DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6, Article 1

Amend: R9-6-101, R9-6-103

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: **Oct 3, 2023**

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

FROM: Council Staff

DATE: **Sep 11, 2023**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 6, Article 1

Amend: R9-6-101, R9-6-103

Summary:

This expedited rulemaking from the Department of Health Services (DHS) or (Department) seeks to amend two (2) rules in Title 9, Chapter 6, Article 1. Specifically, rule 101 contains definitions applicable to multiple Articles in the Chapter, and rule 103 establishes procedures for processing requests for disclosure of communicable disease-related information. DHS is required to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases."

With this rulemaking, the Department is correcting cross references identified in the April 2023 Five Year Review Report.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

To qualify for expedited rulemaking, the rulemaking must not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and meet one or more criteria listed in A.R.S. § 41-1027(A). The Department indicates the amendments

do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The Department states the rules satisfy the criteria for an expedited rulemaking under A.R.S. § 41-1027(A)(6) as the rulemaking amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government by updating cross references in the associated rules.

Council staff believes the Department has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).

2. 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.

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

The Department states they did not receive public or stakeholder comments about this rulemaking.

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

The Department indicates that no changes were made between the proposed and final rules.

6. 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 states federal laws do not apply to these rules.

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

The Department indicates that the rules do not require a permit or license.

8. 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 states that they did not review or rely on any study for this rulemaking.

9. Conclusion

This expedited rulemaking from the Department of Health Services seeks to amend two rules in Title 9, Chapter 6, Article 1. With this rulemaking, the Department is correcting cross references identified in the April 2023 Five Year Review Report.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF HEALTH SERVICES
POLICY & INTERGOVERNMENTAL AFFAIRS

August 22, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, 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 1, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: July 17, 2023

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemaking amends rules to address issues identified in a five-year-review report approved by the Council on April 4, 2023, as specified in A.R.S. § 41-1027(A)(6). The Department plans to clarify the rules by correcting cross-references through expedited rulemaking, under A.R.S. § 41-1027, consistent with the five-year review report. The Department believes that making these changes will improve the effectiveness of the rules and reduce regulatory burden.

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 6, Article 1, relates to a five-year-review report approved by the Council on April 4, 2023.

4. A list of all items enclosed:
   a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
   b. Statutory authority
   c. Current rule

The Department is requesting that the rules be heard at the Council meeting on October 3, 2023.

I certify that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES

COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 1. GENERAL

PREAMBLE

1.	Article, Part, of Section Affected (as applicable)	Rulemaking Action
	R9-6-101	Amend
	R9-6-103	Amend

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

Authorizing Statutes: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Implementing Statutes: A.R.S. § 36-136(I)(1)

3. The effective date of the rules:

The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

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 expedited rulemaking:

Notice of Docket Opening: 29 A.A.R. 1367, June 16, 2023

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 1510, July 7, 2023

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

Name: Ken Komatsu, State Epidemiologist

Address: Arizona Department of Health Services
Public Health Preparedness
150 N. 18th Ave., Suite 100
Phoenix, AZ 85007-3248

Telephone: (602) 364-3587

Fax: (602) 364-3199

E-mail: Ken.Komatsu@azdh

or

Name: Stacie Gravito, Office Chief

Address: Arizona Department of Health Services

Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Stacie.Gravito@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

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. R9-6-101 contains definitions applicable to multiple Articles in the Chapter, and R9-6-103 establishes procedures for processing requests from Good Samaritans, who have had a significant exposure risk, for disclosure of communicable disease-related information pursuant to A.R.S. § 36-664(E). As part of a five-year-review report for 9 A.A.C. 6, Article 1, the Department identified incorrect cross-references in these two rules and proposed making changes to the rules. After receiving an exception according to A.R.S. § 41-1039(A), the Department is correcting the cross-references in the rules through expedited rulemaking, under A.R.S. § 41-1027, consistent with the five-year review report. The Department believes that making these changes will improve effectiveness and reduce the regulatory burden.

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 or rely on any study for 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:

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

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

The Department did not receive public or stakeholder comments about the 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:

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 rule does not require the issuance of a regulatory permit. Therefore, a general permit is 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:

Federal laws do not apply to 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 such 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:

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES

COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 1. GENERAL

Section

ARTICLE 1. GENERAL

R9-6-101. Definitions

In this Chapter, unless otherwise specified:

1. "Active tuberculosis" means the same as in A.R.S. § 36-711.
2. "Administrator" means the individual who is the senior leader at a child care establishment, health care institution, correctional facility, school, pharmacy, or shelter.
3. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
4. "Agent" means an organism that may cause a disease, either directly or indirectly.
5. "AIDS" means Acquired Immunodeficiency Syndrome.
6. "Airborne precautions" means, in addition to use of standard precautions:
    a. Either:
        i. Placing an individual in a private room with negative air-pressure ventilation, at least six air exchanges per hour, and air either:
            (1) Exhausted directly to the outside of the building containing the room, or
            (2) Recirculated through a HEPA filtration system before being returned to the interior of the building containing the room; or
        ii. If the building in which an individual is located does not have an unoccupied room meeting the specifications in subsection (6)(a)(i):
            (1) Placing the individual in a private room, with the door to the room kept closed when not being used for entering or leaving the room, until the individual is transferred to a health care institution that has a room meeting the specifications in subsection (6)(a)(i) or to the individual's residence, as medically appropriate; and
            (2) Ensuring that the individual is wearing a mask covering the individual's nose and mouth; and
    b. Ensuring the use by other individuals, when entering the room in which the individual is located, of a device that is:
        i. Designed to protect the wearer against inhalation of an atmosphere that may be harmful to the health of the wearer, and
        ii. At least as protective as a National Institute for Occupational Safety and Health-approved N-95 respirator.
7. "Approved test for tuberculosis" means a Mantoux skin test or other test for tuberculosis recommended by the Centers for Disease Control and Prevention or the Tuberculosis Control Officer appointed under A.R.S. § 36-714.

8. "Arizona State Laboratory" means the part of the Department authorized by A.R.S. Title 36, Chapter 2, Article 2, and A.R.S. § 36-132(A)(11) that performs serological, microbiological, entomological, and chemical analyses.
9. "Average window period" means the typical time between exposure to an agent and the ability to detect infection with the agent in human blood.
10. "Barrier" means a mask, gown, glove, face shield, face mask, or other membrane or filter to prevent the transmission of infectious agents and protect an individual from exposure to body fluids.
11. "Body fluid" means semen, vaginal secretion, tissue, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid, urine, blood, lymph, or saliva.
12. "Carrier" means an infected individual without symptoms who can spread the infection to a susceptible individual.
13. "Case" means an individual:
    a. With a communicable disease whose condition is documented:
        i. By laboratory results that support the presence of the agent that causes the disease;
        ii. By a health care provider's diagnosis based on clinical observation; or
        iii. By epidemiologic associations with the communicable disease, the agent that causes the disease, or toxic products of the agent;
    b. Who has experienced diarrhea, nausea, or vomiting as part of an outbreak; or
    c. Who has experienced a vaccinia-related adverse event.
14. "Case definition" means the disease-specific criteria that must be met for an individual to be classified as a case.
15. "Chief medical officer" means the senior health care provider in a correctional facility or that individual's designee who is also a health care provider.
16. "Child" means an individual younger than 18 years of age.
17. "Child care establishment" means:
    a. A "child care facility," as defined in A.R.S. § 36-881;
    b. A "child care group home," as defined in A.R.S. § 36-897;
    c. A child care home registered with the Arizona Department of Education under A.R.S. § 46-321; or
    d. A child care home certified by the Arizona Department of Economic Security under A.R.S. Title 46, Chapter 7, Article 1.
18. "Clinical signs and symptoms" means evidence of disease or injury that can be observed by a health care provider or can be inferred by the health care provider from a patient's description of subjective complaints.
19. "Cohort room" means a room housing only individuals infected with the same agent and no other agent.

20. "Communicable disease" means an illness caused by an agent or its toxic products that arises through the transmission of that agent or its products to a susceptible host, either directly or indirectly.
21. "Communicable period" means the time during which an agent may be transmitted directly or indirectly:
    a. From an infected individual to another individual;
    b. From an infected animal, arthropod, or vehicle to an individual; or
    c. From an infected individual to an animal.
22. "Confirmatory test" means a laboratory analysis approved by the U.S. Food and Drug Administration to be used after a screening test to diagnose or monitor the progression of HIV infection.
23. "Contact" means an individual who has been exposed to an infectious agent in a manner that may have allowed transmission of the infectious agent to the individual during the communicable period.
24. "Correctional facility" means any place used for the confinement or control of an individual:
    a. Charged with or convicted of an offense,
    b. Held for extradition, or
    c. Pursuant to a court order for law enforcement purposes.
25. "Court-ordered subject" means a subject who is required by a court of competent jurisdiction to provide one or more specimens of blood or other body fluids for testing.
26. "Dentist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.
27. "Department" means the Arizona Department of Health Services.
28. "Designated service area" means the same as in ~~R9-18-101~~ A.A.C. R9-1-601.
29. "Diagnosis" means an identification of a disease by an individual authorized by law to make the identification.
30. "Disease" means a condition or disorder that causes the human body to deviate from its normal or healthy state.
31. "Emerging or exotic disease" means:
    a. A new disease resulting from change in an existing organism;
    b. A known disease not usually found in the geographic area or population in which it is found;
    c. A previously unrecognized disease appearing in an area undergoing ecologic transformation; or
    d. A disease reemerging as a result of a situation such as antimicrobial resistance in a known infectious agent, a breakdown in public health measures, or deliberate release.
32. "Entity" has the same meaning as "person" in A.R.S. § 1-215.

33. "Epidemiologic investigation" means the application of scientific methods to ascertain a diagnosis; identify risk factors for a disease; determine the potential for spreading a disease; institute control measures; and complete forms and reports such as communicable disease, case investigation, and outbreak reports.
34. "Fever" means a temperature of 100.4° F or higher.
35. "Food establishment" has the same meaning as in the document incorporated by reference in ~~A.A.C. R9-8-107~~ A.A.C. R9-8-101.
36. "Food handler" means:
    a. A paid or volunteer full-time or part-time worker who prepares or serves food or who otherwise touches food in a food establishment; or
    b. An individual who prepares food for or serves food to a group of two or more individuals in a setting other than a food establishment.
37. "Foodborne" means that food serves as a mode of transmission of an infectious agent.
38. "Guardian" means an individual who is invested with the authority and charged with the duty of caring for an individual by a court of competent jurisdiction.
39. "HBsAg" means hepatitis B surface antigen.
40. "Health care institution" has the same meaning as in A.R.S. § 36-401.
41. "Health care provider" means the same as in A.R.S. § 36-661.
42. "Health education" means supplying to an individual or a group of individuals:
    a. Information about a communicable disease or options for treatment of a communicable disease, and
    b. Guidance about methods to reduce the risk that the individual or group of individuals will become infected or infect other individuals.
43. "HIV" means Human Immunodeficiency Virus.
44. "HIV-related test" has the same meaning as in A.R.S. § 36-661.
45. "Infected" or "infection" means when an individual has an agent for a disease in a part of the individual's body where the agent may cause a disease.
46. "Infectious active tuberculosis" means pulmonary or laryngeal active tuberculosis in an individual, which can be transmitted from the infected individual to another individual.
47. "Infectious agent" means an agent that can be transmitted to an individual.
48. "Infant" means a child younger than 12 months of age.
49. "Isolate" means:
    a. To separate an infected individual or animal from others to limit the transmission of infectious agents, or
    b. A pure strain of an agent obtained from a specimen.
50. "Isolation" means separation, during the communicable period, of an infected individual or animal from others to limit the transmission of infectious agents.
51. "Laboratory report" means a document that:

a. Is produced by a laboratory that conducts a test or tests on a subject's specimen; and

b. Shows the outcome of each test, including personal identifying information about the subject.

52. "Local health agency" means a county health department, a public health services district, a tribal health unit, or a U.S. Public Health Service Indian Health Service Unit.

53. "Local health officer" means an individual who has daily control and supervision of a local health agency or the individual's designee.

54. "Medical evaluation" means an assessment of an individual's health by a physician, physician assistant, or registered nurse practitioner.

55. "Medical examiner" means an individual:

a. Appointed as a county medical examiner by a county board of supervisors under A.R.S. § 11-592, or

b. Employed by a county board of supervisors under A.R.S. § 11-592 to perform the duties of a county medical examiner.

56. "Multi-drug resistant tuberculosis" means active tuberculosis that is caused by bacteria that are not susceptible to the antibiotics isoniazid and rifampin.

57. "Officer in charge" means the individual in the senior leadership position in a correctional facility or that individual's designee.

58. "Outbreak" means an unexpected increase in incidence of a disease, infestation, or sign or symptom of illness.

59. "Parent" means a biological or adoptive mother or father.

60. "Person" has the same meaning as in A.R.S. § 1-215.

61. "Petition" means a formal written application to a court requesting judicial action on a matter.

62. "Pharmacy" has the same meaning as in A.R.S. § 32-1901.

63. "Physician" means an individual licensed as a doctor of:

a. Allopathic medicine under A.R.S. Title 32, Chapter 13;

b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;

c. Osteopathic medicine under A.R.S. Title 32, Chapter 17; or

d. Homeopathic medicine under A.R.S. Title 32, Chapter 29.

64. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.

65. "Pupil" means a student attending a school.

66. "Quarantine" means the restriction of activities of an individual or animal that has been exposed to a case or carrier of a communicable disease during the communicable period, to prevent transmission of the disease if infection occurs.

67. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.

68. "Respiratory disease" means a communicable disease with acute onset of fever and symptoms such as cough, sore throat, or shortness of breath.

69. "Risk factor" means an activity or circumstance that increases the chances that an individual will become infected with or develop a communicable disease.
70. "School" means:
    a. An "accommodation school," as defined in A.R.S. § 15-101;
    b. A "charter school," as defined in A.R.S. § 15-101;
    c. A "private school," as defined in A.R.S. § 15-101;
    d. A "school," as defined in A.R.S. § 15-101;
    e. A college or university;
    f. An institution that offers a "private vocational program," as defined in A.R.S. § 32-3001; or
    g. An institution that grants a "degree," as defined in A.R.S. § 32-3001, for completion of an educational program of study.
71. "Screening test" means a laboratory analysis approved by the U.S. Food and Drug Administration as an initial test to indicate the possibility that an individual is infected with a communicable disease.
72. "Sexual contact" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, or other deliberate interaction with another individual's genital area for a non-medical or non-hygienic reason.
73. "Shelter" means:
    a. A facility or home that provides "shelter care," as defined in A.R.S. § 8-201;
    b. A "homeless shelter," as defined in A.R.S. § 16-121; or
    c. A "shelter for victims of domestic violence," as defined in A.R.S. § 36-3001.
74. "Significant exposure" means the same as in A.R.S. § 32-3207.
75. "Standard precautions" means the use of barriers by an individual to prevent parenteral, mucous membrane, and nonintact skin exposure to body fluids and secretions other than sweat.
76. "Subject" means an individual whose blood or other body fluid has been tested or is to be tested.
77. "Submitting entity" means the same as in A.R.S. § 13-1415.
78. "Suspect case" means an individual whose medical history, signs, or symptoms indicate that the individual:
    a. May have or is developing a communicable disease;
    b. May have experienced diarrhea, nausea, or vomiting as part of an outbreak; or
    c. May have experienced a vaccinia-related adverse event.
79. "Syndrome" means a pattern of signs and symptoms characteristic of a disease.
80. "Test" means an analysis performed on blood or other body fluid to evaluate for the presence or absence of a disease.
81. "Test result" means information about the outcome of a laboratory analysis of a subject's specimen and does not include personal identifying information about the subject.

82. "Treatment" means a procedure or method to cure, improve, or palliate an illness or a disease.
83. "Tuberculosis control officer" means the same as in A.R.S. § 36-711.
84. "Vaccine" means a preparation of a weakened or killed agent, a portion of the agent's structure, or a synthetic substitute for a portion of the agent's structure that, upon administration into the body of an individual or animal, stimulates a response in the body to produce or increase immunity to a particular disease.
85. "Vaccinia-related adverse event" means a reaction to the administration of a vaccine against smallpox that requires medical evaluation of the reaction.
86. "Victim" means an individual on whom another individual is alleged to have committed a sexual offense, as defined in A.R.S. § 13-1415.
87. "Viral hemorrhagic fever" means disease characterized by fever and hemorrhaging and caused by a virus.
88. "Waterborne" means that water serves as a mode of transmission of an infectious agent.
89. "Working day" means the period from 8:00 a.m. to 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

R9-6-103. Disclosure of Communicable Disease-Related Information to a Good Samaritan

A. In this Section, unless otherwise specified, the following definitions apply:

1. "Affidavit" means a voluntary declaration or statement of facts that is made in writing and under oath or affirmation.
2. "Assisted person" means the individual with whom a Good Samaritan alleges interaction constituting a significant exposure risk.
3. "Available" means in the possession of or accessible by the Designated Officer who is reviewing a disclosure request.
4. "Communicable disease-related information" has the same meaning as in A.R.S. § 36-661.
5. "Designated Officer" means an individual appointed by the Director or a local health officer to:
   a. Review a disclosure request from a Good Samaritan;
   b. Determine whether disclosure of communicable disease-related information is required under A.R.S. § 36-664(E) and this Section; and
   c. Respond to the Good Samaritan.
6. "Director" has the same meaning as in A.R.S. § 36-101.
7. "Disclosure request" means the information submitted by a Good Samaritan according to A.R.S. § 36-664(E) and subsection (C) or (D).
8. "Emergency care or assistance" means actions performed by an individual on or for another individual, which are necessary to prevent death or impairment of the health of the other individual.
9. "Emergency department" has the same meaning as in A.A.C. R9-11-101.

10. "Good Samaritan" has the same meaning as in A.R.S. § 36-661.
11. "In writing" means:
    a. An original document,
    b. A photocopy,
    c. A facsimile, or
    d. An e-mail.
12. "Medical consultation" means discussion between a Good Samaritan and:
    a. A physician or a registered nurse practitioner working in an emergency department or urgent care unit;
    b. An occupational health provider as defined in A.A.C. R9-6-801; or
    c. Any other health care provider knowledgeable in determining circumstances when post-exposure prophylaxis is necessary.
13. "Mucous membrane" means a thin, pliable layer of tissue that lines passageways and cavities in the human body that lead to the outside, such as the mouth, gastrointestinal tract, nose, vagina, and urethra.
14. "Notarized" means signed and dated by a notary.
15. "Notary" means any individual authorized to perform the acts specified under A.R.S. § ~~41-313~~ 41-251.
16. "Post-exposure prophylaxis" means treatment provided to an individual who may have been exposed to a communicable disease, which is intended to prevent infection of the individual.
17. "Significant exposure risk" has the same meaning as in A.R.S. § 36-661.
18. "Under oath or affirmation" means a sworn or affirmed statement made by a Good Samaritan to a notary under the penalty of perjury.
19. "Urgent care unit" has the same meaning as in A.A.C. R9-11-201.

B. A significant exposure risk may occur when a Good Samaritan's interaction with an individual results in:
1. A transfer of blood or body fluids from the individual onto the mucous membranes or into breaks in the skin of the Good Samaritan; or
2. A sharing of airspace between the Good Samaritan and the individual.

C. If a Good Samaritan makes a disclosure request to the Department or a local health agency 72 hours or less after an alleged significant exposure risk, the disclosure request shall include:
1. The Good Samaritan's name;
2. The Good Samaritan's mailing address or e-mail address;
3. The telephone number at which the Good Samaritan may be reached during a working day;
4. A description of the accident, fire, or other life-threatening emergency, in which the Good Samaritan rendered emergency care or assistance;
5. A description of the:

a. Emergency care or assistance rendered by the Good Samaritan at the accident, fire, or other life-threatening emergency; and

b. Circumstances that the Good Samaritan believes constitute a significant exposure risk;

6. If known, the name of the assisted person;

7. If known, the date of birth of the assisted person; and

8. Any additional information that may identify the assisted person.

D. If a Good Samaritan makes a disclosure request to the Department or a local health agency more than 72 hours after an alleged significant exposure risk, the disclosure request shall include:

1. A statement in writing that the Good Samaritan is requesting communicable disease-related information for an assisted person as allowed under A.R.S. § 36-664(E);

2. Documentation concerning the accident, fire, or other life-threatening emergency in which the Good Samaritan rendered emergency care or assistance; and

3. A notarized affidavit that contains:

a. The information specified in subsections (C)(1) through (8);

b. A statement that the Good Samaritan understands that the Good Samaritan may seek medical consultation to determine whether post-exposure prophylaxis for a communicable disease is needed;

c. A statement that the Good Samaritan certifies that the declarations contained within the affidavit are truthful to the best of the Good Samaritan's knowledge; and

d. The Good Samaritan's signature.

E. Within two working days after the Department or a local health agency receives a disclosure request from a Good Samaritan, the Designated Officer shall:

1. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) indicates a significant exposure risk to the Good Samaritan and communicable disease-related information is available for the assisted person:

a. Attempt to contact the Good Samaritan by telephone and provide the Good Samaritan with the communicable disease-related information:

i. For the assisted person;

ii. Pertaining to the specific communicable disease or diseases that may be transmitted through the interaction between the Good Samaritan and the assisted person; and

iii. Without revealing the assisted person's name;

b. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that disclosure of communicable disease-related information for one communicable disease does not rule out the possibility that the Good Samaritan was exposed to other communicable diseases about which information is not available to the Designated Officer;

c. Attempt to contact the Good Samaritan by telephone and provide to the Good Samaritan information concerning the agent causing the communicable disease for which the Designated Officer is disclosing communicable disease-related information, including:
    i. A description of the disease or syndrome caused by the agent, including its symptoms;
    ii. A description of how the agent is transmitted to others;
    iii. The average window period for the agent;
    iv. An explanation that exposure to an individual with a communicable disease does not mean that infection has occurred or will occur;
    v. 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;
    vi. That it is necessary to notify others that they may be or may have been exposed to the agent through interaction with the Good Samaritan; and
    vii. The availability of assistance from the Department, local health agencies, or other resources; and
d. Send to the Good Samaritan in writing:
    i. The information specified in subsection (E)(1)(a);
    ii. The notification specified in subsection (E)(1)(b);
    iii. The information specified in subsection (E)(1)(c); and
    iv. A statement that the confidentiality of the disclosed communicable disease-related information is protected by A.R.S. §§ 36-664(G) and 36-666(A)(2);

2. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) indicates a significant exposure risk to the Good Samaritan, but the Designated Officer is unable to provide communicable disease-related information for the assisted person:
    a. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that either:
        i. Communicable disease-related information, pertaining to the specific communicable disease or diseases that may be transmitted through the interaction between the Good Samaritan and the assisted person, is not available to the Designated Officer; or
        ii. The Designated Officer is unable to identify the assisted person from the information provided in the Good Samaritan's disclosure request, as specified in subsection (C) or (D);

b. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that:
    i. The Good Samaritan's interaction with the assisted person may pose a significant exposure risk to the Good Samaritan; and
    ii. The Good Samaritan may seek medical consultation on the need for post-exposure prophylaxis; and
c. Send to the Good Samaritan in writing the notifications specified in subsections (E)(2)(a) and (b); and

3. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) does not indicate a significant exposure risk to the Good Samaritan:
    a. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that the Designated Officer will not disclose any available communicable disease-related information for the assisted person; and
    b. Send to the Good Samaritan in writing:
        i. The notification specified in subsection (E)(3)(a);
        ii. A statement that the Designated Officer's decision not to disclose communicable disease-related information to the Good Samaritan is based on A.R.S. § 36-664(E) and this Section;
        iii. The Designated Officer's reasons for not disclosing communicable disease-related information to the Good Samaritan; and
        iv. A statement that the Good Samaritan has the right to obtain a hearing as specified in A.R.S. § 41-1092.03(B).

Statutory Authority for 9 A.A.C. 6, Article 1

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.

36-136. <u>Powers and duties of director; compensation of personnel; rules; definitions</u>

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.

36-664. Confidentiality; exceptions

A. A person who obtains communicable disease related information in the course of providing a health service or obtains that information from a health care provider pursuant to an authorization shall not disclose or be compelled to disclose that information except as authorized by state or federal law, including the health insurance portability and accountability act privacy standards (45 Code of Federal Regulations part 160 and part 164, subpart E), or pursuant to the following:

1. The protected person or, if the protected person lacks capacity to consent, the protected person's health care decision maker.

2. A health care provider or first responder who has had an occupational significant exposure risk to the protected person's blood or bodily fluid if the health care provider or first responder provides a written request that documents the occurrence and information regarding the nature of the occupational significant exposure risk and the report is reviewed and confirmed by a health care provider who is both licensed pursuant to title 32, chapter 13, 14, 15 or 17 and competent to determine a significant exposure risk. A health care provider who releases communicable disease information pursuant to this paragraph shall provide education and counseling to the person who has had the occupational significant exposure risk.

3. The department or a local health department for purposes of notifying a Good Samaritan pursuant to subsection E of this section.

4. An agent or employee of a health facility or health care provider to provide health services to the protected person or the protected person's child or for billing or reimbursement for health services.

5. A health facility or health care provider, in relation to procuring, processing, distributing or using a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or other body fluids, for use in medical education, research or therapy or for transplantation to another person.

6. A health facility or health care provider, or an organization, committee or individual designated by the health facility or health care provider, that is engaged in the review of professional practices, including the review of the quality, utilization or necessity of medical care, or an accreditation or oversight review organization responsible for the review of professional practices at a health facility or by a health care provider.

7. A private entity that accredits the health facility or health care provider and with whom the health facility or health care provider has an agreement requiring the agency to protect the confidentiality of patient information.

8. A federal, state, county or local health officer if disclosure is mandated by federal or state law.

9. A federal, state or local government agency authorized by law to receive the information. The agency is authorized to redisclose the information only pursuant to this article or as otherwise allowed by law.

10. An authorized employee or agent of a federal, state or local government agency that supervises or monitors the health care provider or health facility or administers the program under which the health service is provided. An authorized employee or agent includes only an employee or agent who, in the ordinary course of business of the government agency, has access to records relating to the care or treatment of the protected person.

11. A person, health care provider or health facility to which disclosure is ordered by a court or administrative body pursuant to section 36-665.

12. The industrial commission of Arizona or parties to an industrial commission of Arizona claim pursuant to section 23-908, subsection D and section 23-1043.02.

13. Insurance entities pursuant to section 20-448.01 and third-party payors or the payors' contractors.

14. Any person or entity as authorized by the patient or the patient's health care decision maker.

15. A person or entity as required by federal law.

16. The legal representative of the entity holding the information in order to secure legal advice.

17. A person or entity for research only if the research is conducted pursuant to applicable federal or state laws and regulations governing research.

18. A person or entity that provides services to the patient's health care provider, as defined in section 12-2291, and with whom the health care provider has a business associate agreement that requires the person or entity to protect the confidentiality of patient information as required by the health insurance portability and accountability act privacy standards (45 Code of Federal Regulations part 164, subpart E).

19. A county medical examiner or an alternate medical examiner directing an investigation into the circumstances surrounding a death pursuant to section 11-593.

B. At the request of the department of child safety or the department of economic security and in conjunction with the placement of children in foster care or for adoption or court-ordered placement, a health care provider shall disclose communicable disease information, including HIV-related information, to the department of child safety or the department of economic security.

C. A state, county or local health department or officer may disclose communicable disease related information if the disclosure is any of the following:

1. Specifically authorized or required by federal or state law.

2. Made pursuant to an authorization signed by the protected person or the protected person's health care decision maker.

3. Made to a contact of the protected person. The disclosure shall be made without identifying the protected person.

4. Made for the purposes of research as authorized by state and federal law.

5. Made to a nonprofit health information organization as defined in section 36-3801 that is designated by the department as this state's official health information exchange organization.

D. The director may authorize the release of information that identifies the protected person to the national center for health statistics of the United States public health service for the purposes of conducting a search of the national death index.

E. The department or a local health department shall disclose communicable disease related information to a Good Samaritan who submits a request to the department or the local health department. The request shall document the occurrence of the accident, fire or other life-threatening emergency and shall include information regarding the nature of the significant exposure risk. The

department shall adopt rules that prescribe standards of significant exposure risk based on the best available medical evidence. The department shall adopt rules that establish procedures for processing requests from Good Samaritans pursuant to this subsection. The rules shall provide that the disclosure to the Good Samaritan not reveal the protected person's name and be accompanied by a written statement that warns the Good Samaritan that the confidentiality of the information is protected by state law.

F. An authorization to release communicable disease related information shall be signed by the protected person or, if the protected person lacks capacity to consent, the protected person's health care decision maker. An authorization shall be dated and shall specify to whom disclosure is authorized, the purpose for disclosure and the time period during which the release is effective. A general authorization for the release of medical or other information, including communicable disease related information, is not an authorization for the release of HIV-related information unless the authorization specifically indicates its purpose as an authorization for the release of confidential HIV-related information and complies with the requirements of this section.

G. A person to whom communicable disease related information is disclosed pursuant to this section shall not disclose the information to another person except as authorized by this section. This subsection does not apply to the protected person or a protected person's health care decision maker.

H. This section does not prohibit the listing of communicable disease related information, including acquired immune deficiency syndrome, HIV-related illness or HIV infection, in a certificate of death, autopsy report or other related document that is prepared pursuant to law to document the cause of death or that is prepared to release a body to a funeral director. This section does not modify a law or rule relating to access to death certificates, autopsy reports or other related documents.

I. If a person in possession of HIV-related information reasonably believes that an identifiable third party is at risk of HIV infection, that person may report that risk to the department. The report shall be in writing and include the name and address of the identifiable third party and the name and address of the person making the report. The department shall contact the person at risk pursuant to rules adopted by the department. The department employee making the initial contact shall have expertise in counseling persons who have been exposed to or tested positive for HIV or acquired immune deficiency syndrome.

J. Except as otherwise provided pursuant to this article or subject to an order or search warrant issued pursuant to section 36-665, a person who receives HIV-related information in the course of providing a health service or pursuant to a release of HIV-related information shall not disclose that information to another person or legal entity or be compelled by subpoena, order, search warrant or other judicial process to disclose that information to another person or legal entity.

K. This section and sections 36-666, 36-667 and 36-668 do not apply to persons or entities that are subject to regulation under title 20.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 9

Amend: R9-9-402

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: September 13, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 9

Amend: R9-9-402

Summary:

This expedited rulemaking from the Department of Health Services seeks to amend one (1) rule in Title 9, Chapter 9, Article 4 regarding Administration for an Accredited Procurement Organization. Specifically, the rule relates to requirements for licensed accredited procurement organizations to maintain donor consent forms and an electronic identification system for donors, among other things. This rulemaking seeks to amend the rule to clarify an electronic identification system for donors, established and maintained for "non-transplant anatomical donation" (NTAD) or "non-transplant anatomical material" (NAM), must assign a unique identification number according to A.R.S. § 36-851.03(A)(6)(a). The Department indicates this change will align the rule with statutory requirements and make the rule consistent with other sections of Title 9, Chapter 9.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

To qualify for expedited rulemaking, the rulemaking must not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and meet

one or more criteria listed in A.R.S. § 41-1027(A). The Department indicates the proposed amendments will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but reduce a burden due to unnecessary requirements without compromising health and safety. Specifically, the proposed amendments meet the criteria for A.R.S. § 41-1027(A)(3) in that they clarify language of a rule without changing its effect.

Council staff believes the Department has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).

2. 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.

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

The Department indicates it received no public comments regarding this rulemaking.

5. 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 between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

6. 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 is no corresponding federal law.

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

Not applicable. The Department indicates these rules do not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

8. 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 for this rulemaking.

9. Conclusion

This expedited rulemaking from the Department seeks to amend one (1) rule in Title 9, Chapter 9, Article 4 regarding Administration for an Accredited Procurement Organization. Specifically, the rule relates to requirements for licensed accredited procurement organizations to maintain donor consent forms and an electronic identification system for donors, among other things. This rulemaking seeks to amend the rule to clarify an electronic identification system for donors, established and maintained for NTAD or NAM, must assign a unique identification number according to A.R.S. § 36-851.03(A)(6)(a). The Department indicates this change will align the rule with statutory requirements and make the rule consistent with other sections of Title 9, Chapter 9.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF HEALTH SERVICES
POLICY & INTERGOVERNMENTAL AFFAIRS

August 22, 2023

VIA: E-MAIL: 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: 9 A.A.C. 9, Article 4 Department of Health Services – Procurement Organizations

Dear Ms. Sornsin:

Enclosed are the administrative rules identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council (Council) under A.R.S. §§ 41-1027 and 41-1052.

The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-202:

1. The close of record:
   The close of record was August 7, 2023. Submission of the rules is within the 120 days allowed for Final Expedited Rulemaking.

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
   The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
   Not applicable

4. A list of all items enclosed:
   a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
   b. Statutes and current rules

The Department requests the rules be heard at the September 26, 2023, Council meeting.

I certify that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

Sincerely,

Stacie Gravito
Director's Designee

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 9. DEPARTMENT OF HEALTH SERVICES – PROCUREMENT ORGANIZATIONS

PREAMBLE

1.	Article, Part, or Section Affected (as applicable)	Rulemaking Action
	R9-9-402	Amend

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

Authorizing Statutes: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Implementing Statutes: A.R.S. §§ 36-851.01, 36-851.02 and 36-851.03

3. The effective date of the rules:

The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

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 expedited rulemaking:

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 1516, July 7, 2023

Notice of Rulemaking Docket Opening: 29 A.A.R. 1368, June 16, 2023

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

Name: Megan Whitby, Deputy Assistant Director

Address: Department of Health Services
Public Health Licensing
150 N. 18th Ave., Suite 400
Phoenix, AZ 85007

Telephone: (602) 364-3052

Fax: (602) 364-2079

E-mail: megan.whitby@azdhs.gov

or

Name: Stacie Gravito, Interim Office Chief

Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200

Phoenix, AZ 85007-3232
Telephone: (602) 542-5879
Fax: (602) 364-1150
E-mail: Stacie.Gravito@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 36-851.01 requires that a person acting as a procurement organization in Arizona be licensed by the Department, except as provided in A.R.S. § 36-851.01(F). A.R.S. § 36-851.02 specifies requirements for accredited procurement organizations, and A.R.S. § 36-851.03 specifies requirements for procurement organizations that are not accredited. The Department has adopted rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 9. After receiving rulemaking approval pursuant to A.R.S. § 41-1039, the Department is revising the rules to align with statutory requirements and make the rule consistent with other sections of the Chapter. The changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but reduce a burden due to unnecessary requirements without compromising health and safety. This rulemaking will modify already existing rules, and, thus, no new or additional rules will be created as part of this rulemaking. The new rules will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary State.

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 or rely on any study for 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:

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

11. Agency's summary of the pubic or stakeholder comments or objections made about the rulemaking and the agency response to the comments:

The Department did not receive public or stakeholder comments about the 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:

There are no other matters prescribed by statute applicable specifically to the Department or this specific rulemaking.

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 rule does not require the issuance of a regulatory permit. Therefore, a general permit is 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:

There are no federal rules 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 business competitiveness analysis was submitted to the Department.

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. Whether the rule was previously made, amended, or repealed as an emergency rules. 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 rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

CHAPTER 9. DEPARTMENT OF HEALTH SERVICES – PROCUREMENT ORGANIZATIONS

ARTICLE 4. ADMINISTRATION FOR AN ACCREDITED PROCUREMENT ORGANIZATION

Section

ARTICLE 4. ADMINISTRATION FOR AN ACCREDITED PROCUREMENT ORGANIZATION

R9-9-402. Donor Consent; NTAD and NAM Identification

In addition to the requirements in Article 1, a licensee of an accredited procurement organization shall ensure that:

1. A donor consent form includes:
   a. The intended use of the NAM,
   b. How the NAM may be used,
   c. A statement that the NAM will be treated with dignity at all times, and
   d. A statement that the NAM may require international export to an end-user.
2. A donor consent form is maintained in the donor's record and retained for at least 10 years beyond the date of final disposition.
3. An electronic identification system for donors is established and maintained for NTAD or NAM;
   a. Assigns a unique ~~identifier using a combination of letters, numbers, and symbols for NTAD or NAM~~ identification number according to A.R.S. § 36-851.03(A)(6)(a);
   b. Tracks the complete history of all NAM; and
   c. Records the date and staff member involved in each significant step of the operation from the time of NTAD acquisition through final disposition.
4. The information required to register the death of a NTAD is submitted within seven calendar days after receiving the NTAD according to A.R.S. § 36-325.

2. Any personal health condition experienced related to receiving, preparing, packaging, distributing, or transporting NTAD or NAM.

C. If an administrator or medical director of a non-accredited procurement organization determines a health condition in subsection (B)(1) has occurred, the administrator or medical director shall:
1. Follow SOPs to secure the area and eliminate exposure to others;
2. Notify appropriate health and law enforcement agencies, as applicable; and
3. Report the incident to the Department within five working days of determination that a health condition in subsection (B)(2) has occurred.

D. A licensee, administrator, or medical director of a non-accredited procurement organization shall report a health condition experienced by a technician or personnel member to the Department within five calendar days of determination that the individual has a personal health condition specified in subsection (B)(1).

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1517 (July 1, 2022), with an immediate effective date of June 8, 2022 (Supp. 22-2).

ARTICLE 4. ADMINISTRATION FOR AN ACCREDITED PROCUREMENT ORGANIZATION

R9-9-401. General Responsibilities

A. A licensee of an accredited procurement organization shall provide a copy of a renewed accreditation to the Department within 30 calendar days from the date of issuance.

B. A licensee of an accredited procurement organization shall ensure that a procurement organization facility is in a building that provides a separate and designated area for tissue recovery according to A.R.S. § 36-851.02(3).

C. A licensee of an accredited procurement organization shall ensure SOPs are established, documented, and implemented that cover:
1. Labeling;
2. Packaging, including a packaging insert form that discloses disease status of tissue to end-user according to A.R.S. § 36-851.02(2)(d);
3. Transport;
4. Distribution; and
5. Final disposition.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1517 (July 1, 2022), with an immediate effective date of June 8, 2022 (Supp. 22-2).

R9-9-402. Donor Consent; NTAD and NAM Identification

In addition to the requirements in Article 1, a licensee of an accredited procurement organization shall ensure that:
1. A donor consent form includes:
   a. The intended use of the NAM,
   b. How the NAM may be used,
   c. A statement that the NAM will be treated with dignity at all times, and
   d. A statement that the NAM may require international export to an end-user.
2. A donor consent form is maintained in the donor's record and retained for at least 10 years beyond the date of final disposition.
3. An electronic identification system for donors is established and maintained for NTAD or NAM;
   a. Assigns a unique identifier using a combination of letters, numbers, or symbols for NTAD or NAM; or
   b. Tracks the complete history of all NAM; and
   c. Records the date and staff member involved in each significant step of the operation from the time of NTAD acquisition through final disposition.
4. The information required to register the death of a NTAD is submitted within seven calendar days after receiving the NTAD according to A.R.S. § 36-325.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1517 (July 1, 2022), with an immediate effective date of June 8, 2022 (Supp. 22-2). At the request of the Department a clerical error was corrected under subsection (3)(a); "and" was changed to "or" under file number R22-220 (Supp. 22-3).

R9-9-403. Tissue End-Users

A. A licensee of an accredited procurement organization shall establish, document, and implement SOPs to properly screen an end-user that includes:
1. A written request for NAM, including:
   a. The name, address and affiliation of educator and research accepting responsibility for the acceptance, use, and disposition of the NAM;
   b. A description of the intended use;
   c. The date and the approximate duration of NAM use;
   d. A description of the venue in which the NAM will be used and the security measures for the safe and ethical utilization of the venue;
   e. An assurance that universal precautions will be used when handling NAM;
   f. The proposed final disposition of the NAM;
   g. An agreement to comply with procurement organization's policies, as applicable;
   h. An outline of proposed promotional materials to be disseminated in connection with the use of NAM; and
   i. Other supporting documentation that is relevant to the request; and
2. The criteria for approving requested NAM for use, including:
   a. The acceptability of the educator and researcher for NAM utilization;
   b. The appropriateness of the intended use;
   c. Type of venue in which the NAM will be used;
   d. Proposed final disposition of the NAM unless returned to the procurement organization; and
   e. Proposed promotional materials.

B. A licensee of an accredited procurement organization shall establish, document, and implement a procedure that allows an end-users to request an exceptional release of NAM.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1517 (July 1, 2022), with an immediate effective date of June 8, 2022 (Supp. 22-2).

Authorizing Statutes

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.

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.

36-851.01. Procurement organizations; licensure; renewal; fees; penalties; exceptions

A. A person may not act as a procurement organization in this state unless the person is licensed by the department of health services as a procurement organization. The person shall apply in writing to the director of the department on a form specified by the director, shall include all information requested in the application and shall pay the fees prescribed by the director.

B. The director shall grant a procurement organization license to a person if the organization either is accredited by a nationally recognized accrediting agency that is approved by the department of

health services and maintains full accreditation with the accrediting agency or meets the requirements prescribed in section 36-851.03 and the rules adopted by the department.

C. A license under this section is valid for two years and must be renewed every two years. A person shall file an application for renewal at least thirty days before the expiration of the current license.

D. Each procurement organization applying for licensure or license renewal under this section shall pay all applicable fees as prescribed by the director. All fees collected pursuant to this section for the licensure and license renewal of procurement organizations shall be deposited in the health services licensing fund established by section 36-414.

E. The director may sanction, impose civil penalties on or, pursuant to title 41, chapter 6, article 10, suspend or revoke, in whole or in part, the license of any procurement organization if any person who is an owner, officer, agent or employee of the procurement organization is in or continues to be in violation of this article or the rules of the department of health services adopted pursuant to this article.

F. This section does not apply to any of the following:

1. An organ procurement organization as described by 42 United States Code section 273 that is designated for this state by the secretary of the United States department of health and human services pursuant to 42 United States Code section 1320b-8.

2. A procurement organization that is regulated by the United States food and drug administration in connection with the recovery of human tissue intended for transplantation pursuant to 21 Code of Federal Regulations part 1270.

3. A procurement organization as defined in section 36-841, paragraph 27, subdivision (d).

4. A procurement organization that is affiliated with an accredited educational institution in connection with the education of students enrolled in a degree-granting program for health professionals.

5. A procurement organization that recovers anatomical gifts for research or education, including for quality improvement or quality assurance, and that is affiliated with a hospital that is licensed pursuant to chapter 4 of this title.

6. A hospital that is licensed pursuant to chapter 4 of this title.

36-851.02. Procurement organizations; deemed status; requirements; inspection

A procurement organization that is licensed pursuant to section 36-851.01 by virtue of its accreditation status:

1. Is deemed to meet health and safety requirements that are equivalent to those set forth in section 36-851.03 and is not required to meet the requirements prescribed in section 36-851.03 except as specified in paragraph 2 of this section if the procurement organization maintains its accredited status with the accrediting agency.

2. Shall comply with all of the following as adopted in rule by the department of health services:

(a) The proper use and maintenance of donor consent forms.

(b) The implementation and maintenance of proper identification systems for bodies and disarticulated items.

(c) The implementation and maintenance of protocols and materials for procedures used by the procurement organization to properly screen end users.

(d) The proper documentation and disclosure of the disease status of tissue specimens to end users.

(e) Labeling, packaging, transport and distribution policies and procedures.

(f) Final disposition procedures.

3. Shall provide a designated area for tissue recovery that does not operate in a funeral establishment for the recovery of whole bodies for medical research and education.

4. Is subject to inspection by the department of health services at any time with respect to compliance with the requirements of paragraph 2 of this section.

36-851.03. Procurement organizations; requirements; records; rules; inspection

A. Except as provided in section 36-851.02, each procurement organization that is required to be licensed pursuant to section 36-851.01 shall do all of the following:

1. Designate a medical director who is a physician licensed pursuant to title 32, chapter 13 or 17 and who provides medical guidance to determine donor eligibility.

2. Employ a director who holds at least a bachelor's degree in a related science from an accredited university and who is responsible for all licensed activities of the organization.

3. Comply with all of the following as adopted in rule by the department of health services:

(a) The proper use and maintenance of donor consent forms.

(b) The implementation and maintenance of proper identification systems for bodies and disarticulated items.

(c) The implementation and maintenance of protocols and materials for procedures used by the procurement organization to properly screen end users.

(d) The proper documentation and disclosure of the disease status of tissue specimens to end users.

(e) Labeling, packaging, transport and distribution policies and procedures.

(f) Final disposition procedures.

4. Implement and maintain all of the following:

(a) Standard operating procedures for all licensed functions of the organization.

(b) A safety awareness and blood-borne pathogen training program that complies with state and federal law.

(c) A cleaning program that mitigates potential cross-contamination between donors.

5. Provide a designated area for tissue recovery that:

(a) Is open to inspection by the department of health services with or without notice.

(b) Does not operate in a funeral establishment for the recovery of whole bodies for medical research and education.

6. Properly track donors and label tissue by doing both of the following:

(a) Assigning a unique identifying number to each donor and using this number for all tissue from that donor that is recovered and distributed.

(b) Affixing labels with the following information on all nontransplant tissue specimens:

(i) A statement that universal precautions will be used.

(ii) A statement that the specimen is not for transplant or clinical use.

(iii) Any condition or limitation regarding the use of the specimen.

(iv) Contact information for the procurement organization.

7. Maintain the following records for ten years after the last date of tissue distribution:

(a) A copy or recorded consent of the donation authorization.

(b) A copy of the donor's death certificate and transit permit issued by the state where the death occurred.

(c) A copy of the donor's physical assessment and risk assessment questionnaire.

(d) A copy of the donor's serological results, when applicable.

(e) A copy of all documentation relating to tissue recovery, storage and distribution activities.

B. The department of health services shall adopt rules that follow, as nearly as practicable, the requirements on equivalent subjects specified in subsection A of this section that are set forth in the accreditation requirements of a nationally recognized accrediting agency that is approved by the department.

C. A procurement organization that is subject to the requirements of this section is subject to inspection by the department of health services at any time to evaluate the compliance by the procurement organization with the requirements of this article and the rules adopted by the department.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 16, Article 9

Amend: R9-16-902, R9-16-903, R9-16-904

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: September 13, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 16, Article 9

Amend: R9-16-902, R9-16-903, R9-16-904

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend three (3) rules in Title 9, Chapter 16, Article 9 related to Doula Certification. Specifically, the Department indicates it is amending the rules to adhere to statutory requirements, correct rulemaking formatting issues, reduce the burden on stakeholders by eliminating or consolidating processes, and make the rules clearer, more concise, and understandable.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

To qualify for expedited rulemaking, the rulemaking must not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and meet one or more criteria listed in A.R.S. § 41-1027(A). The Department indicates the proposed amendments will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but reduce a burden due to unnecessary requirements without compromising health and safety. Specifically, the proposed amendments meet the

criteria for A.R.S. § 41-1027(A)(3), (5), and (6) in that they clarify language of a rule without changing its effect, reduce or consolidate steps, procedures or processes in the rules, and amend or repeal rules that are outdated, redundant or otherwise no longer necessary for the operation of state government, respectively.

Council staff believes the Department has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).

2. 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.

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

The Department indicates it received no public comments regarding this rulemaking.

5. 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 between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

6. 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 is no corresponding federal law.

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

Not applicable. The Department indicates these rules do not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

8. 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 for this rulemaking.

9. Conclusion

This expedited rulemaking from the Department seeks to amend three (3) rules in Title 9, Chapter 16, Article 9 related to Doula Certification. Specifically, the Department indicates it is

amending the rules to adhere to statutory requirements, correct rulemaking formatting issues, reduce the burden on stakeholders by eliminating or consolidating processes, and make the rules clearer, more concise, and understandable.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF HEALTH SERVICES
POLICY & INTERGOVERNMENTAL AFFAIRS

August 22, 2023

VIA: E-MAIL: 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: 9 A.A.C. 16, Article 9 Department of Health Services – Doula Certification

Dear Ms. Sornsin:

Enclosed are the administrative rules identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council (Council) under A.R.S. §§ 41-1027 and 41-1052.

The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-202:

1. The close of record:
   The close of record was August 7, 2023. Submission of the rules is within the 120 days allowed for Final Expedited Rulemaking.

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
   The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
   Not applicable

4. A list of all items enclosed:
   a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
   b. Statutes and current rules

The Department requests the rules be heard at the September 26, 2023, Council meeting.

I certify that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

Sincerely,

Stacie Gravito
Director's Designee

SG:ec
Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES – OCCUPATIONAL LICENSING

ARTICLE 9. DOULA CERTIFICATION

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)** **Rulemaking Action**

R9-16-902	Amend
R9-16-903	Amend
R9-16-904	Amend

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

Authorizing Statutes: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Implementing Statutes: A.R.S. § 36-766.02

3. **The effective date of the rules:**

The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

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 expedited rulemaking:**

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 1518, July 7, 2023

Notice of Rulemaking Docket Opening: 29 A.A.R. 1370, June 16, 2023

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

Name: Megan Whitby, Deputy Assistant Director

Address: Department of Health Services
Public Health Licensing
150 N. 18th Ave., Suite 400
Phoenix, AZ 85007

Telephone: (602) 364-3052

Fax: (602) 364-2079

E-mail: megan.whitby@azdhs.gov

or

Name: Stacie Gravito, Interim Office Chief

Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007-3232
Telephone: (602) 542-5879
Fax: (602) 364-1150
E-mail: Stacie.Gravito@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 36-766.02 authorizes the Arizona Department of Health Services (Department) to adopt rules to establish standards and requirements for individuals who wish to obtain a state doula certification. The Department has adopted rules for state-certified doula's in Arizona Administrative Code, Title 9, Chapter 16, Article 9. The rules promogulated clarify the scope of practice and core competencies [36-766.02(A)(1)] of state-certified doulas including skills and areas of knowledge that are essential to expand health and wellness; establishes reasonable and necessary minimum doula qualifications; provides standards and requirements relate to doula education and training programs in the state; identifies continuing education requirements; and to ensure protect of public health and safety, specifies criteria for denying, suspending, and revoking a doula certification. After receiving rulemaking approval pursuant to A.R.S. § 41-1039, the Department plans to conduct a rulemaking to amend the rules to adhere to statutory requirements, correct rulemaking formatting issues, reduce the burden on stakeholders by eliminating or consolidating processes, and make the rules clearer and more concise and understandable. The changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but reduce a burden due to unnecessary requirements without compromising health and safety. This rulemaking will modify already existing rules, and, thus, no new or additional rules will be created as part of this rulemaking. The new rules will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary State.

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 or rely on any study for 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:

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

11. Agency's summary of the pubic or stakeholder comments or objections made about the rulemaking and the agency response to the comments:

The Department did not receive public or stakeholder comments about the 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:

There are no other matters prescribed by statute applicable specifically to the Department or this specific rulemaking.

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 rule does not require the issuance of a regulatory permit. Therefore, a general permit is 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:

There are no federal rules 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 business competitiveness analysis was submitted to the Department.

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. Whether the rule was previously made, amended, or repealed as an emergency rules. 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 rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 9. DEPARTMENT OF HEALTH SERVICES – OCCUPATIONAL LICENSING

ARTICLE 9. DOULA CERTIFICATION

Section

ARTICLE 9. DOULA CERTIFICATION

R9-16-902. Doula Eligibility and Doula Scope of Practice

A. An individual may provide doula services in Arizona without obtaining certification as a certified doula specified in this Article.

B. An individual is eligible to ~~practice~~ apply for certification as a certified doula, if the individual:

1. Is 18 years of age or older;
2. Has at least a high school diploma or high school equivalency diploma;
3. Has training or education covering ~~educational documentation for~~ at least one of the following:
   a. ~~Completing~~ Completion of at least 30 hours of in-person instruction or a combination of in-person and online instruction in core competency specified in this Article; or
   b. ~~If an individual from a community trained~~ Community training in non-western doula practices, as determined by the Department, documentation confirming that core competencies have been met through culturally specific training or education subject to Department review; or
   c. ~~If an individual provides documentation of other~~ Other related individualized~~;~~ or experiential training or education that is subject to review by the Director; ~~or~~
   ~~d. Proof of current certification from a nationally recognized doula organization;~~
4. Has written documentation of:
   a. Observing at least one birth after completing the training or education specified in subsection (B)(3), signed and dated ~~is completed~~ by the medical provider or licensed midwife who assisted the laboring mother;
   b. Attending a minimum of three births while serving as the primary doula, including evaluations from the laboring mother and from the medical provider or licensed midwife who assisted the laboring mother;
   c. Completing first aid and adult basic cardiopulmonary resuscitation through a course recognized by the American Heart Association;
   d. Completing neonatal resuscitation through a course recognized by the American Academy of Pediatrics or American Heart Association;
   e. A code of ethics agreement as prescribed by the Department, and
   f. A valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1;

5. Meets the requirements of core competencies as specified in R9-16-901(9) and certified doula scope of practice as specified in R9-16-901(12); and

6. Submits an initial doula application in a Department-provided format to the Department.

C. Proof that an individual has current certification from a nationally recognized doula organization may substitute for requirements in subsections (B)(3).

~~**C.**~~ **D.** An individual who does not meet the requirements in subsections ~~(B)(3) and (4)~~ (B)(3) and (4)(a) and (b), but who has been practicing as a doula in this state for at least five years before ~~the effective date of A.R.S. 36-766.03~~ September 29, 2021, may be eligible to be a certified doula if the individual has ~~submits to the Department the following~~:

1. Proof of current certification from a nationally recognized doula organization; and

2. Three letters of recommendation from medical providers or licensed midwives who have worked with the ~~applicant~~ individual within the preceding two years and can attest to the ~~applicant's~~ individual's competency in providing doula services.

~~**D.**~~ **E.** A certified doula shall not provide physical health services or behavioral health services, as defined in A.R.S. § 36-401 to a client.

R9-16-903. Certification Initial Application

A. An applicant for a doula certification shall submit to the Department:

1. An application ~~provided~~ in a Department-provided format that contains:

   a. The applicant's name, date of birth, home address, telephone number, and email address;

   b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;

   c. Whether the applicant has completed high school or a high school equivalency program;

   d. Whether the applicant is or has been certified as a doula in another state or country;

   e. Whether the applicant has had a certification or license revoked or suspended by any state within the previous two years;

   f. Whether the applicant is currently ineligible for certification or licensure in any state because of a revocation or suspension;

   g. Whether any disciplinary action has been imposed by any state, territory or district in this country for an act related to the applicant's practice as a doula;

   h. Whether the applicant agrees to allow the Department to submit supplemental requests for information under A.R.S. § 41-1075;

i. An attestation that the information submitted is true and accurate; and

j. The applicant's signature and date of signature;

2. If applicable, a list of all states and countries in which the applicant is or has been certified as a doula;

3. If a certificate or license for the applicant has been revoked or suspended by any state within the previous two years, documentation that includes:

   a. The date of the revocation or suspension,

   b. The state or jurisdiction of the revocation or suspension, and

   c. An explanation of the revocation or suspension;

4. If the applicant is currently ineligible for any occupational certificate or license in any state because of a revocation or suspension, documentation that includes:

   a. The date of the ineligibility for certification or license,

   b. The state or jurisdiction of the ineligibility for certification or license, and

   c. An explanation of the ineligibility for certification or license;

5. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's practice as a doula, documentation that includes:

   a. The date of the disciplinary action,

   b. The state or jurisdiction of the disciplinary action,

   c. An explanation of the disciplinary action, and

   d. Any other applicable documents, including a legal order or settlement agreement;

6. Documentation of the applicant's citizenship or alien status that complies with A.R.S. § 41-1080;

7. As applicable, documentation that demonstrates <u>compliance with</u>:

   a. ~~At least 30 hours of in-person instruction or a combination of in-person and online in core competencies; or~~

   ~~b.~~ ~~Specific cultural training or education received related to community training in non-western doula practices confirming completion of required core competencies; or~~

   ~~c.~~ ~~Individualized or experiential training or education that is consistent with core competencies;~~

   ~~d.~~ ~~Practicing as a doula in this state for at least five years, before the effective date of A.R.S. § 36-766.03, and includes:~~

      ~~i.~~ ~~Proof of current certification from a nationally recognized doula organization; and~~

~~ii. Three letters of recommendation from a medical provider or licensed midwife who has worked with the applicant within the preceding two years and attest to the applicant's competency; and~~

~~e. Observing at least one birth after training is completed;~~

~~f. Attending at least three births while serving as the primary doula, including evaluations from the laboring mother and medical provider or licensed midwife who assisted the laboring mother;~~

~~g. Completion of training in:~~

~~i. First aid and cardiopulmonary resuscitation, and~~

~~ii. Neonatal resuscitation; and~~

~~h. A valid code of ethics agreement; and~~

~~i. A valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1; and~~

a. R9-16-902(B)(3) and (4),

b. R9-16-902(C), or

c. R9-16-902(D); and

8. A fee specified in ~~R9-16-909~~ R9-16-909(A) and (B).

B. In lieu of the documentation required in ~~subsection (A)(7)~~ R9-16-902(B)(3), and (4)(a) and (b), an applicant may submit documentation to the Department that includes:

1. The name of each state that issued the applicant a current certification, including:
   a. The certification number of each current certification, and
   b. The date each current certification was issued;
2. Documentation of the professional certificate or license issued to the applicant by each state in which the applicant holds a professional certificate or license;
3. A statement, signed and dated by the applicant, attesting that the applicant:
   a. Has been certified or licensed in another state for at least one year, with a scope of practice consistent ~~with the scope of practice for which certification is being requested~~ of a certified doula;
   b. Has met minimum education requirements specified in this Article;
   c. Has not voluntarily surrendered a certification or license in any other state or country while under investigation for unprofessional conduct; and
   d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct.

~~C.~~ ~~The Department may waive the minimum training and education requirements for doula state certification in subsections (A)(7) and (B) for applicants who shall provide documentation of current certification with a nationally recognized doula organization.~~

~~D.~~ C. The Department shall review the application and required documentation for certification as a certified doula according to R9-16-907 and Table 9.1.

R9-16-904. Certification Renewal

A. From the date of issuance, a doula certification is valid for three years.

B. At least 30 calendar days and not more than 90 calendar days before the expiration date of a certification, an applicant for renewal of certification shall submit to the Department:

1. ~~A renewal application~~ The following information in a Department-provided format ~~that contains~~:
    a. The applicant's name, home address, telephone number, and email address;
    b. The applicant's certification number and date of expiration;
    c. Whether the applicant has had, within ~~two~~ three years before the renewal application date, a certificate suspended or revoked by any state;
    d. An attestation that:
        i. ~~the~~ The applicant has completed at least 15 hours of continuing education, as required in R9-16-905; and
        ii. The documentation of the completed continuing education is available upon the Department's request;
    e. Whether the applicant agrees to allow the Department to submit supplemental request for information under R9-16-907(C);
    f. An attestation that the information submitted as part of the renewal application packet is true and accurate; and
    g. The applicant's signature and date of signature~~.~~;
2. If the applicant has had a certificate suspended or revoked, as specified according to subsection (B)(1)(c), documentation that includes:
    a. The date of the revocation or suspension,
    b. The state or jurisdiction of the revocation or suspension, and
    c. An explanation of the revocation or suspension; and

~~2.~~ 3. A fee specified in ~~R9-16-909~~ R9-16-909(C).

C. An applicant who does not submit the documentation and the fee ~~in~~ according to subsection (B) shall apply for a new certificate ~~in~~ according to R9-16-903.

D. The Department shall review the application and required documentation for renewal certification

as a doula according to ~~R9-16-904~~ R9-16-907 and Table 9.1.

Table 8.1, Time-Frames (in calendar days) made by final rulemaking at 28 A.A.R. 2552 (September 30, 2022), effective November 7, 2022 (Supp. 22-3).

R9-16-809. Changes Affecting a Certificate; Request for a Duplicate Certificate

A. A certified CHW shall submit to the Department a notice in a Department-provided format within 30 calendar days after the effective date of a change in:
1. The certified CHW's home address, telephone number, or e-mail address, including the new home address, telephone number, or e-mail address; and
2. The certified CHW's name, including a copy of one of the following with the certified CHW's new name:
   a. Marriage certificate,
   b. Divorce decree, or
   c. Other legal document establishing the certified CHW's new name.

B. A certificate holder may obtain a duplicate certificate by submitting to the Department a written request for a duplicate certificate in a Department-provided format that includes:
1. The certified CHW's name and address,
2. The certified CHW's certification number and expiration date,
3. The certified CHW's signature and date of signature, and
4. A duplicate certificate fee specified in R9-16-810.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 2552 (September 30, 2022), effective November 7, 2022 (Supp. 22-3).

R9-16-810. Fees

A. An applicant shall submit to the Department for a CHW certification, a $100 nonrefundable initial application fee.

B. An applicant shall submit to the Department for a CHW certification, a $200 initial certification fee.

C. A certified CHW shall submit to the Department for a renewal certification, a $200 nonrefundable renewal fee.

D. The fee for a duplicate certificate is $25.

E. An applicant for initial certification is not required to submit the applicable fee in subsections (A) and (B) if the applicant, as part of the applicable application in R9-16-804, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

F. Subject to the availability of Department funding, an applicant may receive a discounted fee for an initial application, initial certification, or renewal certification.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 2552 (September 30, 2022), effective November 7, 2022 (Supp. 22-3).

ARTICLE 9. DOULA CERTIFICATION

R9-16-901. Definitions

In addition to the definitions in A.R.S. § 36-766, the following definitions apply in this Article unless otherwise specified:
1. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
2. "Applicant" means an individual who submits an application and required documentation for approval to practice as a certified doula.
3. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run and including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
4. "Certification" means an approval granted to individuals who meet the qualifications, including education and training requirements, in this Article for certified doulas.
5. "Certified doula" means the same as "state-certified doula" in A.R.S. § 36-766.
6. "Client" means an individual receiving doula services provided by a certified doula.
7. "Code of ethics agreement" means the document submitted to the Department by an applicant that agrees to the general ethics and compliance of the standards of practice, and doula scope of practice of a certified doula.
8. "Continuing education" means a course that provides training and instruction that is designed to develop or improve a certified doula's professional competence in areas directly related to the practice of a doula.
9. "Core competencies" means a curriculum that provides knowledge to develop core skills and assume job responsibilities, including:
   a. Entrepreneurship,
   b. Standards of practice and ethics,
   c. The childbirth processes,
   d. Parental engagement,
   e. Postpartum care,
   f. Grief,
   g. Trauma-informed care,
   h. Cultural doula practices,
   i. Anatomy and physiology, and
   j. HIPAA.
10. "Course" means a workshop, seminar, lecture, conference, or class.
11. "Department" means the same as in A.R.S. § 36-101.
12. "Doula scope of practice" includes:
    a. Providing care coordination, coaching, and social support;
    b. Providing emotional support of the individuals parenting choices;
    c. Providing encouragement and positive affirmations;
    d. Advocating for parents;
    e. Assessing the needs of the family;
    f. Providing newborn care hands-on education and care including:
       i. Normal newborn behavior,
       ii. Newborn appearance,
       iii. Sleep habits,
       iv. Feeding,
       v. Bathing, and
       vi. Dressing the baby;
    g. Infant feeding support;
    h. Cord and circumcision care;
    i. Establishing a routine;
    j. Organizing the nursery and home; and
    k. Sibling education and transition.
13. "Documentation" means information in written, photographic, electronic or other permanent form.
14. "Evaluation" means the assessment of the client in order to provide doula services.

15. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, according to U.S. Public Law 104-191.
16. "Licensed midwife" has the same meaning as "midwife" in A.R.S. § 36-751 and is licensed by the Department to provide midwifery services.
17. "Medical provider" means an individual licensed in the state of Arizona as a:
    a. "Physician" as defined in A.R.S. §§ 32-1401, 32-1501, or 32-1800;
    b. "Certified nurse midwife" as defined in A.R.S. § 32-1601; or
    c. "Clinical nurse specialist" as defined in A.R.S. § 32-1601.
18. "Observing" means to witness:
    a. The provision of doula services to a client, or
    b. A demonstration of how to provide doula services to a client.
19. "Organization" means a person specified in A.R.S. § 1-215, and includes a tribal government.
20. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
21. "Physical health services" means information and care provided by licensed health professionals consistent with practices specified in A.R.S. § 32-3201.
22. "Postpartum" means the six-week period following delivery of a newborn and placenta.
23. "Training and instruction" means educational activities that develop and improve an individual's professional competence in areas related to the practice as a certified doula specified in A.R.S. § 36-766.03 and specific to the delivery of services identified in the doula scope of practice and core competencies specified in this Article.

Historical Note
New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-902. Doula Eligibility and Doula Scope of Practice

A. An individual may provide doula services in Arizona without obtaining certification as a certified doula specified in this Article.

B. An individual is eligible to practice as a certified doula, if the individual:
1. Is 18 years of age or older;
2. Has at least a high school diploma or high school equivalency diploma;
3. Has training or educational documentation for:
    a. Completing at least 30 hours of in-person instruction or a combination of in-person and online in core competency specified in this Article; or
    b. If an individual from a community trained in non-western doula practices, as determined by the Department, documentation confirming that core competencies have been met through culturally specific training or education subject to Department review; or
    c. If an individual provides documentation of other related individualized; or experiential training or education that is subject to review by the Director; or
    d. Proof of current certification from a nationally recognized doula organization;
4. Has written documentation of:
    a. Observing at least one birth after training is completed by the medical provider or licensed midwife who assisted the laboring mother;
    b. Attending a minimum of three births while serving as the primary doula, including evaluations from the laboring mother and from the medical provider or licensed midwife who assisted the laboring mother;
    c. Completing first aid and adult basic cardiopulmonary resuscitation through a course recognized by the American Heart Association;
    d. Completing neonatal resuscitation through a course recognized by the American Academy of Pediatrics or American Heart Association;
    e. A code of ethics agreement as prescribed by the Department, and
    f. A valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1;
5. Meets the requirements of core competencies as specified in R9-16-901(9) and certified doula scope of practice as specified in R9-16-901(12); and
6. Submits an initial doula application in a Department-provided format to the Department.

C. An individual who does not meet the requirements in subsections (B)(3) and (4), but who has been practicing as a doula in this state for at least five years before the effective date of A.R.S. 36-766.03, may be eligible to be a certified doula if the individual submits to the Department the following:
1. Proof of current certification from a nationally recognized doula organization; and
2. Three letters of recommendation from medical providers or licensed midwives who have worked with the applicant within the preceding two years and can attest to the applicant's competency in providing doula services.

D. A certified doula shall not provide physical health services or behavioral health services to a client.

Historical Note
New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-903. Certification Initial Application

A. An applicant for a doula certification shall submit to the Department:
1. An application provided in a Department-provided format that contains:
    a. The applicant's name, home address, telephone number, and email address;
    b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
    c. Whether the applicant has completed high school or a high school equivalency program;
    d. Whether the applicant is or has been certified as a doula in another state or country;
    e. Whether the applicant has had a certification or license revoked or suspended by any state within the previous two years;
    f. Whether the applicant is currently ineligible for certification or licensure in any state because of a revocation or suspension;
    g. Whether any disciplinary action has been imposed by any state, territory or district in this country for an act related to the applicant's practice as a doula;

h. Whether the applicant agrees to allow the Department to submit supplemental requests for information under A.R.S. § 41-1075;
i. An attestation that the information submitted is true and accurate; and
j. The applicant's signature and date of signature;

2. If applicable, a list of all states and countries in which the applicant is or has been certified as a doula;
3. If a certificate or license for the applicant has been revoked or suspended by any state within the previous two years, documentation that includes:
   a. The date of the revocation or suspension,
   b. The state or jurisdiction of the revocation or suspension, and
   c. An explanation of the revocation or suspension;
4. If the applicant is currently ineligible for any occupational certificate or license in any state because of a revocation or suspension, documentation that includes:
   a. The date of the ineligibility for certification or license,
   b. The state or jurisdiction of the ineligibility for certification or license, and
   c. An explanation of the ineligibility for certification or license;
5. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's practice as a doula, documentation that includes:
   a. The date of the disciplinary action,
   b. The state or jurisdiction of the disciplinary action,
   c. An explanation of the disciplinary action, and
   d. Any other applicable documents, including a legal order or settlement agreement;
6. Documentation of the applicant's citizenship or alien status that complies with A.R.S. § 41-1080;
7. As applicable, documentation that demonstrates:
   a. At least 30 hours of in-person instruction or a combination of in-person and online in core competencies; or
   b. Specific cultural training or education received related to community training in non-western doula practices confirming completion of required core competencies; or
   c. Individualized or experiential training or education that is consistent with core competencies; or
   d. Practicing as a doula in this state for at least five years, before the effective date of A.R.S. § 36-766.03, and includes:
      i. Proof of current certification from a nationally recognized doula organization; and
      ii. Three letters of recommendation from a medical provider or licensed midwife who has worked with the applicant within the preceding two years and attest to the applicant's competency; and
   e. Observing at least one birth after training is completed;
   f. Attending at least three births while serving as the primary doula, including evaluations from the laboring mother and medical provider or licensed midwife who assisted the laboring mother;
   g. Completion of training in:
      i. First aid and cardiopulmonary resuscitation, and
      ii. Neonatal resuscitation; and
   h. A valid code of ethics agreement; and
   i. A valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1; and
8. A fee specified in R9-16-909.

B. In lieu of the documentation required in subsection (A)(7), an applicant may submit documentation to the Department that includes:
1. The name of each state that issued the applicant a current certification, including:
   a. The certification number of each current certification, and
   b. The date each current certification was issued;
2. Documentation of the professional certificate or license issued to the applicant by each state in which the applicant holds a professional certificate or license;
3. A statement, signed and dated by the applicant, attesting that the applicant:
   a. Has been certified or licensed in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
   b. Has met minimum education requirements specified in this Article;
   c. Has not voluntarily surrendered a certification or license in any other state or country while under investigation for unprofessional conduct; and
   d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct.

C. The Department may waive the minimum training and education requirements for doula state-certification in subsections (A)(7) and (B) for applicants who shall provide documentation of current certification with a nationally recognized doula organization.

D. The Department shall review the application and required documentation for certification as a certified doula according to R9-16-907 and Table 9.1.

Historical Note

New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-904. Certification Renewal

A. From the date of issuance, a doula certification is valid for three years.

B. At least 30 calendar days and not more than 90 calendar days before the expiration date of a certification, an applicant shall submit to the Department:
1. A renewal application in a Department-provided format that contains:
   a. The applicant's name, home address, telephone number, and email address;
   b. The applicant's certification number and date of expiration;
   c. Whether the applicant has had, within two years before the renewal application date, a certificate suspended or revoked by any state;
   d. An attestation that the applicant has completed 15 hours of continuing education required in R9-16-905 and documentation of the completed continuing education is available upon the Department's request;

e. Whether the applicant agrees to allow the Department to submit supplemental request for information under R9-16-907(C);
f. An attestation that the information submitted as part of the renewal application packet is true and accurate; and
g. The applicant's signature and date of signature.
2. A fee specified in R9-16-909.

C. An applicant who does not submit the documentation and the fee in subsection (B) shall apply for a new certificate in R9-16-903.

D. The Department shall review the application and required documentation for renewal certification as a doula according to R9-16-904 and Table 9.1.

Historical Note
New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-905. Continuing Education

A. A certified doula shall complete 15 hours of continuing education hours within the three years prior to renewing certification specified in A.R.S. § 36-766.01.

B. Continuing education shall:
1. Directly relate to doula core competencies as specified in R9-16-901(9) including services, skills, and knowledge that:
a. Facilitates access to quality of care delivery and health outcomes for clients receiving services; and
b. Expands health and wellness in diverse communities to reduce health disparities;
2. Have educational objectives that exceed an introductory level of knowledge related to doula core competencies and scope of practices; and
3. Consist of courses related to core competencies, such as:
a. Health and social service systems, including disease prevention to help manage health conditions;
b. Health promotion education;
i. Health literacy and cross-cultural communication;
ii. Referrals and providing follow-up;
iii. Individual support and coaching; and
iv. Outreach methods and strategies;
c. Client and community assessment;
d. Health education for behavior change;
e. Provide direct services;
f. Home visits to provide education, assessment, and social support; and
g. Support, advocacy, and health system navigation for clients.

C. A continuing education course developed, endorsed, or sponsored by the Department according to A.R.S. § 36-766.09(B) is available at www.azdhs.gov.

Historical Note
New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-906. Enforcement

A. The Department may deny, suspend, or revoke a certificate holder's certification, permanently or for a fixed period of time specified in A.R.S. § 36-766.04 and this Article.

B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
1. The type of violation,
2. The severity of the violation,
3. The danger to public health and safety,
4. The number of violations,
5. The number of clients affected by the violations,
6. The degree of harm to the consumer,
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

C. A certificate holder may appeal an enforcement action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

D. If a certified doula is employed by a tribe and appears to have violated this Article according to A.R.S. § 36-766.04(C), the tribal government having jurisdiction and following tribal ordinances and policies shall:
1. Review and determine whether the certified doula has violated this Article; and
2. Provide the Department with a written determination of whether denied, suspended, or revoked, including specific penalties from disciplinary actions taken by the tribal government.

Historical Note
New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-907. Time-frames

A. For a certificate or approval issued by the Department under this Article, Table 9.1 specifies the overall time-frame.
1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. The extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. For a certificate or approval issued by the Department under this Article, Table 9.1 specifies the administrative completeness review time-frame.
1. The administrative completeness review time-frame begins the date the Department receives an application required in this Article.
2. Except as provided in subsection (B)(3), the Department shall provide a written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
a. If a certificate application is not complete, the notice of deficiencies listing each deficiency and the information or documentation needed to complete the application.
b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application withdrawn.
3. If the Department issues a certificate during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. For a certificate or approval issued by the Department under this Article, Table 9.1 specifies the substantive review time-frame, which begins on the date the Department sends a written notice of administrative completeness.
1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department approved or denied the application.
2. During the substantive review time-frame:
   a. The Department may make one comprehensive written request for additional information or documentation; and
   b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation.
3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.
4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the certificate or approval.

D. An applicant who is denied certification may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

Table 9.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to a Comprehensive Written Request
Initial Application	A.R.S. § 36-766.02	60	30	30	30	30
Certification Renewal	A.R.S. § 36-766.02	60	30	30	30	30

Historical Note

New Table 9.1, Time-Frames (in calendar days) made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-908. Changes Affecting a Certificate; Request for a Duplicate Certificate

A. A certified doula shall submit to the Department a notice in a Department-provided format within 30 calendar days after the effective date of a change in:
1. The certified doula's home address, telephone number, or email address, including the new home address, telephone number, or email address; and
2. The certified doula's name, including a copy of one of the following with the certified doula's new name:
   a. Marriage certificate,
   b. Divorce decree, or
   c. Other legal documents establishing the certified doula's new name.

B. A certificate holder may obtain a duplicate certificate by submitting to the Department a written request for a duplicate certificate in a Department-provided format that includes:
1. The certified doula's name and address,
2. The certified doula's certification number and expiration date,
3. The certified doula's signature and date of signature, and
4. A duplicate certificate fee specified in R9-16-909.

Historical Note

New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

R9-16-909. Fees

A. An applicant shall submit to the Department for a doula certification, a $100 nonrefundable initial application fee.

B. An applicant shall submit to the Department for a doula certification, a $200 initial certification fee.

C. A certified doula shall submit to the Department for a renewal certification, a $200 nonrefundable renewal fee.

D. The fee for a duplicate certificate is $25.

E. An applicant for initial certification is not required to submit the applicable fee in subsections (A) and (B) if the applicant, as part of the applicable application in R9-16-903, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

F. Subject to the availability of Department funding, an applicant may receive a discounted fee for an initial application, initial certification, or renewal certification.

Historical Note

New Section made by exempt rulemaking at 29 A.A.R. 803 (March 31, 2023), effective August 1, 2023 (Supp. 23-1).

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.

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.

36-766.02. Powers and duties of director; rules; waiver

A. The director, by rule, shall:

1. Outline the scope of practice and the core competencies of state-certified doulas regarding the skills and areas of knowledge that are essential to expand health and wellness, to reduce health disparities and to promote culturally relevant practices within diverse communities.

2. Describe and define reasonable and necessary minimum qualifications, including those prescribed in section 36-766.03.

3. Adopt standards and requirements to establish state-certified doula education and training programs in this state.

4. Adopt standards to approve or accept continuing education courses for renewing state-certified doula certificates.

5. Establish criteria for granting, denying, suspending and revoking state-certified doula certificates in order to protect the public health and safety.

B. The director may consult with subject matter experts from an integrated public health program at a higher education institution located in this state regarding the development of rules prescribed by this section.

C. The director may adopt rules:

1. That are necessary to administer and enforce this article.

2. That allow for reciprocity agreements, including with the Indian health service.

D. The director shall waive the minimum training and education requirements for certification for applicants who provide documentation of current certification with a nationally recognized doula organization.

C-4.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 20

Amend: R9-20-106, R9-20-107, R9-20-108, R9-20-201, R9-20-203, R9-20-206, R9-20-207, R9-20-208

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: **Sep 11, 2023**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 20

Amend: R9-20-106, R9-20-107, R9-20-108, R9-20-201, R9-20-203, R9-20-206, R9-20-207, R9-20-208

Summary:

This expedited rulemaking from the Arizona Department of Health Services (Department) seeks to amend eight (8) rules in Title 9, Chapter 20 related to Court Ordered Program Approvals. The Department is required to establish standards for referrals of court-ordered alcohol, drug, and domestic violence screening and treatment programs.These rules establish the requirements for applicants to become DUI and misdemeanor domestic violence offender treatment service providers and the education that should be completed by the individuals of these programs. With this rulemaking, the Department will align the rule with statutory requirements and make the rule consistent with other sections of the Chapter.

The Department indicates that this rulemaking is not related to a prior five year review report.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

To qualify for expedited rulemaking, the rulemaking must not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and meet one or more criteria listed in A.R.S. § 41-1027(A).The Department indicates the rules satisfy the criteria for expedited rulemaking under ARS 41-1027 (A)(6) as the rules amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government

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

The Department cites both authorizing and implementing statutes.

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

The Department did not receive public or stakeholder comments about the rulemaking.

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

The Department states the rules are not a substantial change, considered as a whole, from the proposed or any supplemental proposals.

5. **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 that the rules are not more stringent than federal law as there is no federal law that applies to this rulemaking.

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

The Department states the rules do not require the issuance of a regulatory permit or license.

7. **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 did not review or rely on any study for this rulemaking.

8. Conclusion

This expedited rulemaking from the Arizona Department of Health Services seeks to amend eightrules in Title 9, Chapter 20 related to Court Ordered Program Approvals. With this rulemaking, the Department will align the rule with statutory requirements and make the rule consistent with other sections of the Chapter.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

July 26, 2023

VIA: E-MAIL: grrc@azdoa.gov
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100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 20, Department of Health Services – Court-Ordered Program Approvals

Dear Ms. Sornsin:

Enclosed are the administrative rules identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council (Council) under A.R.S. §§ 41-1027 and 41-1052.

The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-202:

1. The close of record:
   The close of record was June 12, 2023. Submission of the rules is within the 120 days allowed for Final Expedited Rulemaking.

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
   The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
   Not applicable

4. A list of all items enclosed:
   a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
   b. Statutes and current rules

I certify that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

Sincerely,

Stacie Gravito
Director's Designee

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 20. DEPARTMENT OF HEALTH SERVICES –

COURT-ORDERED PROGRAM APPROVALS

PREAMBLE

1.	Article, Part, or Section Affected (as applicable)	Rulemaking Action
	R9-20-106	Amend
	R9-20-107	Amend
	R9-20-108	Amend
	R9-20-201	Amend
	R9-20-203	Amend
	R9-20-206	Amend
	R9-20-207	Amend
	R9-20-208	Amend

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

Authorizing Statutes: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Implementing Statutes: A.R.S. §§ 13-3601.01 and 36-2006

3. The effective date of the rules:

The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

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 expedited rulemaking:

Notice of Rulemaking Docket Opening: 29 A.A.R. 619, February 24, 2023

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 997, May 5, 2023

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

Name: Odette Colburn, RN, BSN, Section Chief

Address: Arizona Department of Health Services
Bureau of Medical Facilities Licensing
150 N. 18th Ave., Suite 450
Phoenix, AZ 85007

Telephone: (602) 364-3446
E-mail: odette.colburn@azdhs.gov
or
Name: Stacie Gravito, Interim Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007-3232
Telephone: (602) 542-5879
Fax: (602) 364-1150
E-mail: Stacie.Gravito@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) §§ 13-3601.01 and 36-2006 requires the Arizona Department of Health Services (Department) to establish standards for referrals of court-ordered alcohol and other drug screening and treatment programs, and domestic violence offender treatment programs. The Department has adopted rules in Arizona Administrative Code, Title 9, Chapter 20. The rules establish the requirements for applicants to become DUI and misdemeanor domestic violence offender treatment service providers, and the policies and procedures for the approved service providers regarding assessments and education for individuals court-ordered to complete the programs. After obtaining an exception from the rulemaking moratorium in accordance with A.R.S. § 41-1039(A), the Department is revising the rules to address issues with the rules to align with statutory requirements, improve the effectiveness of the rules and make them less burdensome, and make the rule consistent with other sections of the Chapter. The changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but reduce a burden due to outdated requirements without compromising health and safety. The proposed changes will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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 or rely on any study for 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:

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

11. Agency's summary of the pubic or stakeholder comments or objections made about the rulemaking and the agency response to the comments:

The Department did not receive public or stakeholder comments about the 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:

There are no other matters prescribed by statute applicable specifically to the Department or this specific rulemaking.

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 rule does not require the issuance of a regulatory permit. Therefore, a general permit is 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:

There are no federal rules 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 business competitiveness analysis was submitted to the Department.

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. Whether the rule was previously made, amended, or repealed as an emergency rules. 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 rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 20. DEPARTMENT OF HEALTH SERVICES – COURT-ORDERED PROGRAM APPROVALS

ARTICLE 1. DUI SERVICES

Section

ARTICLE 2. MISDEMEANOR DOMESTIC VIOLENCE OFFENDER TREATMENT

ARTICLE 1. DUI SERVICES

R9-20-106. Rescinding Approval

A. The Department may rescind the approval of a DUI services provider if the Department determines that noncompliance with this Article by the DUI services provider negatively impacts the DUI screening, DUI education, or DUI treatment the client is receiving from the DUI services provider.

B. If the Department rescinds the approval of a DUI services provider, the Department shall:

1. Provide written notice of the rescindment to the DUI services provider that includes a list of the requirements with which the DUI services provider is not in compliance, and
2. Remove the DUI services provider from the list of the Department's approved DUI service providers.

C. To obtain approval after a rescindment, an applicant shall submit~~:~~

~~1.~~ ~~The~~ the application required in R9-20-103~~, and~~.

~~2. A written recommendation for approval of the applicant from a referring court.~~

D. The Department shall review the application and recommendation in subsection (C) and issue an approval or notice of non-approval no sooner than 60 days, but not later than 90 days, after the Department receives the application and recommendation.

R9-20-107. Administration, Monitoring

A. A DUI services provider shall designate an administrator who meets qualifications established by the DUI services provider.

B. An applicant or DUI services provider shall ~~allow~~ provide the Department ~~immediate~~ access to a client, records, and all areas of a facility according to A.R.S. § 41-1009 within two hours after the Department's request.

R9-20-108. Requirements for DUI Screening

A. An administrator shall ensure that policies and procedures are developed, documented, and implemented for:

1. Conducting DUI screening,
2. If applicable, performing DUI screening electronically including:
    a. Using a secure connection,
    b. Having direct and immediate interaction between the individual conducting the DUI screening and the individual being screened, and
    c. Verifying the identities of the individual conducting and the individual receiving the DUI screening before the DUI screening is conducted;

3. Tracking and referring a client to DUI education or DUI treatment, and

4. Communicating with and reporting information to a referring court.

B. An administrator shall ensure that:

1. A client is given the following information in writing before DUI screening is conducted:

   a. A description of the DUI screening process;

   b. The timeline for initiating and completing DUI screening;

   c. The consequences to the client for not complying with the DUI screening process and timeline; and

   d. The cost and methods of payment for DUI screening, DUI education, and DUI treatment; and

2. The client's receipt of the information is documented in the client record.

C. An administrator shall ensure that a client's DUI screening:

1. Occurs within 30 days after the date of the court order, unless otherwise required by the court;

2. Is conducted by a:

   a. Behavioral health professional; or

   b. Licensed substance abuse technician under direct supervision, as defined in A.A.C. R4-6-101, of a behavioral health professional;

3. Consists of a face-to-face interview that lasts at least 30 minutes but not more than three hours;

4. Includes administering at least one of the following for measuring alcohol dependency or substance abuse:

   a. Driver Risk Inventory II,

   b. Michigan Alcoholism Screening Test,

   c. The Minnesota Multiphasic Personality Inventory MMPI-2,

   d. Mortimer-Filkins Test,

   e. Substance Abuse Subtle Screening Inventory (SASSI),

   f. Drug Abuse Screening Test (DAST),

   g. Adolescent Chemical Dependency Inventory (ACDI),

   h. Juvenile Substance Abuse Profile (JSAP),

   i. Reinstatement Review Inventory (RRI), or

   j A substance abuse questionnaire that contains the information in one of the screening assessments in subsections (C)(4)(a) through (C)(4)(i); and

5. Is documented in the client record.

D. An administrator shall classify a client based upon the information obtained in the DUI screening in subsection (C) as follows:

1. A Level 1 DUI client is a client who:
    a. Meets at least one of the following:
        i. Has been arrested or convicted two or more times for alcohol or drug-related offenses;
        ii. Had an alcohol concentration of 0.15 or higher at the time of the arrest that led to the current referral and meets at least one of the criteria in subsections (D)(1)(b)(ii) through (xii);
        iii. Has been unable to control use of alcohol or drugs or has habitually abused alcohol or drugs;
        iv. Admits a problem controlling alcohol or drug use;
        v. Has been diagnosed with substance abuse or organic brain disease resulting from substance abuse;
        vi. Has experienced symptoms of withdrawal from alcohol or drug use that included visual, auditory, or tactile hallucinations; convulsive seizures; or delirium tremens; or
        vii. Has been diagnosed with alcoholic liver disease, alcoholic pancreatitis, or alcoholic cardiomyopathy by a medical practitioner; or
    b. Meets at least three of the following:
        i. Had an alcohol concentration of 0.08 or higher at the time of the arrest that led to the current referral;
        ii. Had previously been arrested or convicted one time for an alcohol-related or drug-related offense;
        iii. Has experienced a decrease in attendance or productivity at work or school as a result of alcohol or drug use;
        iv. Has experienced family, peer, or social problems associated with alcohol or drug use;
        v. During DUI screening, provided responses on the standardized instrument in subsection (C)(4) that indicated substance abuse;
        vi. Has previously participated in substance abuse education or treatment for problems associated with alcohol or drug use;
        vii. Has experienced blackouts as a result of alcohol or drug use;
        viii. Has passed out as a result of alcohol or drug use;

ix. Has experienced symptoms of withdrawal from alcohol or drug use including shakes or malaise relieved by resumed alcohol or drug use; irritability; nausea; or anxiety;

x. Exhibits a psychological dependence on drugs or alcohol;

xi. Has experienced an increase in consumption, a change in tolerance, or a change in the pattern of alcohol or drug use; or

xii. Has experienced personality changes associated with alcohol or drug use; and

2. A Level 2 DUI client is a client who:

a. Does not meet any of the criteria in subsection (D)(1)(a), and

b. Meets no more than two of the criteria in subsection (D)(1)(b).

E. An administrator shall ensure that after a client completes DUI screening:

1. The results of the DUI screening are documented in the client record and include:

a. The client's alcohol concentration at the time of the arrest that led to the current referral, if available;

b. The client's history of alcohol and drug use;

c. The client's history of treatment associated with alcohol or drug use; and

d. The client's history of impairments in physical, educational, occupational, or social functioning as a result of alcohol or drug use;

2. Referrals are made as specified in subsection (F); and

3. The following information is reported to the referring court within seven days after the client's completion of DUI screening:

a. The date that the client completed DUI screening;

b. The results of a client's DUI screening;

c. Recommendations for DUI education or DUI treatment, based on the:

i. Results of the DUI screening, and

ii. ~~Recommended~~ Recommendations of the behavioral health professional conducting the DUI screening; and

d. The name of the DUI services provider selected by the client to provide DUI education or DUI treatment to the client.

F. Except as provided in subsection (H), an administrator shall ensure that:

1. A Level 1 DUI client is referred to both:

a. A DUI education provider that provides at least 16 hours of DUI education, and

b. A DUI treatment provider that provides at least 20 hours of DUI treatment;

2. A Level 2 DUI client is referred to a DUI education provider that provides at least 16 hours of DUI education;
3. The referral of a client includes:
    a. Providing the client with the names, addresses, and telephone numbers of three DUI education providers or DUI treatment providers, as applicable, in the geographic area requested by the client, at least two of which are not owned by, operated by, or affiliated with the DUI screening provider; and
    b. Instructing the client to:
        i. Select a DUI education provider or DUI treatment provider, as applicable;
        ii. Schedule an appointment or enroll in DUI education or DUI treatment, as applicable, within seven days after the date of completion of the DUI screening; and
        iii. Notify the DUI screening provider of the name of the DUI education provider or DUI treatment provider, as applicable, selected by the client;
4. A client's written authorization to release information to the selected DUI services provider is obtained; and
5. The DUI education provider or DUI treatment provider, as applicable, selected by the client is provided with:
    a. A copy of the completed standardized instrument or results of the client's DUI screening, and
    b. Recommendations for DUI education or DUI treatment, as applicable, from the behavioral health professional who conducted the DUI screening.

G. A DUI screening provider may refer a Level 1 or Level 2 DUI client to a self-help or peer-support program that assists individuals in achieving and maintaining freedom from alcohol or drugs, such as Alcoholics Anonymous or Narcotics Anonymous. Participation in a self-help group or peer support program is not DUI education or DUI treatment and does not count toward required hours in DUI education or DUI treatment.

H. If a court's requirements conflict with the requirements in subsection (F), a DUI screening provider shall:
1. Comply with the court's requirements,
2. Document in the client record that the court's requirements conflict with requirements in subsection (F), and
3. Maintain at the facility a document identifying the court's requirements.

I. An administrator shall ensure that a referring court is notified in writing within seven days, unless otherwise specified by the court, after:

1. A client fails to:
    a. Obtain or complete DUI screening, or
    b. Pay the cost of DUI screening; or
2. The DUI screening provider learns that a client has:
    a. Completed DUI education or DUI treatment; or
    b. Failed to:
        i. Comply with DUI education or DUI treatment procedures, or
        ii. Complete DUI education or DUI treatment.

J. An administrator shall ensure that a record is maintained for each client that contains:

1. The citation number or complaint number from the arrest that led to the current referral, if available;
2. A copy of the documents referring the client to DUI screening, if available;
3. Documentation that the client received the information required in subsection (B);
4. Documentation of the results of the client's DUI screening required in subsection (E)(1), including the completed standardized instrument required in subsection (C)(4);
5. Documentation of the:
    a. Referrals for DUI education or DUI treatment, as applicable, required in subsection (E)(2); and
    b. Recommendations for DUI education or DUI treatment, as applicable, required in subsection (E)(3)(c);
6. The DUI client's signed and dated authorization for release of information required in subsection (F)(4); and
7. A copy of the information provided to the:
    a. DUI education provider or DUI treatment provider, as applicable, selected by the client, as required in subsection (F)(5); and
    b. Referring court as required in subsection (E)(3).

ARTICLE 2. MISDEMEANOR DOMESTIC VIOLENCE OFFENDER TREATMENT

R9-20-201. Definitions

The following definitions apply in this Article unless otherwise specified:

1. “Administrator” means an individual who has authority and responsibility for managing the provision of treatment.

2. "Applicant" means an individual or business organization that has submitted an application packet to the Department.
3. "Application packet" means the forms, documents, and additional information the Department requires an applicant to submit to become a provider.
4. "Behavioral health professional" means an individual licensed under A.R.S. Title 32 whose scope of practice allows the individual to:
    a. Independently engage in the practice of behavioral health as defined in A.R.S. § 32-3251; or
    b. Except for a licensed substance abuse technician, engage in the practice of behavioral health as defined in A.R.S. § 32-3251 under direct supervision as defined in A.A.C. R4-6-101.
5. "Business organization" has the same meaning as "entity" in A.R.S. § 10-140.
6. "Client" means an individual who is ordered by a referring court to complete a domestic violence offender treatment program as a result of a conviction for a misdemeanor domestic violence offense according to A.R.S. § 13-3601.01.
7. "Client record" means documentation relating to the treatment received by a client.
8. "Controlling person" means a person who, with respect to a business organization:
    a. Through ownership, has the power to vote at least 10% of the outstanding voting securities of the business organization;
    b. If the business organization is a partnership, is a general partner or is a limited partner who holds at least 10% of the voting rights of the partnership;
    c. If the business organization is a corporation, association, or limited liability company, is the president, the chief executive officer, the incorporator, an agent, or any person who owns or controls at least 10% of the voting securities; or
    d. Holds a beneficial interest in 10% or more of the liabilities of the business organization.
9. "Day" means a calendar day, not including the day of the act, event, or default, from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or state holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday.
10. "Department" means the Arizona Department of Health Services.
11. "Documentation" means information in written, photographic, electronic, or other permanent form.
12. "Domestic violence offense" has the same meaning as in A.R.S. § 13-3601.01.

13. "Employee" means an individual compensated by a provider for work on behalf of the provider.

14. "Facility" means the building or buildings used to provide treatment.

15. "Monitoring" means the Department's inspection of a facility to ~~determine compliance with this Article~~ observe and check the quality of misdemeanor domestic violence offender treatment services.

16. "Provider" means an individual or business organization that meets the standards in this Article, as determined by the Department, and is approved by the Department to provide treatment.

17. "Referring court" means a court of competent jurisdiction that orders a client to receive misdemeanor domestic violence offender screening, misdemeanor domestic violence offender education, or misdemeanor domestic violence offender treatment.

~~17.~~ 18. "Treatment" means a program of activities for misdemeanor domestic violence offenders according to A.R.S. § 13-3601.01.

R9-20-203. Application and Renewal

A. An applicant applying to become a provider shall submit to the Department an application packet that contains:

1. An application in a format provided by the Department that includes:
   a. The applicant's name;
   b. The applicant's mailing address and telephone number;
   c. The applicant's e-mail address;
   d. The name, telephone number, and e-mail address of the individual acting on behalf of the applicant according to R9-20-202, if applicable;
   e. The name under which the applicant plans to do business, if different from the applicant's name;
   f. The name of each referring court;
   g. The address and telephone number ~~of the~~ for each facility where treatment is provided; and
   h. The applicant's signature and the date signed;
2. A copy of the:
   a. Program description required in R9-20-208(A)(1),
   b. Policies and procedures required in R9-20-208(B), and
   c. Policies and procedures required in R9-20-208(D);
3. The name and qualifications of the administrator; and

4. A copy of the applicant's:
    a. U.S. Passport, current or expired;
    b. Birth certificate;
    c. Naturalization documents; or
    d. Documentation of legal resident alien status.

B. For renewal, at least 60 days before the expiration of approval, a provider shall submit to the Department in a Department-provided format:
1. The provider's approval number,
2. The information in subsection (A)(1), and
3. The documentation in subsection (A)(2).

R9-20-206. Rescinding Approval

A. The Department may rescind the approval of a provider if the Department determines that noncompliance with this Article by the provider negatively impacts the treatment a client is receiving from the provider.

B. If the Department rescinds the approval of a provider, the Department shall:
1. Provide written notice of the rescindment to the provider that includes a list of the requirements with which the provider is not in compliance,
2. Remove the provider from the Department's list of approved treatment providers, and
3. Provide written notice of the rescindment to any referring courts identified by the provider.

C. To obtain approval after a rescindment, a provider shall submit~~:~~
~~1.~~ ~~The~~ the application required in R9-20-203~~, and~~.
~~2. A written recommendation for approval of the provider from a referring court notified in subsection (B)(3).~~

D. The Department shall review the application and recommendation in subsection (C) and issue an approval or notice of non-approval no sooner than 60 days, but not later than 90 days, after the Department receives the application and recommendation.

R9-20-207. Administration, Monitoring

A. A provider shall designate an administrator who meets qualifications established by the provider.

B. An applicant or ~~A~~ provider shall ~~allow~~ provide the Department ~~immediate~~ access to all areas of a facility, a client, or records, according to A.R.S. § 41-1009 within two hours of the Department's request.

R9-20-208. Misdemeanor Domestic Violence Offender Treatment Standards

A. An administrator shall ensure that:

1. A program description is developed that includes a method for providing treatment;
2. Treatment:
    a. Is based on methodologies developed by behavioral health professionals and supported by published research results;
    b. Does not disproportionately or exclusively include one or more of the following:
        i. Anger or stress management,
        ii. Conflict resolution,
        iii. Family or couples counseling, or
        iv. Education or information about domestic violence;
    c. Emphasizes personal responsibility;
    d. Identifies domestic violence as a means of asserting power and control over another individual;
    e. Does not require the participation of a victim of domestic violence;
    f. Is not provided at a location where a victim of domestic violence is sheltered;
    g. Includes individual counseling, group counseling, or a combination of individual counseling and group counseling that:
        i. Is conducted by a behavioral health professional; and
        ii. Requires each counseling session to be documented in the client record;
    h. Does not include more than 15 clients in group counseling; and
3. Treatment is provided to a client according to subsection (C).

B. An administrator shall ensure that policies and procedures are developed, documented, and implemented that:

1. Unless the period of time for a client to complete treatment is extended, require a client to complete treatment in not less than three months and no more than 12 months after the date the client begins treatment; and
2. Establish criteria for determining whether to extend the time for a client's completion of treatment, such as:
    a. Receiving a recommendation from a behavioral health professional, or
    b. An occurrence of one of the following during the 12 months after the date the client is admitted for treatment:
        i. The client serving jail time,
        ii. Illness of the client or a client’s family member, or
        iii. Death of a client’s family member, or

c. The court requiring the client to complete more than 52 sessions of treatment.

C. An administrator shall ensure that:

1. Except as provided in a court order, treatment includes, at a minimum, the following number of sessions, to be completed after the applicable offense for which the client was required to complete treatment:
   a. For a first offense, 26 sessions;
   b. For a second offense, 36 sessions; and
   c. For a third offense or any subsequent offense, 52 sessions;
2. The duration of a session in subsection (C)(1) is:
   a. For an individual session, not less than 50 minutes; and
   b. For a group session, not less than 90 minutes and not longer than 180 minutes; and
3. Except if extended according to subsection (B)(2), treatment for a client is scheduled to be completed in not less than three months and no more than 12 months after the client is admitted into treatment.

D. An administrator shall ensure that policies and procedures are developed, documented, and implemented for providing treatment that:

1. Establish:
   a. The process for a client to begin and complete treatment;
   b. The timeline for a client to begin treatment;
   c. The timeline for a client to complete treatment, which shall not exceed 12 months, except as provided in subsection (B)(2); and
   d. Criteria for a client's successful completion treatment, including attendance, conduct, and participation requirements;
2. Require notification to a client at the time of admission of the consequences to the client if the client fails to successfully complete treatment;
3. Require notification, in writing, to the entity that referred the client to the provider on behalf of the court, within a timeline established by the referring court or the entity that referred the client to the provider on behalf of the court, when any of the following occurs:
   a. A client referred by the court has not reported for admission to treatment,
   b. A client referred by the court is ineligible or inappropriate for treatment,
   c. A client is admitted for treatment,
   d. A client is voluntarily or involuntarily discharged from treatment,

e. A client fails to comply with treatment, or

f. A client completes treatment;

4. Are reviewed and revised as necessary by the provider at least once every 12 months; and

5. Are maintained at the facility.

E. An administrator shall ensure that:

1. Treatment is provided by a behavioral health professional who:

a. Has at least six months of full-time work experience with domestic violence offenders or other criminal offenders, or

b. Is visually observed and directed by a behavioral health professional with at least six months of full-time work experience with domestic violence offenders or other criminal offenders; and

2. Policies and procedures are developed, documented, and ~~implement~~ implemented that establish education and training requirements for a behavioral health professional providing treatment that demonstrate that the behavioral health professional is qualified to provide treatment.

F. An administrator shall ensure that:

1. All employees are provided orientation specific to the duties of the employee,

2. An employee completes orientation before the employee provides treatment,

3. Annual training requirements are established for an employee, and

4. Orientation and training required in this subsection are documented.

G. An administrator shall ensure that:

1. A behavioral health professional completes an assessment of each client;

2. The assessment includes a client's:

a. Substance abuse history,

b. Legal history,

c. Family history,

d. History of trauma or abuse,

e. Behavioral health treatment history, and

f. Potential for self-harm or to harm another individual;

3. The following information is requested:

a. The case number or identification number assigned to the client by the referring court;

b. Whether the client has any past or current orders for protection or no-contact orders issued by a court;

c. The client's history of domestic violence or family disturbances, including incidents that did not result in arrest; and

d. The details of the misdemeanor domestic violence offense that led to the client's referral for treatment; and

4. The assessment and information in subsection (G)(3) are documented in the client record.

H. For a client who has completed treatment, an administrator shall:

1. Issue a certificate of completion that includes:

a. The case number or identification number assigned to the client by the referring court or, if the provider has made three documented attempts to obtain the case number or identification number without success, the client's date of birth;

b. The client's name;

c. The date of completion of treatment;

d. The name, address, and telephone number of the provider; and

e. The signature of an individual authorized to sign on behalf of the provider;

2. Provide the original of the client's certificate of completion to the client;

3. Provide a copy of the client's certificate of completion to the referring court according to the timeline established in the provider's policies and procedures; and

4. Maintain a copy of the client's certificate of completion in the client record.

13-3601.01. Domestic violence; treatment; definition

A. The judge shall order a person who is convicted of a misdemeanor domestic violence offense to complete a domestic violence offender treatment program that is provided by a facility approved by the court pursuant to rules adopted by the supreme court, the department of health services, the United States department of veterans affairs or a probation department. If a person has previously been ordered to complete a domestic violence offender treatment program pursuant to this section, the judge shall order the person to complete a domestic violence offender treatment program unless the judge deems that alternative sanctions are more appropriate. The department of health services shall adopt and enforce guidelines that establish standards for domestic violence offender treatment program approval.

B. On conviction of a misdemeanor domestic violence offense, if a person within a period of sixty months has previously been convicted of a violation of a domestic violence offense or is convicted of a misdemeanor domestic violence offense and has previously been convicted of an act in another state, a court of the United States or a tribal court that if committed in this state would be a domestic violence offense, the judge may order the person to be placed on supervised probation and the person may be incarcerated as a condition of probation. If the court orders supervised probation, the court may conduct an intake assessment when the person begins the term of probation and may conduct a discharge summary when the person is released from probation. If the person is incarcerated and the court receives confirmation that the person is employed or is a student, the court, on pronouncement of any jail sentence, may provide in the sentence that the person, if the person is employed or is a student and can continue the person's employment or studies, may continue the employment or studies for not more than twelve hours a day nor more than five days a week. The person shall spend the remaining day, days or parts of days in jail until the sentence is served and shall be allowed out of jail only long enough to complete the actual hours of employment or studies.

C. A person who is ordered to complete a domestic violence offender treatment program shall pay the cost of the program.

D. If a person is ordered to attend a domestic violence offender treatment program pursuant to this section, the program shall report to the court whether the person has attended the program and has successfully completed the program.

E. For the purposes of this section, prior convictions for misdemeanor domestic violence offenses apply to convictions for offenses that were committed on or after January 1, 1999.

F. For the purposes of this section, "domestic violence offense" means an offense involving domestic violence as defined in section 13-3601.

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.

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.

36-2006. Department of health services monitoring of screening, education and treatment programs

A. The department of health services shall monitor the alcohol and other drug screening, education or treatment programs and facilities that are used pursuant to sections 5-395.01, 8-249, 28-1381, 28-1382 and 28-1383.

B. The department of health services shall:

1. Adopt rules establishing the standards for approval of alcohol and other drug screening, education and treatment facilities.

2. Approve alcohol and other drug screening, education and treatment facilities.

3. Adopt rules establishing the standards for referrals to alcohol and other drug screening, education and treatment facilities.

4. Establish a standardized screening assessment.

5. Establish reporting and record keeping requirements for alcohol and other drug screening, education and treatment facilities.

DEPARTMENT OF WATER RESOURCES
Title 12, Chapter 15

Amend: R12-15-102, R12-15-103, R12-15-104

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: **September 13, 2023**

SUBJECT: **DEPARTMENT OF WATER RESOURCES**
Title 12, Chapter 15

Amend: R12-15-102, R12-15-103, R12-15-104

Summary:

This expedited rulemaking from the Arizona Department of Water Resources seeks to amend three (3) rules in Title 12, Chapter 15, Article 1 regarding fees. Specifically, the proposed amendments would require applicants to pay a flat fee for applications for an initial certificate of a grandfathered right in a subsequent active management area (AMA) or an initial notice of irrigation authority in a subsequent irrigation non-expansion area (INA), rather than an hourly fee. The Department is proposing the following additional amendments:

- **R12-15-102:** In addition to alerting individuals that application fees for an initial certificate of grandfathered right in a subsequent AMA or an initial notice of irrigation authority in a subsequent INA fall under a fixed application or filing fee structure, the Department is amending this rule to make clear the refund process for any applicant who filed for either of the aforementioned applications prior to the rule change taking effect.
- **R12-15-103:** The Department is proposing to delete the "Issuance of notice of authority to irrigate in an irrigation non-expansion area" from the initial fee and billing per hour fee structure to move it to the fixed application or filing fee subsection.

- **R12-15-104:** The Department is proposing to amend R12-15-104 to establish the reduced fixed fees for the aforementioned applications. Specifically, the amendments would set a $75 fixed fee for an "Issuance of notice of authority to irrigate in a subsequent irrigation non-expansion area"; set a $75 fixed fee for an "Application for certificate of grandfathered right following the designation of a subsequent Active Management Area"; and remove the obligation to repay mileage expenses associated with these applications. Additionally, the Department is proposing to amend R12-15-104(A)(3)(a) to specify that it only applies in initial AMAs. This rule sets a fee for a late application for a certificate of grandfathered right, which can only be filed in *initial* AMAs under A.R.S. §45-476.01. The statute governing an application for a certificate of grandfather right in a *subsequent* AMA is found in A.RS. §45-478(B), which does not allow for late applications to be filed.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

To qualify for expedited rulemaking, the rulemaking must not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and meet one or more criteria listed in A.R.S. § 41-1027(A). The Department indicates the amendments do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Instead, the Department indicates the proposed amendments reduce the cost of regulatory compliance, decrease fees, and make no changes to the procedural rights of persons regulated.

The Department indicates the amendments are justified under A.R.S. § 41-1027(A)(5) because they reduce or consolidate steps, procedures, or processes in the rules. Additionally, the Department indicates will reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Specifically, the Department indicates reducing the required fees for applicants in a new AMA or INA achieves the same regulatory objective – to collect monies for the water resources fund established by A.R.S. § 45-117 – while reducing the burden of a higher payment. Furthermore, the Department states the rule changes establish equity between applicants in a subsequent AMA or INA and those who applied when the initial areas were established. The current fees require applicants to pay an initial amount of $500-$1,000 and up to $10,000 by billing them for the work done by staff in the Department at a rate of $118/hour. However, applicants in the original AMAs and INAs paid only $20 for the same applications. The proposed reduced fee of $75 matches the original $20 fee, when adjusted for inflation.

Council staff believes the Department has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).

2. 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.

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

The Department indicates it received one public comment in support of the amendments. A copy of the written comment has been provided with the final materials for the Council's reference. Council staff believes the Department has adequately responded to the comments on these proposed rules.

5. 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 between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

6. 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 is no corresponding federal law.

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

Not applicable. The Department indicates these rules do not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

8. 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 for this rulemaking.

9. Conclusion

This expedited rulemaking from the Arizona Department of Water Resources seeks to amend three (3) rules in Title 12, Chapter 15, Article 1 regarding fees. Specifically, the proposed amendments would require applicants to pay a flat fee for applications for an initial certificate of a grandfathered right in a subsequent active management area (AMA) or an initial notice of irrigation authority in a subsequent irrigation non-expansion area (INA), rather than an hourly fee, among other related amendments.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

KATIE M. HOBBS
Governor

THOMAS BUSCHATZKE
Director

ARIZONA DEPARTMENT of WATER RESOURCES
1110 West Washington Street, Suite 310
Phoenix, Arizona 85007
602.771.8500
azwater.gov

July 18, 2023

Sent via email to grrc@azdoa.gov

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Re: Arizona Department of Water Resources Expedited Rule Package

Dear Governor's Regulatory Review Council:

Pursuant to A.A.C. R1-6-202(A), the Arizona Department of Water Resources ("ADWR") submits this final expedited rule package to the Council for placement on the Council Agenda. This rule package amends R12-15-102, R12-15-103, and R12-15-104. ADWR requests that these rules be placed on the agenda for the Council's September 6, 2023 meeting.

ADWR provides the following information regarding the rule package, as required by A.A.C. R1-6-202(A):

a) The record for this rulemaking closed on June 26, 2023 at 5:00 p.m.

b) All the amendments are justified under A.R.S. § 41-1027(A)(7) because they will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

c) The rulemaking activity does not relate to ADWR's five-year rule review report.

d) ADWR certifies that no study was relied on in ADWR's evaluation of or justification for the rule modification.

e) Additionally, the following documents are included in this rule package as required by A.A.C. R1-6-202(A)(1)(e) in the following order:

1. This cover letter.
2. The Notice of Final Rulemaking required by A.A.C. R1-6-202, including the preamble, table of contents for the rulemaking, and text of each rule (**attachment A1**).
3. The written comment received by the agency concerning the rulemaking (**attachment A2**).

4. A copy of the general and specific statutes authorizing the rule, including relevant statutory definitions (**attachment A3**).
5. A copy of the existing rules R12-15-102, R12-15-103, and R12-15-104 (**attachment A4**).
6. Written approval for an exemption to the rulemaking moratorium from Patrick J. Adams, Water Policy Advisor for Governor Hobbs dated April 24, 2023(**attachment A5**).
7. Written final approval for an exemption to the rulemaking moratorium from Patrick J. Adams, Water Policy Advisor for Governor Hobbs to be provided prior to the August 22, 2023 deadline to submit final materials.

Thank you for your assistance in this matter. If you have any questions or need additional information, please contact Karen Nielsen, ADWR Deputy Counsel, at (602) 771-8472.

Sincerely,

Thomas Buschatzke
Director

Enclosures: as listed

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. ARIZONA DEPARTMENT OF WATER RESOURCES

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R12-15-102	Amend
R12-15-103	Amend
R12-15-104	Amend

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

Authorizing statutes: A.R.S. § 45-105(B)(1), 45-113(A)-(C)

Implementing statute: A.R.S. § 45-113(A)-(C)

3. The effective date of the rule:

Immediately

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: 29 A.A.R., Issue 20, dated May 19, 2023.
Notice of Proposed Expedited Rulemaking: 29 A.A.R., Issue 21, dated May 26, 2023.

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

Name: Karen Nielsen, Deputy Counsel
Address: Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
Telephone: (602) 771-8472
Fax: (602) 771-8686
Email: knielsen@azwater.gov
Website: www.azwater.gov

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

The amendments are justified under A.R.S. § 41-1027(A)(5) because they reduce or consolidate steps, procedures, or processes in the rules. Applications for an initial certificate of a grandfathered right in a subsequent AMA or an initial notice of irrigation authority in a subsequent INA are now subject to a fixed fee, rather than an hourly fee. Applicants will pay one flat fee when submitting their application.

Additionally, the amendments are eligible for approval because they will reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Reducing the required fees for applicants in a new AMA or INA achieves the same regulatory objective – to collect monies for the water resources fund established by A.R.S. § 45-117 – while reducing the burden of a higher payment. Furthermore, the rule changes establish equity between applicants in a subsequent AMA or INA and those who applied when the initial areas were established. The current fees require applicants to pay an initial amount of $500-$1,000 and up to $10,000 by billing them for the work done by staff in the Department at a rate of $118/hour. However, applicants in the original AMAs and INAs paid only $20 for the same applications. The proposed reduced fee of $75 matches the original $20 fee, when adjusted for inflation.

Finally, the amendments do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Indeed, they reduce the cost of regulatory compliance, decrease fees, and make no changes to the procedural rights of persons regulated.

The Department received written approval from the Governor's Office to make all the included rule amendments through an expedited rulemaking on April 24, 2023 and final approval on _____, 2023.

The following is an explanation of each proposed rule amendment:

Fees for Applications and Filings R12-15-102

The Department is amending R12-15-102 to add specificity to the rule. The first amendment alerts individuals that application fees for an initial certificate of grandfathered right in a subsequent AMA or an initial notice of irrigation authority in a subsequent INA fall under a fixed application or filing fee structure. The second amendment makes clear the refund process for any applicant who filed for either of the aforementioned applications prior to the rule change taking effect.

Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee R12-15-103

The Department is amending R12-15-103 to delete the "Issuance of notice of authority to irrigate in an irrigation non-expansion area" from the initial fee and billing per hour fee structure to move it to the fixed application or filing fee subsection.

Applications and Filings Subject to a Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices R12-15-104

The Department is amending R12-15-104 to establish the reduced fixed fees for the aforementioned applications. Specifically, the amendments would: 1) set a $75 fixed fee for an "Issuance of notice of authority to irrigate in a subsequent irrigation non-expansion area"; 2) set a $75 fixed fee for an "Application for certificate of grandfathered right following the designation of a subsequent Active Management Area"; and 3) remove the obligation to repay mileage expenses associated with these applications.

Additionally, to clarify a rule already in place, the Department amending R12-15-104(A)(3)(a) to specify that it only applies in initial AMAs. This rule sets a fee for a late application for a certificate of grandfathered right, which can only be filed in initial AMAs under A.R.S. §45-476.01. The statute governing an application for a certificate of grandfather right in a subsequent AMA is found in A.RS. §45-478(B), which does not allow for late applications to be filed.

7. A reference to any study relevant to the rule that the agency reviewed and proposes to either 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:

None.

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 statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2):

This rule making is exempt from the requirements to prepare and file an economic, small business and consumer impact statement pursuant to A.R.S. § 41-1055(D)(3).

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

None.

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

The Department received one public comment in support of the amendments.

12. 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:

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 rules do not require the issuance of a regulatory permit, license or agency authorization. For that reason, A.R.S. § 41-1037 does not apply to R12-15-102, R12-15-103, or R12-15-104.

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 corresponding federal law.

c. Whether a person submitted an analysis to the agency that compares the rules' impact of the competitiveness of business in this state to the impact on business in another state:

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 rules. If so, cite the notice published in the *Register* as specified in R1-1-409(A) and state where the text was changed between the emergency and the final rulemaking packages:

The rules were not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 1. FEES

Section
R12-15-102. Fees for Applications and Filings
R12-15-103. Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee
R12-15-104. Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices

R12-15-102. Fees for Applications and Filings

A. A person submitting an application or filing to the Department on or after the effective date of this Section shall pay an hourly application fee as provided in R12-15-103 or a fixed application or filing fee as provided in R12-15-104, whichever applies. Application fees for an initial certificate of grandfathered right following the designation of a subsequent active management area or an initial notice of irrigation authority in a subsequent irrigation non-expansion area fall under a fixed application or filing fee structure, as outlined in R12-15-104. Fees for applications and filings shall be paid in U.S. dollars by cash, check, cashier's check, money order, or any other method acceptable to the Department.

B. A person with an application or filing pending before the Department prior to the effective date of this Section shall pay the application or filing fees and costs in effect when the application or filing was submitted to the Department.

C. For an application for an initial certificate of grandfathered right in a subsequent active management area or a notice of irrigation authority in a subsequent irrigation non-expansion area submitted prior to the effective date of this Section the applicant shall only be responsible for the fees and costs in effect on the effective date of this Section. The Department shall refund the difference in the fees and costs paid when the application was submitted to the applicant within 60 days of the effective date of this Section.

R12-15-103. Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee

A. No change.

B. A person submitting an application listed below shall pay an hourly fee for the application, not to exceed the maximum fee shown for the application:

1. No change.

2. Groundwater:

Type of Application	Maximum Fee
a. Issuance, renewal or modification of groundwater withdrawal permit	$10,000.00

~~b. Issuance of notice of authority to irrigate in an irrigation non-expansion area~~	~~$10,000.00~~
~~e.~~ b. Approval of contract by a city, town or private water company to supply groundwater to another city, town or private water company pursuant to A.R.S. § 45-492(C)	$10,000.00
~~d.~~ c. Notice of intent to establish new service area right by a city, town or private water company	$10,000.00
~~e.~~ d. Final petition to establish new service area right by a city, town or private water company	$10,000.00
~~f.~~ e. Extension of the service area of a city, town or private water company to furnish disproportionately large amounts of water to an industrial or other large water user pursuant to A.R.S. § 45-493(A)(2)	$10,000.00
~~g.~~ f. Addition and exclusion of area by an irrigation district pursuant to A.R.S. § 45-494.01	$10,000.00
~~h.~~ g. Delivery of groundwater by an irrigation district to an industrial user with a general industrial use permit pursuant to A.R.S. § 45-497(B)	$10,000.00
~~i.~~ h. Determination of historically irrigated acres or annual transportation allotment for lands in McMullen valley groundwater basin pursuant to A.R.S. § 45-552	$10,000.00

~~j.~~ i. Determination of volume of groundwater that can be transported from lands in Harquahala irrigation non-expansion area to an initial active management area pursuant to A.R.S. § 45-554	$10,000.00
~~k.~~ j. Determination of historically irrigated acres or annual transportation allotment for lands in the Big Chino sub-basin of the Verde River groundwater basin pursuant to A.R.S. § 45-555	$10,000.00
~~l.~~ k. Permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547	$10,000.00
~~m.~~ l. Drought emergency groundwater transfer away from a groundwater basin outside of an active management area	$10,000.00

3. No change.
4. No change.
5. No change.
6. No change.
7. No change.
8. No change.
9. No change.
10. No change.

C. No change.
D. No change.
E. No change.
F. No change.

G. No change.
H. No change.

R12-15-104. Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices

A. The Department shall not accept or take action on the following applications and filings unless the fee shown for the application or filing is paid at the time the application or filing is submitted:

1. No change.

2. Groundwater:

Type of Application or Filing	Fee
a. Conveyance of farm's flexibility account balance	$250.00
b. Conveyance of notice of authority to irrigate in an irrigation non-expansion area	$500.00
c. Conveyance of groundwater withdrawal permit	$500.00
d. Issuance of notice of authority to irrigate in an irrigation non-expansion area	$75.00

3. Grandfathered rights:

Type of Application	Fee
a. Late application for certificate of grandfathered right in an initial Active Management Area	$100.00
b. Conveyance of certificate of grandfathered right	$500.00
c. Issuance of revised certificate of grandfathered right following partial extinguishment of grandfathered right for assured water supply extinguishment credits	$120.00
d. Revised certificate of Type 2 non-irrigation grandfathered right to reflect new or additional points of	$250.00

	withdrawal or the deletion of a point of withdrawal	
e.	Approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right	$500.00
f.	Re-issuance of certificate of grandfathered right to reflect a change in family circumstances or a transfer of the right from the rightholder to a trust in which the rightholder is a beneficiary or from a trust to a beneficiary of the trust	$120.00
g.	Application for certificate of grandfathered right following the designation of a subsequent Active Management Area	$75.00

4. No change.

5. No change.

6. No change.

7. No change.

8. No change.

9. No change.

B. In addition to the application or filing fee listed in subsection (A) of this Section, an applicant shall pay any mileage expenses and the actual cost of mailing or publishing any legal notice of the application. This subsection shall not apply to applications listed in subsection (A)(2)(d) or (A)(3)(g) of this Section.

June 23, 2023

Via email

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington, Suite 310
Phoenix, AZ 85007
(602) 771-8472 (phone)
(602) 771-8686 (fax)
sscantlebury@azwater.gov

Re: Response to the Arizona Department of Water Resources Proposed Expedited Rulemaking to amend Arizona Administrative Rules R12-15-102, R12-15-103, and R12-15-104

Dear Supervisor Scantlebury:

On behalf of the Water for Arizona Coalition, we write in support of the Department's Proposed Expedited Rulemaking to amend Arizona Administrative Rules R12-15-102, R12-15-103, and R12-15-104. We are grateful to the Governor and the Department for their efforts to help rural Arizona communities protect their groundwater supplies.

The Water for Arizona Coalition is a collective of five conservation organizations, with more than 60,000 members in the state, working in the public interest to ensure water security for all people.

In many parts of rural Arizona, groundwater is the only water source. But too often, vulnerable rural groundwater supplies are virtually unprotected. Many rural communities know they must do something to protect their groundwater supplies - and they cannot afford policies that discourage groundwater protections.

In the preamble to the Proposed Expedited Rule, the Department states its concern that "communities may not want to establish an AMA or INA because of the fees associated with the process...." We share the Department's concern. Fees as high as $10,000 can be prohibitively expensive for too many Arizonans.

We are grateful to the Governor and the Department for reducing fees that disincentivize groundwater protections for rural Arizona. As the groundwater situation in Arizona becomes worse, and without other options for rural communities, we expect more AMAs and INAs to be created throughout the state. With this in mind, we hope the reduced fees in this proposed rule can help greatly reduce potential barriers for communities that are seeking to protect their water supplies and ensure their access to water now and into the future.

Sincerely,

Chris Kuzdas
Senior Water Program Manager
Environmental Defense Action Fund
Co-Lead, Water for Arizona Coalition

Haley Paul
Arizona Policy Director
National Audubon Society
Co-Lead, Water for Arizona Coalition

Kim Mitchell
Senior Water Policy Advisor
Healthy Rivers Program
Western Resource Advocates

Sinjin Eberle
Communications Director
Intermountain West
American Rivers

Todd Reeve
Director
Business for Water Stewardship

The Water for Arizona Coalition is a group of five conservation organizations — American Rivers, National Audubon Society, Business for Water Stewardship, Environmental Defense Action Fund, and Western Resource Advocates — that supports policies and innovative practices to ensure a reliable water supply to meet the state's needs. Collectively, we have over 60,000 Arizona members, as well as hundreds of hunter, angler, business, and outdoor recreation partners around the state. The coalition was recognized as an Arizona Capitol Times "2020 Leader of the Year" for our efforts to protect Arizona's most valuable resource. Learn more at waterforarizona.com

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Authority: A.R.S. § 45-101 et seq.

Editor's Note: The lowercase references to the Department Director and Department have been changed to title case for continuity in this Chapter (Supp. 22-1).

Supp. 22-2

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ARTICLE 1. FEES

ARTICLE 2. PROCEDURAL RULES

Article 2, consisting of Sections R12-15-201 through R12-15-224, adopted effective June 13, 1984.

ARTICLE 3. STOCKPOND AND OTHER SURFACE WATER RULES

ARTICLE 4. LICENSING TIME-FRAMES

Article 4, consisting of Sections R12-15-401 and Table A, adopted effective December 31, 1998; filed in the Office of the Secretary of State July 28, 1998 (Supp. 98-3).

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Article 7, consisting of Sections R12-15-701 through R12-15-725, adopted effective February 7, 1995.

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

Article 8, consisting of Sections R12-15-801 through R12-15-821, adopted effective March 5, 1984.

ARTICLE 9. WATER MEASUREMENT

Article 9, consisting of Sections R12-15-901 through R12-15-

905, adopted effective December 27, 1982.

ARTICLE 10. REPORTING REQUIREMENTS FOR ANNUAL REPORTS, ANNUAL ACCOUNTS, OPERATING FLEXIBILITY ACCOUNTS, AND CONVEYANCES OF GROUNDWATER RIGHTS

ARTICLE 11. INSPECTIONS AND AUDITS

Article 11, consisting of Sections R12-15-1101 and R12-15-1102, adopted effective August 31, 1992 (Supp. 92-3).

ARTICLE 12. DAM SAFETY PROCEDURES

Article 12, consisting of Sections R12-15-1201 through R12-15-1206, repealed; new Article 12, consisting of Sections R12-15-1201 through R12-15-1226 et seq., adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

ARTICLE 13. WELL SPACING REQUIREMENTS; REPLACEMENT WELLS IN APPROXIMATELY THE SAME LOCATION

Article 13, consisting of Sections R12-15-1301 through R12-15-1308, made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 1. FEES

R12-15-101. Definitions

In addition to the definitions in A.R.S. §§ 45-101, 45-271, 45-402, 45-511, 45-561, 45-802.01, 45-1001, 45-1201 and R12-15-701, the following definitions apply to this Article:

1. "Application" means a written request submitted by an applicant to the Department for the purpose of obtaining a permit, license or other legal authorization issued by the Department.
2. "Fiscal year" means the year beginning July 1 and ending June 30.
3. "Mileage expenses" means the Department's mileage expenses for traveling to and from a site inspection calculated at the rate set by the Arizona Department of Administration for state travel by motor vehicle.
4. "Municipality" means an incorporated city or town.
5. "Pre-decision administrative hearing" means an administrative hearing held on an application before the Department makes any decision on the application.
6. "Population" means the population according to the most recent United States decennial census.
7. "Review hours" means the hours or portions of hours spent by Department employees in reviewing an application and making a decision thereon, including pre-application consultation time in excess of 60 minutes and site inspection time. Only time spent by the program staff members and technical review team members responsible for processing the application shall be included as review hours. Review hours do not include the first 60 minutes of pre-application consultation time, the time spent traveling to and from a site inspection, any time spent on a pre-decision administrative hearing and any time spent on the application after a party appeals the Director's decision on the application pursuant to A.R.S. § 41-1092.03(B).
8. "Site inspection" means an inspection conducted by the Department before issuing a decision on an application or before issuing a decision on whether water may be stored at an underground storage facility.
9. "Site inspection time" means time spent on a site inspection. Site inspection time includes the time spent conducting the inspection and the time spent preparing an inspection report following the inspection, but does not include the time spent traveling to and from the inspection.
10. "Water resources fund" means the water resources fund established by A.R.S. § 45-117.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 203, effective July 1, 2012 (Supp. 12-1).

R12-15-102. Fees for Applications and Filings

A. A person submitting an application or filing to the Department on or after the effective date of this Section shall pay an hourly application fee as provided in R12-15-103 or a fixed application or filing fee as provided in R12-15-104, whichever applies. Fees for applications and filings shall be paid in U.S. dollars by cash, check, cashier's check, money order, or any other method acceptable to the Department.

B. A person with an application or filing pending before the Department prior to the effective date of this Section shall pay the application or filing fees and costs in effect when the application or filing was submitted to the Department.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-103. Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee

A. The Department shall calculate the fee for an application listed in subsection (B) of this Section by multiplying the number of review hours for the application by an hourly rate of $118.00, plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application.

B. A person submitting an application listed below shall pay an hourly fee for the application, not to exceed the maximum fee shown for the application:

1. Wells:

Type of Application	Maximum Fee
Variance from well construction requirements that has not been pre-approved by the Department	$10,000.00

2. Groundwater:

Type of Application	Maximum Fee
a. Issuance, renewal or modification of groundwater withdrawal permit	$10,000.00
b. Issuance of notice of authority to irrigate in an irrigation non-expansion area	$10,000.00
c. Approval of contract by a city, town or private water company to supply groundwater to another city, town or private water company pursuant to A.R.S. § 45-492(C)	$10,000.00
d. Notice of intent to establish new service area right by a city, town or private water company	$10,000.00
e. Final petition to establish new service area right by a city, town or private water company	$10,000.00
f. Extension of the service area of a city, town or private water company to furnish disproportionately large amounts of water to an industrial or other large water user pursuant to A.R.S. § 45-493(A)(2)	$10,000.00
g. Addition and exclusion of area by an irrigation district pursuant to A.R.S. § 45-494.01	$10,000.00
h. Delivery of groundwater by an irrigation district to an industrial user with a general industrial use permit pursuant to A.R.S. § 45-497(B)	$10,000.00

i. Determination of historically irrigated acres or annual transportation allotment for lands in McMullen valley groundwater basin pursuant to A.R.S. § 45-552	$10,000.00
j. Determination of volume of groundwater that can be transported from lands in Harquahala irrigation non-expansion area to an initial active management area pursuant to A.R.S. § 45-554	$10,000.00
k. Determination of historically irrigated acres or annual transportation allotment for lands in the Big Chino sub-basin of the Verde River groundwater basin pursuant to A.R.S. § 45-555	$10,000.00
l. Permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547	$10,000.00
m. Drought emergency groundwater transfer away from a groundwater basin outside of an active management area	$10,000.00

3. Grandfathered Rights:

Type of Application	Maximum Fee
a. Type 1 non-irrigation grandfathered right for land retired from irrigation after date of designation of active management area pursuant to A.R.S. § 45-469 or 45-472	$10,000.00
b. Restoration of retired irrigation grandfathered right pursuant to A.R.S. § 45-469(O)	$10,000.00

4. Substitution of Acres:

Type of Application	Maximum Fee
a. Substitution of flood damaged acres in an active management area or an irrigation non-expansion area	$10,000.00
b. Substitution of acres to eliminate limiting condition impeding efficient irrigation in an active management area or an irrigation non-expansion area	$10,000.00
c. Substitution of acres to allow irrigation with Central Arizona Project water in an active management area	$10,000.00

5. Lakes:

Type of Application	Maximum Fee
a. Permit to fill body of water with poor quality water pursuant to A.R.S. § 45-132(C)	$10,000.00
b. Permit for interim water use in a body of water	$10,000.00
c. Temporary emergency permit for use of surface water or groundwater in a body of water	$10,000.00

6. Water Exchange:

Type of Application	Maximum Fee
a. Issuance, renewal or modification of water exchange permit	$10,000.00
b. Notice of water exchange for which approval is required pursuant to A.R.S. § 45-1052(6)(b)	$10,000.00

7. Water Exportation:

Type of Application	Maximum Fee
Permit to transport water from this state	$25,000.00

8. Underground Water Storage, Savings and Replenishment:

Type of Application	Maximum Fee
a. Issuance, renewal or modification of an underground storage facility permit	$25,000.00
b. Issuance, renewal or modification of a groundwater savings facility permit	$10,000.00
c. Issuance, renewal or modification of a water storage permit	$10,000.00
d. Recovery well permit, including an emergency temporary recovery well permit	$10,000.00

9. Assured and Adequate Water Supply:

Type of Application	Maximum Fee
a. Physical availability determination	$10,000.00
b. Analysis of assured or adequate water supply	$10,000.00
c. Renewal of analysis of assured or adequate water supply	$10,000.00
d. Certificate of assured water supply	$10,000.00
e. Issuance or modification of designation of assured water supply	$35,000.00
f. Issuance or modification of designation of adequate water supply	$25,000.00
g. Water report (outside an AMA)	$10,000.00
h. Assignment of Type A certificate of assured water supply	$5,000.00
i. Assignment of Type B certificate of assured water supply	$5,000.00
j. Classification of Type A certificate of assured water supply pursuant to R12-15-707	$10,000.00
k. Review of revised plat to determine whether changes are material	$10,000.00
l. New certificate of assured water supply pursuant to R12-15-704(G)	$10,000.00
m. Letter stating that owner is not required to obtain a certificate of assured water supply pursuant to R12-15-704(M)	$10,000.00

10. Surface Water:

Type of Application		Maximum Fee
a.	Permit to appropriate public water	$10,000.00
b.	Certificate of water right	$10,000.00
c.	Primary reservoir permit or secondary reservoir permit	$10,000.00
d.	Change in use of water	$10,000.00
e.	Severance and transfer of water right to land that is not within the same parcel or farm unit as the current use, or that includes a change in water source, use or ownership	$25,000.00
f.	Severance and transfer of water right to land that is within the same parcel or farm unit as the current use and that does not include a change in water source, use or ownership	$2,500.00
g.	Request for extension of time to complete construction	$10,000.00

C. A person filing an application that is subject to an hourly fee shall submit an initial fee at the time the application is submitted to the Department. The initial fee for applications described in subsections (B)(7), (B)(8)(a), (B)(9)(e), (f) and (B)(10)(e) of this Section shall be $2,000.00. The initial fee for all other applications shall be $1,000.00. If requested by the applicant, the Department may set a lower initial fee if the Department estimates that the total application fee will be less than the initial fee specified in this subsection. The Department shall not accept an application for which an initial fee is required under this subsection unless the initial fee is included with the application.

D. The Department shall bill the applicant for processing the application no more than monthly, but at least quarterly. Each bill shall contain the following information for the billing period:

1. The number of review hours accrued by activity and subactivity code during the billing period, the date of each activity, a description of each activity and the effective hourly rate for all activities;
2. A description and amount of any mileage expenses charged for the application;
3. A description and amount of the cost of mailing or publishing any legal notice of the application or notice of a pre-decision administrative hearing on the application; and
4. The total fees paid to date, the total fees due for the billing period, the date when the fees are payable, which shall be at least 60 days after the date of the bill, and the maximum fee for the application.

E. A bill for hourly fees becomes past due if the applicant does not pay the bill in full by the due date specified in the bill, unless the applicant submits a timely request for reconsideration of the bill pursuant to subsection (G) of this Section. If the applicant submits a timely request for reconsideration of the bill, the bill becomes past due if the applicant does not pay the amount due under the Director's decision on the request by the date specified in the decision. If a bill for hourly fees becomes past due, the following shall apply:

1. The applicable review time-frame shall be suspended from the date the bill became past due until the applicant pays the bill in full or the application is denied under subsection (E)(2) of this Section, whichever applies.
2. The Department shall suspend its review of the application and send a written notice to the applicant that the bill is past due. If the applicant does not pay the outstanding bill by the date specified in the notice, which shall be at least 35 days from the date of the notice, the application shall be denied.

F. After the Department makes a determination whether to grant or deny the application, or when an applicant withdraws the application, the Department shall prepare and send to the applicant a final itemized billing statement for the application fee.

1. If the total fee exceeds the amount of the initial fee paid plus all other payments made to date, the applicant shall pay the balance, up to the maximum fee for the application, plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application or notice of a pre-decision administrative hearing on the application, by the date specified in the statement, unless the applicant submits a timely request for reconsideration of the bill pursuant to subsection (G) of this Section. The statement shall specify a date, at least 60 days from the date of the statement, by which the applicant must pay the bill. If the applicant submits a timely request for reconsideration of the bill, the applicant shall pay the amount due under the Director's decision on the request by the date specified in the decision. The Department shall not release the final permit or approval until the final bill is paid in full.
2. If the total fee is less than the initial fee plus all other payments made to date, the Department shall refund the difference to the applicant within 35 days of the date of the statement.

G. An applicant may seek reconsideration of a bill for hourly fees by filing a written request for reconsideration with the Director. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 business days after the date the Director receives the written request. The decision shall specify a date, at least 35 days from the date of the decision, by which the applicant must pay the bill. The Director may reduce the amount of any fees billed under this Section if the Director determines that the number of review hours or mileage expenses billed to the applicant was incorrect or that time spent by the Department to review the application and make a decision thereon was not necessary or advisable.

H. If a person receives a bill under this Section and the bill becomes past due under subsection (E) or (F) of this Section, the Department shall not accept for filing any other application by that person until the person pays the past due amount in full.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-104. Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices

A. The Department shall not accept or take action on the following applications and filings unless the fee shown for the application or filing is paid at the time the application or filing is submitted:

1. Wells:

Type of Application or Filing	Fee
a. Late registration of well	$60.00
b. Well driller's license	$50.00
c. Re-issuance, renewal, or amendment of well driller's license	$50.00
d. Re-activation of expired well driller's license	$50.00
e. Well assignment	$30.00 per well
f. Notice of intention to abandon a well	$150.00
g. Notice of intention to drill a well other than a well described in subsection (A)(1)(h) of this Section	$150.00
h. Notice of intention to drill a well that will not be located in an active management area or irrigation non-expansion area, that will be used solely for domestic purposes and that will have a pump with a maximum capacity of not more than 35 gallons per minute	$100.00
i. Re-issuance of drill card	$120.00
j. Permit to drill non-exempt well in an active management area	$150.00 application fee plus $30.00 permit fee

2. Groundwater:

Type of Application or Filing	Fee
a. Conveyance of farm's flexibility account balance	$250.00
b. Conveyance of notice of authority to irrigate in an irrigation non-expansion area	$500.00
c. Conveyance of groundwater withdrawal permit	$500.00

3. Grandfathered rights:

Type of Application	Fee
a. Late application for certificate of grandfathered right	$100.00
b. Conveyance of certificate of grandfathered right	$500.00
c. Issuance of revised certificate of grandfathered right following partial extinguishment of grandfathered right for assured water supply extinguishment credits	$120.00
d. Revised certificate of Type 2 non-irrigation grandfathered right to reflect new or additional points of withdrawal or the deletion of a point of withdrawal	$250.00
e. Approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right	$500.00
f. Re-issuance of certificate of grandfathered right to reflect a change in family circumstances or a transfer of the right from the rightholder to a trust in which the rightholder is a beneficiary or from a trust to a beneficiary of the trust	$120.00

4. Underground water storage, savings and replenishment:

Type of Application or Filing	Fee
a. Conveyance of storage facility permit	$500.00
b. Conveyance of water storage permit	$500.00
c. Assignment of long-term storage credits	$250.00

5. Assured water supply:

Type of Application or Filing	Fee
a. Extinguishment of grandfathered right for extinguishment credits	$250.00
b. Conveyance of extinguishment credits	$250.00

6. Surface water:

Type of Application or Filing	Fee
a. Re-issuance of a surface water permit or certificate (not associated with an assignment of the permit or certificate)	$120.00
b. Claim of water right for a stockpond pursuant to A.R.S. § 45-273	$10.00
c. Statement of claim for a water right pursuant to A.R.S. § 45-183	$5.00
d. Assignment of application, permit, certificate or statement of claim	$75.00
e. Certification of water right for a stockpond pursuant to A.R.S. § 45-275	$120.00

7. Dams:

Type of Application	Fee
Approval of plans for construction, enlargement, repair, alteration or removal of dam	2 percent of the total project cost

8. Water Exchange:

Type of Filing	Fee
Notice of water exchange that does not require approval pursuant to A.R.S. § 45-1052(6)(b)	$500.00

9. Weather modification:

Type of Application	Fee
a. License for weather control or cloud modification	$100.00
b. Equipment license for weather control or cloud modification	$10.00

B. In addition to the application or filing fee listed in subsection (A) of this Section, an applicant shall pay any mileage expenses and the actual cost of mailing or publishing any legal notice of the application.

Historical Note
New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-105. Fee for Dam Safety Inspection; Fee for Review of Dam Safety Inspection Report

A. The owner of a high or significant hazard potential dam shall pay a fee for the Department's dam safety inspection pursuant to R12-15-1219(A). The fee shall be based on the total crest length of the dam plus appurtenant embankments and saddle dikes, as follows:

Length (feet)	Fee
0 up to and including 500	$2,000.00
More than 500 up to and including 1,000	$2,200.00
More than 1,000 up to and including 2,000	$2,400.00
More than 2,000 up to and including 4,000	$2,600.00
More than 4,000 up to and including 8,000	$3,000.00
More than 8,000 up to and including 16,000	$3,400.00
More than 16,000 up to and including 32,000	$3,800.00
More than 32,000	$4,200.00

B. The owner of a low or very low hazard potential dam shall pay a fee for the Department's dam safety inspection pursuant to R12-15-1219(A). The fee shall be $250.00.

C. After conducting a dam safety inspection pursuant to R12-15-1219(A), the Director shall send to the dam owner a bill for the fee required by subsection (A) or (B) of this Section. The dam owner shall pay the fee by the date specified in the bill, which shall be at least 35 days from the date of the bill. Failure by a dam owner to pay a fee required by subsection (A) or (B) of this Section shall be considered a violation of R12-15-1219.

D. The owner of a dam who submits a dam safety inspection report pursuant to R12-15-1219(E) shall pay a fee of $750.00 if the dam is a high or significant hazard potential dam or a fee of $250 if the dam is a low or very low hazard potential dam. The Department shall not accept a dam safety inspection report unless the fee is submitted with the report.

Historical Note
New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Section amended by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3).

R12-15-106. Fee for Well Capping

The owner of a well that is capped by the Department pursuant to A.R.S. § 45-594(C) shall pay to the Department a fee of $300.00, plus actual expenses over $300.00. After capping an open well, the Department shall send the owner of the well a bill for the fee under this Section. The owner of the well shall pay the fee by the date specified in the bill, which shall be at least 35 days after the date of the bill.

Historical Note
New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-107. Expired

Historical Note
New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011 (Supp. 11-2). New Section made by exempt rulemaking at 17 A.A.R. 1769, effective August 10, 2011 with an automatic repeal date effective July 1, 2012 (Supp. 11-3). New Section made by final rulemaking at 18 A.A.R. 203, effective July 1, 2012 (Supp. 12-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3475, effective November 5, 2016 (Supp. 16-4).

R12-15-108. Reserved

R12-15-109. Reserved

R12-15-110. Reserved

R12-15-111. Reserved

R12-15-112. Reserved

R12-15-113. Reserved

R12-15-114. Reserved

R12-15-115. Reserved

R12-15-116. Reserved

R12-15-117. Reserved

R12-15-118. Reserved

R12-15-119. Reserved

R12-15-120. Reserved

R12-15-121. Reserved

R12-15-122. Reserved

R12-15-123. Reserved

R12-15-124. Reserved

R12-15-125. Reserved

R12-15-126. Reserved

R12-15-127. Reserved

R12-15-128. Reserved

R12-15-129. Reserved

R12-15-130. Reserved

R12-15-131. Reserved

R12-15-132. Reserved

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018
Currentness

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.

2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.

3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.

4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.

5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.

6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.

7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3[1] and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; 33 United States Code § 701-1).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.[2] If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.

2. Administer all laws relating to groundwater, as provided in this title.

3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.

4. Coordinate and confer with and may contract with:

(a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.

(b) The department of environmental quality with respect to title 49, chapter 2[3] for its assistance in the development of state water plans.

(c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.[4]

(d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.

5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.

6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.

7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.

8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.

9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.

11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.[5]

12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.[6]

13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.

14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:

(a) The current status of the water supply in this state and any likely changes in that status.

(b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.

(c) The status of current water conservation programs in this state.

(d) The current state of each active management area and the level of progress toward management goals in each active management area.

(e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.

(f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.

(g) The status of Indian water rights settlements and related negotiations that affect this state.

(h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; Laws 1990, Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch.

156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

1 Section 11-951 et seq.

2 Section 45-401 et seq.

3 Section 49-201 et seq.

4 Section 49-281 et seq.

5 Section 45-2101 et seq.

6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through the First Special Session of the Fifty-Fifth Legislature and the First Regular Session of the Fifty-Fifth Legislature (2021)

End of Document

45-113. Fees; refunds

A. Except as otherwise prescribed, the director shall establish by rule and shall collect reasonable fees to cover the costs of administrative services and expenses.

B. Except as otherwise prescribed, the director may establish by rule and collect fees for applications, certificates, licenses and permits relating to surface water, groundwater, water exchanges, wells, grandfathered rights, substitution of acres, adequate and assured water supply, groundwater oversupply and lakes and for inspections relating to dam safety.

C. If the director determines that a fee, including a fee collected pursuant to section 45-611, has been erroneously paid during the same fiscal year or during any prior fiscal year, the director shall make an administrative adjustment or a refund, without interest, from the agency fund in which the fee was originally deposited to the current holder of the right, application or registration for which the fee was paid.

D. This section does not apply to fees paid or payable under section 45-254 or section 45-255, subsection B.

E. Except as provided in subsection F of this section, the director shall deposit, pursuant to sections 35-146 and 35-147, the monies collected under this section in the water resources fund established by section 45-117.

F. The director shall deposit, pursuant to sections 35-146 and 35-147, the fees collected under this section relating to adequate and assured water supply pursuant to sections 45-108, 45-576 and 45-579 in the assured and adequate water supply administration fund established by section 45-580.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 7

Amend: R9-22-731

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: **September 7, 2023**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 7

Amend: R9-22-731

Summary:

This regular rulemaking from the Arizona Health Care Cost Containment System (AHCCCS) or (Administration) seeks to amend one (1) rule in Title 9, Chapter 22, Article 7 in order to update the intended Health Care Investment Fund (HCIF) assessment amounts for FFY 2024. Pursuant to 42 CFR § 438.6(c), one of HCIF's primary purposes is to make directed payments—known as Hospital Enhanced Access Leading to Health Improvements Initiative (HEALTHII) payments—to hospitals which supplement the base reimbursement rates hospitals receive for services provided to persons eligible for Title XIX services. The HCIF is also used to increase base reimbursement rates for reimbursed services under the physician fee schedule and dental fee schedule.

Specifically, AHCCCS seeks to amend the rates to ensure that HCIF payments can provide the full State Match required to fund the dental and physician rate increases required by Laws 2020, Chapter 46 and the HEALTHII directed payments.

AHCCCS is requesting an immediate effective date under A.R.S. § 41-1032(A)(4) "[t]o provide a benefit to the public and a penalty is not associated with a violation of the rule." Council staff believes the Administration has provided sufficient information that demonstrates a need for an immediate effective date.

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

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

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

The Administration indicates that the rulemaking does not 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 Administration indicates it did not review or rely on any study in conducting this rulemaking.

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

The Administration indicates that AHCCCS proposes to update the intended Health Care Investment Fund (HCIF) assessment amounts for FFY 2024. One of the main purposes of the HCIF is to make directed payments to hospitals, pursuant to 42 CFR § 438.6(c), that supplement the base reimbursement rate provided to hospitals for services provided to persons eligible for Title XIX Services. These directed payments have been named Hospital Enhanced Access Leading to Health Improvements Initiative (HEALTHII) payments. Additionally, the HCIF is used to increase base reimbursement for services reimbursed under the dental fee schedule and physician fee schedule. The Administration does not anticipate an overall economic impact since the payments are the result of a one-time legislative action. To ensure adequate HCIF is available to provide the full State Match required to fund the physician and dental rate increases as required by Laws 2020, Chapter 46 and the HEALTHII directed payments, AHCCCS intends to amend the rates located in this rule.

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 Administration did not consider other alternatives because the changes are the most cost effective and efficient method of complying with federal law and state statute.

6. What are the economic impacts on stakeholders?

The Administration states that the HCIF hospital assessment established in A.R.S. § 36-2999.72 will be matched by federal funds. The majority of the assessment funds and accompanying federal funds will be used to provide an increase for base reimbursement for services reimbursed under the dental fee schedule and physician fee schedule and for quarterly directed payment to Arizona hospitals. The Administration indicates that many of the providers

of that medical care are considered small businesses located in Arizona. In addition, the Administration indicates that A.R.S. § 36-2999.72 prohibits the assessed hospitals from passing the cost of the assessment on to patients or third parties who pay for care in the hospital. In the aggregate, the Administration expects to return over $1.7 billion in FFY 2024 in incremental payments for hospital services than will be collected through the assessment.

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

The Administration indicates that there were no changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. .

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

The Administration received one (1) comment on the proposed rule and indicates it was adequately addressed as identified in the table on subsection 11 of the NFR. The comment was received from Phoenix Children's Hospital expressing support of this rulemaking. The comment stated that without the rulemaking, Phoenix Children's will be limited from maximizing its benefits from the program because it will be excluded from making a full assessment payment into the program, effectively capping the amount of benefit that it can receive. In addition, Phoenix Children's indicated that because it is the only hospital in its assessment pool, the benefit it may receive from a reconciliation to address any underpayment of funds is also limited in comparison to other hospitals.

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 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 Administration states that the rule is not more stringent than federal law.

11. Conclusion

This regular rulemaking from AHCCCS seeks to amend one (1) rule in Title 9, Chapter 22, Article 7 in order to update the intended Health Care Investment Fund (HCIF) assessment amounts for FFY 2024. AHCCCS is requesting an immediate effective date under A.R.S. § 41-1032(A)(4) "[t]o provide a benefit to the public and a penalty is not associated with a violation of the rule." Council staff believes the Administration has provided sufficient information that demonstrates a need for an immediate effective date.

Council staff recommends approval of this rulemaking.

August 22, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: R9-22-731 Rulemaking

Dear Ms. Sornsin:

1.	The close of record date:	08/21/2023
2.	Does the rulemaking activity relate to a Five Year Review Report:	No
a.	If yes, the date the Council approved the Five Year Review Report:	N/A
3.	Does the rule establish a new fee:	No
a.	If yes, what statute authorizes the fee:	N/A
4.	Does the rule contain a fee increase:	No
5.	Is an immediate effective date requested pursuant to A.R.S. 41-1032:	Yes

AHCCCS certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. AHCCCS certifies that the preamble states that it did not rely on any such study in the agency's evaluation of or justification for the rule.

AHCCCS certifies 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 following documents are enclosed:

1. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;
4. If applicable: Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable: Material incorporated by reference;
6. General and specific statutes authorizing the rules, including relevant statutory definitions; and

7. If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22 ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

PREAMBLE

1. Article, Part, or Section Affected (as applicable) Rulemaking Action

R9-22-731

Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:

Authorizing statute: A.R.S. § 36-2999.72

Implementing statute: A.R.S. § 36-2999.72

3. The effective date of the rule and the agency's reason it selected the effective date:

As specified in A.R.S. § 41-1032(A)(4), the agency requests an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule. Since the purpose of the HCIF payments are to supplement hospitals' base reimbursement rate, they are only a benefit, and no penalty is associated with the rule.

4. A list of all notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:

Notice of Rulemaking Docket Opening: 29 A.A.R.1637, July 21, 2023.

Notice of Proposed Rulemaking: 29 A.A.R.1626, July 21, 2023.

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

Name: Nicole Fries

Address: AHCCCS Office of the General Counsel

801 E. Jefferson, Mail Drop 620

Phoenix, AZ 85034

Telephone: (602) 417-4232

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Web site: www.azahcccs.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:

Through this rulemaking, AHCCCS proposes to update the intended Health Care Investment Fund (HCIF) assessment amounts for FFY 2024. One of the main purposes of the HCIF is to make directed payments to hospitals, pursuant to 42 CFR § 438.6(c), that supplement the base reimbursement rate provided to hospitals for services provided to persons eligible for Title XIX Services. These directed payments have been named Hospital Enhanced Access Leading to Health Improvements Initiative (HEALTHII) payments. Additionally, the HCIF is used to increase base reimbursement for services reimbursed under the dental fee schedule and physician fee schedule.

Hospitals received their first HEALTHII directed payment in December 2020 and will continue receiving directed payments on a quarterly basis. Annually, HEALTHII payments represent a net increase of over $1.7 billion. To ensure adequate HCIF is available to provide the full State Match required to fund the physician and dental rate increases as required by Laws 2020, Chapter 46 and the HEALTHII directed payments, AHCCCS intends to amend the rates located in this rule.

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:

No studies were conducted relevant to the rule.

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 summary of the economic, small business, and consumer impact, if applicable:

The Health Care Investment Fund hospital assessment established in A.R.S. § 36-2999.72 will be matched by federal funds. The majority of the assessment funds and accompanying federal funds will be used to provide

an increase for base reimbursement for services reimbursed under the dental fee schedule and physician fee schedule and for quarterly directed payments to Arizona hospitals. Many of the providers of that medical care are considered small businesses located in Arizona.

A.R.S. §36-2999.72 prohibits the assessed hospitals from passing the cost of the assessment on to patients or third parties who pay for care in the hospital. In the aggregate, the Administration expects to return over $1.7 billion in FFY 2024 in incremental payments for hospital medical services than will be collected through the assessment.

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

Not applicable.

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

Name and Position of Commenter	Date of Comment	Text of Comment	AHCCCS Response
Jennifer Carusetta, Vice President, Public Affairs & Advocacy, Phoenix Children's Hospital	08/04/2023	The purpose of this letter is to provide comment on Proposed Rulemaking: Health Care Investment Fund. Phoenix Children's strongly supports the Healthii Payment program and the Health Care Investment Fund, which continues to be a source of critical support for Phoenix Children's.	Ms. Carusetta, AHCCCS thanks Phoenix Children's for their support of this rulemaking. AHCCCS Team

		Over the next two years, Phoenix Children's will be expanding its reach to include multiple hospital locations and a broader system of care, thereby significantly enhancing access to care for children enrolled in AHCCCS. It is critical that the Healthii Payment Program develop in a way that continues to provide a level of support that is commensurable to that which other hospital systems enjoy. Under the current model, Phoenix Children's is limited from maximizing its benefit from the program in two ways. First, Phoenix Children's is excluded from making a full assessment payment into the program, which in effect, "caps" the	

		amount of benefit that it may receive. In addition, because Phoenix Children's is the only hospital in its assessment pool, the benefit it may receive from a reconciliation to address any underpayment of funds is also limited in comparison to other hospital systems. We anticipate that the disparities in the current model will only become more significant as we further expand in the coming years. For this reason, we reiterate our request to engage in a discussion about how to achieve more equity in the Healthii Payment Program. We understand that substantive changes to the model are not a reasonable expectation for	

		the purpose of this rulemaking but would like to engage in ways to achieve more equity with minimal disruption to other systems in anticipation of development of the Contract Year ’25 model. We have appreciated AHCCCS’s transparency and partnership throughout the model development and stakeholder process. Please do not hesitate to contact me if I can answer any questions or provide additional information.	

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

No other matters have been prescribed.

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

the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The rulemaking must be established consistent with 42 CFR Part 433 Subpart B. The rule is not more stringent than 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 and its location in the rule:

Not applicable.

14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-731. Health Care Investment Fund - Hospital Assessment

A. For purposes of this Section, terms are the same as defined in A.A.C. R9-22-730 as provided below unless the context specifically requires another meaning:

B. Beginning October 1, ~~2022~~2023, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, ~~2022~~2023, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital's ~~2019~~2021 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges," multiplied by the following rates appropriate to the hospital's peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital's peer group:

1. $~~211.50~~245.50 per discharge and ~~3.5149~~3.5063% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
2. $~~211.50~~245.50 per discharge and ~~1.645~~1.4610% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
3. $~~53.00~~61.50 per discharge and ~~1.645~~1.4610% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
4. $~~53.00~~61.50 per discharge and ~~1.645~~1.4610% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the ~~2019~~2021 Medicare Cost Report.
5. $~~169.25~~196.50 per discharge and ~~3.8078~~3.7985% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's ~~2019~~2021 Uniform Accounting Report.
6. $~~190.50~~221.00 per discharge and ~~4.3936~~4.3829% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short- term with at least 10% but less than 20% of total

licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's ~~2019~~2021 Uniform Accounting Report.

7. $~~42.50~~49.25 per discharge and ~~1.1716~~1.1688% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children's.

8. $~~211.50~~245.50 per discharge and ~~5.8581~~5.8439% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short- term not included in another peer group.

C. Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, ~~2022~~2023.

D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's ~~2019~~2021 Medicare Cost Report, are assessed a rate of $~~53.00~~61.50 for each discharge from the psychiatric sub-provider as reported in the ~~2019~~2021 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).

E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's ~~2019~~2021 Medicare Cost Report, are assessed a rate of $0 for each discharge from the rehabilitative sub-provider as reported in the ~~2019~~2021 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).

F. Notwithstanding subsection (B), for any hospital that reported more than ~~24,000~~23,000 discharges on the hospital's ~~2019~~2021 Medicare Cost Report, discharges in excess of ~~24,000~~23,000 are assessed a rate of $~~21.25~~24.75 for each discharge in excess of ~~24,000~~23,000. The initial ~~24,000~~23,000 discharges are assessed at the rate required by subsection (B).

G. Assessment notice. On or before the 10th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.

H. Assessment due date. The assessment must be received by the Administration no later than the 10th day of the second month of the quarter.

I. Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's ~~2019~~2021 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, ~~2022~~2023:

1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the ~~2019~~2021 Medicare Cost Report.
4. Hospitals designated as type: hospital, subtype; rehabilitation.
5. Hospitals designated as type: med-hospital, subtype: special hospitals.
6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the ~~2019~~2021 Medicare Cost Report are reimbursed by Medicare.
7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the ~~2019~~2021 Medicare Cost Report.
8. Hospitals designated as type: hospital, subtype: short-term that are an urban public acute care hospital.

J. New hospitals. For hospitals that did not file a ~~2019~~2021 Medicare Cost Report because of the date the hospital began operations:

1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.
2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.

3. A hospital is not considered a new hospital based on a change in ownership.

4. The assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply;

   a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. "Annualized" means divided by a ratio equal to the number of months of data divided by 12 months.

   b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;

5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.

6. For hospitals providing self-reported data, described in subpart 4 and 5:

   a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.

   b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.

~~L~~**K.** Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.

~~M~~L. Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.

~~N~~M. Required information for the inpatient assessment. For any hospital that has not filed a ~~2019~~2021 Medicare Cost report, or if the ~~2019~~2021 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the ~~2019~~2021 Uniform Accounting Report filed by the hospital in place of the ~~2019~~2021 Medicare Cost report to calculate the assessment. If the ~~2019~~2021 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the ~~2019~~2021 Medicare Cost report to calculate the assessment.

~~O~~N. Required information for the outpatient assessment. For any hospital that has not filed a ~~2019~~2021 Uniform Accounting Report, if the 2021 Uniform Accounting Report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, or if the ~~2019~~2021 Uniform Accounting Report does not reconcile to ~~2019~~2021 Audited Financial Statements, the Administration shall use the data reported on ~~2019~~2021 Audited Financial Statements to calculate the outpatient assessment. If the ~~2019~~2021 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration all use data reported on the ~~2019~~2021 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the ~~2019~~2021 Medicare Cost report to calculate the outpatient assessment.

~~P~~O. Enforcement. If a hospital does not comply with this section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

1. Identification of rulemaking.

Through this rulemaking, AHCCCS proposes to update the intended Health Care Investment Fund (HCIF) assessment amounts for FFY 2024. One of the main purposes of the HCIF is to make directed payments to hospitals, pursuant to 42 CFR § 438.6(c), that supplement the base reimbursement rate provided to hospitals for services provided to persons eligible for Title XIX Services. These directed payments have been named Hospital Enhanced Access Leading to Health Improvements Initiative (HEALTHII) payments. Additionally, the HCIF is used to increase base reimbursement for services reimbursed under the dental fee schedule and physician fee schedule.

Hospitals received their first HEALTHII directed payment in December 2020 and will continue receiving directed payments on a quarterly basis. Annually, HEALTHII payments represent a net increase of over $1.7 billion. To ensure adequate HCIF is available to provide the full State Match required to fund the physician and dental rate increases as required by Laws 2020, Chapter 46 and the HEALTHII directed payments, AHCCCS intends to amend the rates located in this rule.

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

This rule is not intended to change any conduct or its occurrence.

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:

The harm that will result from not promulgating this rulemaking is that A.R.S. §36-2999.72 prohibits the assessed hospitals from passing the cost of the assessment on to patients or third parties who pay for care in the hospital. In the aggregate, the Administration expects to return millions more in FFY 2022 in incremental payments for medical services than will be collected through the assessment that would be lost if the rulemaking is not enacted.

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

The agency does not expect a change in the frequency of any targeted conduct.

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

The Health Care Investment Fund hospital assessment established in A.R.S. § 36-2999.72 will be matched by federal funds. The majority of the assessment funds and accompanying federal funds will be used to provide

an increase for base reimbursement for services reimbursed under the dental fee schedule and physician fee schedule and for quarterly supplemental payments to Arizona hospitals.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rule making.

Many of the providers of that medical care are considered small businesses located in Arizona. All affected entities benefit from the additional funding available due to the rulemaking.

3. Cost benefit analysis.

a. Probable costs and benefits to 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 (JLBC) of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council:

The Administration does not anticipate an overall economic impact since the payments are a result of a one-time legislative action. However, there may be an economic impact to individual providers as the money will be distributed, than if there were no rule change.

i. Cost:

The expected cost to the state General Fund was already anticipated by the Legislature under Laws 2020, Chapter 46.

ii. Benefit:

In the aggregate, the Administration expects to return millions more in FFY 2024 in incremental payments for medical services than will be collected through the assessment.

iii. Do any Full-time Employees need to be hired?

The Administration does not anticipate the need to hire full-time employees as a result of the proposed rule changes.

b. Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

This proposed rule revision does not directly affect political subdivisions.

c. 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 Administration does not anticipate an overall impact on revenues or payroll expenditures of employers.

4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.

The Administration cannot anticipate the nature of private or public employment due to these additional funds, however they will provide a benefit.

5. Statement of probable impact of the proposed rule on small businesses. The statement shall include:

a. Identification of the small businesses subject to the proposed rulemaking.

The Administration does not anticipate the level of a fiscal impact on small businesses, however it will be a benefit.

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

The Administration does not anticipate an impact upon the administrative expenses of the small business community because the proposed rule language changes are only funding related and will not incur costs.

c. Description of methods prescribed in section A.R.S. § 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 use each method:

i. Establishing less stringent compliance or reporting requirements in the rule for small businesses;

The changes represent the most cost-effective and efficient method of fulfilling the agency's responsibilities and impose only those requirements that are necessary to comply with federal law and state statute.

ii. Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;

The changes represent the most cost-effective and efficient method of fulfilling the agency's responsibilities and impose only those requirements that are necessary to comply with federal law and state statute.

iii. Consolidate or simplify the rule's compliance or reporting requirements for small businesses;

The changes represent the most cost-effective and efficient method of fulfilling the agency's responsibilities and impose only those requirements that are necessary to comply with federal law and state statute.

iv. Establish performance standards for small businesses to replace design or operational standards in the rule; and

The changes represent the most cost-effective and efficient method of fulfilling the agency's responsibilities and impose only those requirements that are necessary to comply with federal law and state statute.

v. Exempting small businesses from any or all requirements of the rule.

The Administration cannot exempt small businesses from any rule requirements.

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

There may be a consumer impact due to the increased funding than if there were no rule change.

6. Statement of the probable effect on state revenues.

The Administration anticipates no fiscal impact upon state revenues beyond those already anticipated by the Legislature under Laws 2020, Chapter 46.

7. 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 Administration did not consider other alternatives because the changes are the most cost effective and efficient method of complying with federal law and state statute.

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.

No additional data was considered.

Phoenix Children's

August 4, 2023

Nicole Friese
AHCCCS
Office of General Counsel
801 E. Jefferson
Phoenix, Arizona 85034

Dear Ms. Friese:

The purpose of this letter is to provide comment on Proposed Rulemaking: Health Care Investment Fund. Phoenix Children's strongly supports the Healthii Payment program and the Health Care Investment Fund, which continues to be a source of critical support for Phoenix Children's.

Over the next two years, Phoenix Children's will be expanding its reach to include multiple hospital locations and a broader system of care, thereby significantly enhancing access to care for children enrolled in AHCCCS. It is critical that the Healthii Payment Program develop in a way that continues to provide a level of support that is commensurable to that which other hospital systems enjoy.

Under the current model, Phoenix Children's is limited from maximizing its benefit from the program in two ways. First, Phoenix Children's is excluded from making a full assessment payment into the program, which in effect, "caps" the amount of benefit that it may receive. In addition, because Phoenix Children's is the only hospital in its assessment pool, the benefit it may receive from a reconciliation to address any underpayment of funds is also limited in comparison to other hospital systems.

We anticipate that the disparities in the current model will only become more significant as we further expand in the coming years. For this reason, we reiterate our request to engage in a discussion about how to achieve more equity in the Healthii Payment Program. We understand that substantive changes to the model are not a reasonable expectation for the purpose of this rulemaking but would like to engage in ways to achieve more equity with minimal disruption to other systems in anticipation of development of the Contract Year '25 model.

We have appreciated AHCCCS's transparency and partnership throughout the model development and stakeholder process. Please do not hesitate to contact me if I can answer any questions or provide additional information.

Phoenix Children's

Respectfully,

Jennifer A. Carusetta
Vice President
Public Affairs & Advocacy

L. Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.

M. Required information for the inpatient assessment. For any hospital that has not filed a 2019 Medicare Cost report, or if the 2019 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2019 Uniform Accounting Report filed by the hospital in place of the 2019 Medicare Cost report to calculate the assessment. If the 2019 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the assessment.

N. Required information for the outpatient assessment. For any hospital that has not filed a 2019 Uniform Accounting Report, or if the 2019 Uniform Accounting Report does not reconcile to 2019 Audited Financial Statements, the Administration shall use the data reported on 2019 Audited Financial Statements to calculate the outpatient assessment. If the 2019 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration all use data reported on the 2019 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the outpatient assessment.

O. The Administration will review and update as necessary rates and peer groups periodically to ensure the assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in A.R.S. § 36-2901.08.

P. Enforcement. If a hospital does not comply with this Section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

Historical Note

New Section R9-22-730 made by exempt rulemaking at 20 A.A.R. 281, effective January 15, 2014 (Supp. 14-1). Amended by exempt rulemaking at 20 A.A.R. 1833, effective July 1, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 637, effective April 15, 2015 (Supp. 15-2). Amended by final exempt rulemaking at 21 A.A.R. 1486, effective July 16, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 22 A.A.R. 2050, effective July 14, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 23 A.A.R. 1945, effective July 1, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2229, effective July 10, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 1938, effective July 1, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1702, effective July 1, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 26 A.A.R. 2984, effective October 1, 2020 (Supp. 20-4). Amended by final exempt rulemaking at 27 A.A.R. 2370, effective October 1, 2021 (Supp. 21-3). Amended by final exempt rulemaking 28 A.A.R. 2213 (September 2, 2022), effective October 1, 2022 (Supp. 22-3).

R9-22-731. Health Care Investment Fund - Hospital Assessment

A. For purposes of this Section, terms are the same as defined in A.A.C. R9-22-730 as provided below unless the context specifically requires another meaning.

B. Beginning October 1, 2022, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, 2022, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital's 2019 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges," multiplied by the following rates appropriate to the hospital's peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital's peer group:

1. $211.50 per discharge and 3.5149% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
2. $211.50 per discharge and 1.645% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
3. $53.00 per discharge and 1.645% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
4. $53.00 per discharge and 1.645% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2019 Medicare Cost Report.
5. $169.25 per discharge and 3.8078% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2019 Uniform Accounting Report.
6. $190.50 per discharge and 4.3936% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short- term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2019 Uniform Accounting Report.
7. $42.50 per discharge and 1.1716% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children's.
8. $211.50 per discharge and 5.8581% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short- term not included in another peer group.

C. Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2022.

D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2019 Medicare Cost Report, are assessed a rate of $53.00 for each discharge from the psychiatric sub-provider as reported in the 2019 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric

sub-provider are assessed at the rate required by subsection (B).

E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2019 Medicare Cost Report, are assessed a rate of $0 for each discharge from the rehabilitative sub-provider as reported in the 2019 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).

F. Notwithstanding subsection (B), for any hospital that reported more than 24,000 discharges on the hospital's 2019 Medicare Cost Report, discharges in excess of 24,000 are assessed a rate of $21.25 for each discharge in excess of 24,000. The initial 24,000 discharges are assessed at the rate required by subsection (B).

G. Assessment notice. On or before the 10th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.

H. Assessment due date. The assessment must be received by the Administration no later than the 10th day of the second month of the quarter.

I. Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2019 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2022:

1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2019 Medicare Cost Report.
4. Hospitals designated as type: hospital, subtype; rehabilitation.
5. Hospitals designated as type: med-hospital, subtype: special hospitals.
6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2019 Medicare Cost Report are reimbursed by Medicare.
7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2019 Medicare Cost Report.
8. Hospitals designated as type: hospital, subtype: short-term that are an urban public acute care hospital.

J. New hospitals. For hospitals that did not file a 2019 Medicare Cost Report because of the date the hospital began operations:

1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.
2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.
3. A hospital is not considered a new hospital based on a change in ownership.
4. The assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply;
   a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. "Annualized" means divided by a ratio equal to the number of months of data divided by 12 months.
   b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;
5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
6. For hospitals providing self-reported data, described in subpart 4 and 5:
   a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
   b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.

L. Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.

M. Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.

N. Required information for the inpatient assessment. For any hospital that has not filed a 2019 Medicare Cost report, or if the 2019 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2019 Uniform Accounting Report filed by the hospital in place of the 2019 Medicare Cost report to calculate the assessment. If the 2019 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the assessment.

O. Required information for the outpatient assessment. For any hospital that has not filed a 2019 Uniform Accounting Report,

or if the 2019 Uniform Accounting Report does not reconcile to 2019 Audited Financial Statements, the Administration shall use the data reported on 2019 Audited Financial Statements to calculate the outpatient assessment. If the 2019 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration all use data reported on the 2019 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the outpatient assessment.

P. Enforcement. If a hospital does not comply with this Section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

Historical Note

New Section made by final exempt rulemaking at 26 A.A.R. 2984, effective October 1, 2020 (Supp. 20-4). Amended by final rulemaking at 27 A.A.R. 2514 (October 29, 2021), with an immediate effective date of October 6, 2021 (Supp. 21-4). Amended by final exempt rulemaking at 28 A.A.R. 3351 (October 21, 2022), effective October 1, 2022 (Supp. 22-3).

ARTICLE 8. REPEALED

Article 8, consisting of R9-22-801 through R9-22-804 and Exhibit A, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).

R9-22-801. 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 R9-22-801 adopted as an emergency adoption now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted effective October 29, 1985 (Supp. 85-5). Amended subsections (C), (F), (H), (I), and (K) effective October 1, 1986 (Supp. 86-5). Change of heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (H) effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Section heading amended 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). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

R9-22-802. 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 R9-22-802 adopted as an emergency adoption now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 29, 1985 (Supp. 85-5). Amended subsections (A), (B), (C) and (D) effective October 14, 1988 (Supp. 88-4). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-802 repealed, new Section R9-22-802 adopted effective January 14, 1997 (Supp. 97-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

R9-22-803. 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 R9-22-803 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-803 repealed, new Section R9-22-803 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-803 renumbered and amended as Section R9-22-804. Adopted effective January 31, 1986 (Supp. 86-1). Amended effective September 29, 1992 (Supp. 92-3). Former Section R9-22-803 repealed, new Section R9-22-803 adopted January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

R9-22-804. 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 R9-22-804 adopted as an emergency adoption now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Former Section R9-22-804 repealed, former Section R9-22-803 renumbered and amended as Section R9-22-804 effective October 29, 1985 (Supp. 85-5). Amended effective October 14, 1988 (Supp.88-4). Amended subsections (B) and (C) effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-804 repealed, new Section R9-22-804 adopted effective January 14, 1997 (Supp. 97-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

Exhibit A. Repealed

Historical Note

New Exhibit adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Exhibit repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

36-2999.72. Hospital assessment; rules; collection; enforcement

(Conditionally Rpld.)

A. In addition to the assessment established pursuant to section 36-2901.08, beginning October 1, 2020, the director shall establish, administer and collect an assessment on hospital revenues, discharges or bed days with respect to inpatient or outpatient services, or both, for the purposes prescribed in section 36-2999.73.

B. The director shall adopt rules regarding the method for determining the assessment, the amount or rate of the assessment and modifications to or exemptions from the assessment. The assessment is subject to approval by the centers for medicare and medicaid services to ensure that the assessment is not established or administered in a manner that causes a reduction in federal financial participation.

C. The director may establish modifications to or exemptions from the assessment. In determining the modifications or exemptions, the director may consider such factors as the size of the hospital, the specialty services available to patients at the hospital and the geographic location of the hospital.

D. The director shall present any change to the hospital assessment methodology to the joint legislative budget committee for review.

E. The administration shall deposit, pursuant to sections 35-146 and 35-147, the monies collected pursuant to this section in the health care investment fund established by section 36-2999.73.

F. A hospital may not pass the cost of the assessment on to patients or third-party payors that are liable to pay for care on a patient's behalf. As part of its financial statement submissions pursuant to section 36-125.04, a hospital shall submit to the department of health services an attestation that it has not passed on the cost of the assessment to patients or third-party payors.

G. If a hospital does not comply with this section as prescribed by the director of the Arizona health care cost containment system, the director of the Arizona health care cost containment system may suspend or revoke the hospital's Arizona health care cost containment system provider agreement registration. If the hospital does not comply within one hundred eighty days after the director of the Arizona health care cost containment system suspends or revokes the hospital's provider agreement, the director of the Arizona health care cost containment system shall notify the director of the department of health services, who shall suspend or revoke the hospital's license pursuant to section 36-427.

C-7.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22

Amend: R9-22-712.35, R9-22-712.61, R9-22-712.71, R9-22-712.90

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: **September 7, 2023**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 7

Amend: R9-22-712.35, R9-22-712.61, R9-22-712.71, R9-22-712.90

Summary:

This regular rulemaking from the Arizona Health Care Cost Containment System (AHCCCS) seeks to amend four (4) rules in Title 9, Chapter 22, Article 7, Standards for Payment. Specifically, the proposed rulemaking will amend and clarify rules specifying requirements for receipt of the Differential Adjusted Payment (DAP) for the time period of October 1, 2023 through September 30, 2024. AHCCCS is Arizona's Medicaid program designed to deliver quality health care under managed care. The DAP initiatives are designed to reward hospital providers and hospital-based free standing emergency departments that have taken designated actions to improve patients' care experience, improve members' health, and reduce the growth of the cost of care. Hospitals and hospital-based emergency departments which satisfy the requirements delineated in the proposed rule for the time period of October 1, 2023 through September 30, 2024 (CYE 2024) will receive increased payments from the AHCCCS Administration and Contractors for inpatient and outpatient services.

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

AHCCCS cites both general and specific statutory authority for these rules.

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

AHCCCS indicates that 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?

AHCCCS states that no study was reviewed or relied upon when revising these rules.

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

The Administration indicates that AHCCCS Differential Adjusted Payment (DAP) initiatives are strategically designed to reward quality outcomes and reduce growth in the cost of health care. They state that the objective of DAP delineated in the proposed rulemaking is to reward hospital providers and hospital-based free standing emergency departments that have taken designated actions to improve patients' care experience, improve members' health, and reduce the growth of the cost of care. The proposed rulemaking will amend and clarify rules specifying requirements for receipt of DAP for qualifying hospitals and hospital-based free standing emergency departments for both inpatient and outpatient services for the time period of October 1, 2023 through September 30, 2024. Stakeholders include the State, taxpayers, and providers.

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 Administration did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

6. What are the economic impacts on stakeholders?

The Administration anticipates that the DAP rulemaking will result in approximately $91.6 million of additional payments for contract year October 1, 2023 through September 30, 2024 to 120 hospitals. The Administration indicates that participation in the state's health information exchange is voluntary and will result in increased funding for medical services under this rule. The Administration states that the rulemaking does not impose compliance or reporting requirements on small businesses. The administration anticipates that private persons and consumers of medical services provided by hospitals will benefit from an improved patient care experience, improved health care outcomes, and a reduction in the growth of medical care costs.

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

AHCCCS indicates that the final rules are not a substantial change from the proposed or supplemental rules.

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

AHCCCS indicates that no comments were received for these rules.

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

AHCCCS indicates that the rules do not require a permit or license.

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

AHCCCS indicates that no federal laws apply and therefore the rules are not more stringent than federal law.

11. Conclusion

This regular rulemaking from AHCCCS seeks to amend four rules in Title 9, Chapter 22, Article 7, Standards for Payment. Specifically, the proposed rulemaking will amend and clarify rules specifying requirements for receipt of the Differential Adjusted Payment.

AHCCCS is seeking an immediate effective date under A.R.S. § 41-1032(A)(4), as the rulemaking will provide a benefit to the public and a penalty is not associated with a violation of the rule. Council staff recommends approval of this rulemaking.

August 22, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: R9-22-712.35, R9-22-712.61, R9-22-712.71, R9-22-712.90 Rulemaking

Dear Ms. Sornsin:

1.	The close of record date:	08/21/2023
2.	Does the rulemaking activity relate to a Five Year Review Report:	No
a.	If yes, the date the Council approved the Five Year Review Report:	N/A
3.	Does the rule establish a new fee:	No
a.	If yes, what statute authorizes the fee:	N/A
4.	Does the rule contain a fee increase:	No
5.	Is an immediate effective date requested pursuant to A.R.S. 41-1032:	Yes

AHCCCS certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. AHCCCS certifies that the preamble states that it did not rely on any such study in the agency's evaluation of or justification for the rule.

AHCCCS certifies 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 following documents are enclosed:

1. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;
4. If applicable: Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable: Material incorporated by reference;
6. General and specific statutes authorizing the rules, including relevant statutory definitions; and

7. If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-712.35, R9-22-712.61, R9-22-712.71

1. **Identification of rulemaking.**

AHCCCS Differential Adjusted Payment (DAP) initiatives are strategically designed to reward quality outcomes and reduce growth in the cost of health care. The objective of DAP delineated in this proposed rulemaking is to reward hospital providers and hospital-based free standing emergency departments that have taken designated actions to improve patients' care experience, improve members' health, and reduce the growth of the cost of care. Hospitals and hospital-based emergency departments which satisfy the requirements delineated in the proposed rule for the time period of October 1, 2023 through September 30, 2024 (CYE 2024) will receive increased payments from the AHCCCS Administration and Contractors for inpatient and outpatient services. The proposed DAP rules represent the AHCCCS Administration's expanding efforts to enhance accountability of the health care delivery system.

The proposed rulemaking will amend and clarify rules specifying requirements for receipt of DAP for qualifying hospitals and hospital-based free standing emergency departments for both inpatient and outpatient services for the time period of October 1, 2023 through September 30, 2024. These initiatives include participation in the Health Information

Exchange, Arizona Health Directives Registry, Social Determinants of Health Closed Loop Referral System, Naloxone Distribution Program (NDP), and the Inpatient Psychiatric Facility Quality Reporting Program, as well as includes a performance measure for Long-Term Care Hospitals and Inpatient Rehabilitation Hospitals that meet or fall below the national average percentage for pressure ulcers. The proposed rulemaking will authorize AHCCCS to continue rewarding innovative activities and broaden the reach of the present model, emphasizing improved patient care and reduced growth in the cost of care.

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

The rule is designed to incentivize hospital participation in the state's health information exchange (HIE) which are expected to enhance quality of care and reduced growth in the cost of care.

b. <u>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</u>:

It is expected that the change in hospital behavior will improve patient care experience, improve patient health, and reduce the growth in the cost of health care.

c. <u>The estimated change in frequency of the targeted conduct expected from the rule change</u>:

It is anticipated that hospitals which participate in the health information exchange in order to receive increased payments through the DAP initiative will continue to do so going forward.

2. **Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rule making.**

The State, taxpayers, and providers will directly benefit from this rulemaking as the payment model will reward efficient utilization of services. Hospital providers which participate in the health information exchange will benefit by receiving a higher rate of reimbursement for medical services. In addition, patients are expected to experience improved care while the State and taxpayers will be positively affected by the more efficient delivery of health care services and the reduced growth in the cost of care.

3. **Cost benefit analysis.**

   a. **Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:**

      i. Cost:

      The Administration anticipates that the DAP rulemaking will result in approximately $91.6 million of additional payments for the contract year October 1, 2023 through September 30, 2024 to 120 hospitals.

      ii. Benefit:

The AHCCCS Administration, taxpayers, and providers will directly benefit from this rulemaking as the DAP payments incentivize improved patient care, innovation, efficient delivery of services, and the reduction in the growth of the costs of health care.

iii. Need for additional Full-time Employees:

The Administration does not anticipate the need to hire full-time employees as a result of this rulemaking.

b. Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

This rulemaking does not directly affect political subdivisions.

4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.

The Administration anticipates no economic impact on public and private employment.

5. Statement of probable impact of the proposed rule on small businesses. The statement shall include:

a. Identification of the small businesses subject to the proposed rulemaking.

Of the 135 hospitals, 2 hospitals satisfy the definition of small businesses.

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

The Administration does not anticipate an impact on the small business community because providers do not incur additional costs for participating in the state's health information exchange.

c. Description of methods prescribed in section A.R.S. § 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 use each method:

i. Establishing less stringent compliance or reporting requirements in the rule for small businesses;

This rulemaking does not impose compliance or reporting requirements on small businesses. Participation in the state's health information exchange is voluntary and will result in increased funding for medical services under this rule.

ii. Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;

This rulemaking does not impose compliance or reporting requirements on small businesses. Participation in the state's health information exchange are voluntary and will result in increased funding for medical services under this rule.

iii. Consolidate or simplify the rule's compliance or reporting requirements for small businesses;

This rulemaking does not impose compliance or reporting requirements on small businesses. Participation in the state's health information exchange is voluntary and will result in increased funding for medical services under this rule.

iv. Establish performance standards for small businesses to replace design or operational standards in the rule; and

This rulemaking does not establish performance standards for small businesses.

v. Exempting small businesses from any or all requirements of the rule.

Exempting small businesses is not applicable to this rulemaking.

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

It is anticipated that private persons and consumers of medical services provided by hospitals will benefit from an improved patient care experience, improved health outcomes, and a reduction in the growth of medical care costs.

6. Statement of the probable effect on state revenues.

It is anticipated that the rulemaking will not affect state revenues.

7. 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 Administration did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

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.

The Administration did not rely on any data for this rulemaking.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22 ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action**

R9-22-712.35	Amend
R9-22-712.61	Amend
R9-22-712.71	Amend
R9-22-712.90	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:

Authorizing statute: A.R.S. § 36-2903.01(A)

Implementing statute: A.R.S. § 36-2903.01(G)(12)

3. The effective date of the rule and the agency's reason it selected the effective date:

As specified in A.R.S. § 41-1032(A)(4), the agency requests an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule.

4. A list of all notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:

Notice of Rulemaking Docket Opening: 29 A.A.R.1635, July 21, 2023.

Notice of Proposed Rulemaking: 29 A.A.R.1601, July 21, 2023.

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

Name: Nicole Fries

Address: AHCCCS Office of the General Counsel

801 E. Jefferson, Mail Drop 620

Phoenix, AZ 85034

Telephone: (602) 417-4232

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E-mail: AHCCCSRules@azahcccs.gov

Web site: www.azahcccs.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:

AHCCCS Differential Adjusted Payment (DAP) initiatives are strategically designed to reward quality outcomes and reduce growth in the cost of health care. The objective of DAP delineated in this proposed rulemaking is to reward hospital providers and hospital-based free standing emergency departments that have taken designated actions to improve patients' care experience, improve members' health, and reduce the growth of the cost of care. Hospitals and hospital-based emergency departments which satisfy the requirements delineated in the proposed rule for the time period of October 1, 2023 through September 30, 2024 (CYE 2024) will receive increased payments from the AHCCCS Administration and Contractors for inpatient and outpatient services. The proposed DAP rules represent the AHCCCS Administration's expanding efforts to enhance accountability of the health care delivery system.

The proposed rulemaking will amend and clarify rules specifying requirements for receipt of DAP for qualifying hospitals and hospital-based free standing emergency departments for both inpatient and outpatient services for the time period of October 1, 2023 through September 30, 2024. These initiatives include participation in the Health Information Exchange, Arizona Health Directives Registry, Social Determinants of Health Closed Loop Referral System, Naloxone Distribution Program (NDP), and the Inpatient Psychiatric Facility Quality Reporting Program, as well as includes a performance measure for Long-Term Care Hospitals and Inpatient Rehabilitation Hospitals that meet or fall below the national average percentage for pressure ulcers. The proposed rulemaking will authorize AHCCCS to continue rewarding innovative activities and broaden the reach of the present model, emphasizing improved patient care and reduced growth in the cost of care.

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 study was not referenced or relied upon when revising these regulations.

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 summary of the economic, small business, and consumer impact, if applicable:

The Administration anticipates that the DAP rulemaking will result in approximately $91.6 million of additional payments for the contract year October 1, 2023 through September 30, 2024 to 120 hospitals.

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

Not applicable.

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

Not applicable.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

No other matters have been prescribed.

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 the 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 submitted.

13. A list of any incorporated by reference material and its location in the rule:

None.

14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so,

the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees

A. For all claims with a begin date of service on or before September 30, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule established under R9-22-712.20 (except for laboratory services and out-of-state hospital services) for the following hospitals submitting any claims:

1. By 48 percent for public hospitals on July 1, 2005, and hospitals that were public anytime during the calendar year 2004;
2. By 45 percent for hospitals in counties other than Maricopa and Pima with more than 100 Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
3. By 50 percent for hospitals in counties other than Maricopa and Pima with 100 or less Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
4. By 115 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the criteria during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
5. By 113 percent for a Freestanding Children's Hospital with at least 110 pediatric beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective; or
6. By 14 percent for a University Affiliated Hospital which is a hospital that has a majority of the members of its board of directors appointed by the Board of Regents during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective.

B. For all claims with a begin date of service on or after October 1, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services) for the following hospitals. A hospital shall receive an increase from only one of the following categories:

1. By 73 percent for public hospitals;
2. By 31 percent for hospitals in counties other than Maricopa and Pima with more than 100 licensed beds as of October 1 of that contract year;
3. By 37 percent for hospitals in counties other than Maricopa and Pima with 100 or fewer licensed beds as of October 1 of that contract year;
4. By 100 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the critical access criteria;
5. By 78 percent for a Freestanding Children's Hospital with at least 110 pediatric beds as of October 1 of that contract year; or
6. By 41 percent for a University Affiliated Hospital, this is a hospital that has a majority of the members of its board of directors appointed by the Arizona Board of Regents.

C. In addition to subsections (A) and (B), an Arizona Level 1 trauma center as defined by R9-22-2101 shall receive a 50 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services and out-of-state hospital services) for Level 2 and 3 emergency department procedures.

D. Hospitals with greater than 100 pediatric beds not receiving an increase under subsection (B) shall receive an 18 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services).

E. For outpatient services with dates of service from October 1, 2022 through September 30, 2023 (CYE 2023), the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2022. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in ~~a, b, c or d~~(a), (b), (c), or (d):
   a. By April 1, 2022, the hospital must have submitted a Letter of Intent (LOI) to the Health Information Exchange (HIE) in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved.
      i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
      ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
         (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE organization to ensure proper processing of lab results within the HIE system.
         (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
         (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to

the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below:

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.5% if criteria are met for all categories.

(1) Data source and data site information must be submitted on all ADT transactions. (0.5%)

(2) Event type must be properly coded on all ADT transactions. (0%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)

(4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (0.5%)

(6) Ethnicity must be submitted on all ADT transactions. (0.5%)

(7) Diagnosis must be submitted on all ADT transactions. (0.5%)

(8) Overall completeness of the ADT message. (0~~.5~~%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;

i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.

ii. No later than April 1, 2022:

(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through

an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use,

ii. Number of ICU beds available for use,

iii. Number of Medical-Surgical beds in use,

iv. Number of Medical-Surgical beds available for use,

v. Number of Telemetry beds in use,

vi. Number of Telemetry beds available for use.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in ~~a, b, c or d~~(a), (b), (c), or (d):

a. By April 1, 2022 the hospital must have submitted a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:

i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the

qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

viii. No later than January 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below:

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 8.0% if criteria are met for all categories indicating a DAP.

(1) Data source and data site information must be submitted on all ADT transactions. (1.0%)

(2) Event type must be properly coded on all ADT transactions. (1.0%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)

(4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (2.0%)

(6) Ethnicity must be submitted on all ADT transactions. (2.0%)

(7) Diagnosis must be submitted on all ADT transactions. (2.0%)

(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;

i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.

ii. No later than April 1, 2022:

(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE

organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

   i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

   ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

   iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

   iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

   v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

   vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

   i. Number of ICU beds in use

ii. Number of ICU beds available for use

iii. Number of Medical-Surgical beds in use

iv. Number of Medical-Surgical beds available for use

v. Number of Telemetry beds in use

vi. Number of Telemetry beds available for use

3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in ~~a, b, c, d, e, or f~~(a), (b), (c), (d), (e), or (f):

a. In order to qualify, by April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:

i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the facility has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization or an Advance Directives Registry platform operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to DAP increases described below:

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.0% if criteria are met for all categories.

(1) Data source and data site information must be submitted on all ADT transactions. (0.5%)

(2) Event type must be properly coded on all ADT transactions. (0%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)

(4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (0.5%)

(6) Ethnicity must be submitted on all ADT transactions. (0.5%)

(7) Diagnosis must be submitted on all ADT transactions. (0.5%)

(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;

i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.

ii. No later than April 1, 2022:

(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE

organization. After go-live, the hospital must regularly utilize SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. On March 15, 2022 is identified as a Medicare Annual Payment Update recipients on the QualityNet.org website; APU recipients are those facilities that satisfactorily met the requirements for the IPFQR program, which includes multiple clinical quality measures. Facilities identified as APU recipients will qualify for the DAP increase.

d. On March 15, 2022 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Provider Data Catalog website for long-term care hospitals. Facility results will be compared to the national average results for the measure. Hospitals that meet or fall below the national average percentage will qualify for the DAP increase.

e. On March 15, 2022 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Provider Data Catalog website for rehabilitation hospitals. Facility results will be compared to the national average results for the measure. Hospitals that meet or fall below the national average percentage will qualify for the DAP increase.

f. By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

   i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

   ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

   iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

   iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

   v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by

September 1, 2022. During CYE 2023, from October 1, 2022, through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

4. A hospital designated as type: hospital, subtype: long term or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the following criteria. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

~~i~~a. Number of ICU beds in use

~~ii~~b. Number of ICU beds available for use

~~iii~~c. Number of Medical-Surgical beds in use

~~iv~~d. Number of Medical-Surgical beds available for use

~~v~~e. Number of Telemetry beds in use

~~vi~~f. Number of Telemetry beds available for use

5. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (IHS) or under Tribal authority will qualify for an increase if it meets these criteria specified in ~~a or b~~(a) or (b);

a. By April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:

i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE

organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the facility has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If the hospital has ambulatory and/or behavioral health practices, then the facility must submit the following actual patient identifiable information to the production environment of a qualifying HIE: registration, encounter summary, and SMI data elements as defined by the qualifying HIE organization. For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

vii. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

viii. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below:

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

ix. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 2.5% if criteria are met for all categories indicating a DAP.

(1) Data source and data site information must be submitted on all ADT transactions. (0.5%)

(2) Event type must be properly coded on all ADT transactions. (0.5%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0.5%)

(4) Patient demographic information must be submitted on all ADT transactions. (0.5%)

(5) Overall completeness of the ADT message. (0.5%)

b. By March 15, 2022, the facility must submit a LOI to enter into a CCA with a non-HIS/638 facility (a fully signed copy of a CCA with a non-HIS/Tribal 638 facility is also acceptable). By April 30, 2021, the facility must have entered into a CCA with a non-IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

The IHS/Tribal 638 facility will have in place a signed CCA with a non-IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

i. The IHS/Tribal 638 facility will have a valid referral template in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

ii. The IHS/Tribal 638 facility will continue to assume responsibility of the referred member, maintaining records and release of information protocol including clinical documentation of services provided by the non-IHS/Tribal 638 facility.

iii. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the IHS/Tribal 638 facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2021.

iv. The IHS/638 facility will submit a minimum of one referral and any supporting medical documentation to the non-IHS/Tribal 638 facility by September 1, 2022. During CYE 2023, from October 1, 2022, through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA referrals per month to the non-IHS/Tribal 638 facility.

v. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA referrals to the non-IHS/Tribal 638 facility by March 15, 2022, and submit an average of 5 CCA referrals per month by May 31, 2022.

F. For outpatient services with dates of service from October 1, 2023 through September 30, 2024 (CYE 2024), the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2023. If a hospital receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (F), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in (1)(a), (b), (c) or (d):

a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the

system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in (2)(a), (b), (c) or (d). No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

a. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

i. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

ii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iii. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for

Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

iv. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in (3)(a), (b), (c), (d), (e), or (f):

a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. On March 15, 2023 a hospital that is identified as a Medicare Annual Payment Update (APU) recipient on the QualityNet.org website will qualify for the DAP increase. APU recipients are those hospitals that satisfactorily meet the requirements for the Inpatient Psychiatric Facility Quality Reporting Program, which includes multiple clinical quality measures.

e. On March 15, 2023, long-term care hospitals that meet or fall below the national average for the pressure ulcers performance measure will qualify for the DAP increase. The national average will be downloaded from the most current data from the Medicare Provider Data Catalog website for the rate of changes in skin integrity post-acute care: Pressure Ulcer/Injury for long-term care hospitals. Facility results will be compared to the national average results for the measure.

f. On March 15, 2023, rehabilitation hospitals that meet or fall below the national average for the pressure ulcers performance measure will qualify for the DAP increase. The national average will be downloaded from the most current data from the Medicare Provider Data Catalog website for the rate of changes in skin integrity post-acute care: Pressure Ulcer/Injury rehabilitation hospitals. Facility results will be compared to the national average results for the measure.

4. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (IHS) or under Tribal authority will qualify for an increase if it meets these criteria specified in (4)(a) or (b);

a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 1, 2023, complete the AzHDR Participant Agreement.

ii. No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required.

ii. No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

R9-22-712.61. DRG Payments: Exceptions

A. Notwithstanding section R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 801 E. Jefferson, Phoenix, Arizona. If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the outlier CCR. The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS. The resulting amount will be the total reimbursement for the claim. There is no provision for outlier payments for hospitals described under subsection (A)(3).

1. Hospitals designated as type: hospital, subtype; rehabilitation in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website in March of each year;
2. Hospitals designated as type: hospital, subtype: long term in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
3. Hospitals designated as type: hospital, subtype; psychiatric in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;

B. Notwithstanding section R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the principal diagnosis on the claim is a behavioral health diagnosis, shall be reimbursed as prescribed by a per diem rate described by a fee schedule established by the Administration; however, if the principal diagnosis is a physical health diagnosis, the claim shall be processed under the DRG methodology described in this section, even if behavioral health services are provided during the inpatient stay.

C. Notwithstanding section R9-22-712.60, claims for services associated with transplant services shall be paid in accordance with the contract between the AHCCCS administration and the transplant facility.

D. Notwithstanding section R9-22-712.60, claims from an IHS facility or 638 Tribal provider shall be paid the all-inclusive rate on a per visit basis in accordance with the rates published annually by IHS in the federal register.

E. For hospitals that have contracts with the Administration for the provision of transplant services, inpatient days associated with transplant services are paid in accordance with the terms of the contract.

F. For inpatient services with a date of admission from October 1, 2022 through September 30, 2023(CYE 2023), provided by a hospital in subsection (A) that qualifies, the administration shall pay the hospital an Inpatient Differential Adjusted Payment equal to the sum of the payment otherwise provided for in subsection (A) plus the product of the amount otherwise provided for in subsection (A) and a percentage published on the Administration's public website as part of its fee schedule, subsequent to a public notice

published no later than September 1, 2022. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection ~~a, b, c, or d~~(1)(a), (b), (c), or (d):

    a. By April 1, 2022, a hospital the hospital must have submitted a Letter of Intent (LOI) to AHCCCS and the Health Information Exchange (HIE), in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved~~.~~.

        i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

        ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

            (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE organization to ensure proper processing of lab results within the HIE system.

            (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

            (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

        iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf.

        iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital

emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November, 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the ~~initial~~ data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below in ~~1.a.x~~(1)(a)(x).

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2022 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.0% if criteria are met for all categories.

(1) Data source and data site information must be submitted on all ADT transactions. (0.5%)

(2) Event type must be properly coded on all ADT transactions. (0%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)

(4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (0.5%)

(6) Ethnicity must be submitted on all ADT transactions. (0.5%)

(7) Diagnosis must be submitted on all ADT transactions. (0.5%)

(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;

i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.

ii. No later than April 1, 2022:

(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

~~b~~c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the

facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use

ii. Number of ICU beds available for use

iii. Number of Medical-Surgical beds in use

iv. Number of Medical-Surgical beds available for use

v. Number of Telemetry beds in use

vi. Number of Telemetry beds available for use

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified in subsection ~~a, b, c, or d~~(a), (b), (c), or (d):

a. By April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:

i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription;

medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below.

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 8.0% if criteria are met for all categories indicating a DAP.

(1) Data source and data site information must be submitted on all ADT transactions. (2.0%)

(2) Event type must be properly coded on all ADT transactions. (0%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)

(4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (2.0%)

(6) Ethnicity must be submitted on all ADT transactions. (2.0%)

(7) Diagnosis must be submitted on all ADT transactions. (2.0%)

(~~5~~8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates.

i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.

ii. No later than April 1, 2022:

(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use

ii. Number of ICU beds available for use

iii. Number of Medical-Surgical beds in use

iv. Number of Medical-Surgical beds available for use

v. Number of Telemetry beds in use

vi. Number of Telemetry beds available for use

G. For inpatient services with a date of admission from October 1, 2023 through September 30, 2024 (CYE 2024), provided by a hospital in subsection (A) that qualifies, the administration shall pay the hospital an Inpatient Differential Adjusted Payment equal to the sum of the payment otherwise provided for in subsection (A) plus the product of the amount otherwise provided for in subsection (A) and a percentage published on the Administration's public website as part of its fee schedule, subsequent to a public notice

published no later than September 1, 2023. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype. If a hospital receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (G), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in (1)(a), (b), (c) or (d):

   a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

      i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

      ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

      iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

      iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in (2)(a), (b), (c) or (d):

a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE

organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's EHR system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10

patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facilities' policy.

R9-22-712.71. Final DRG Payment

A. The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Differential Adjusted Payment.

B. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

C. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

D. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration's website and is on file for public inspection at the AHCCCS administration located at 801 E. Jefferson Street, Phoenix, Arizona.

E. For inpatient services with a date of discharge from October 1, 2022 through September 30, 2023 (CYE 2023), the Inpatient Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2022. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria:
    a. By April 1, 2022, a hospital the hospital must have submitted a Letter of Intent (LOI) to AHCCCS and the Health Information Exchange (HIE), in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved-.
        i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
        ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below.

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.0% if criteria are met for all categories.

(1) Data source and data site information must be submitted on all ADT transactions. (0.5%)

(2) Event type must be properly coded on all ADT transactions. (0%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)

(4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (0.5%)

(6) Ethnicity must be submitted on all ADT transactions. (0.5%)

(7) Diagnosis must be submitted on all ADT transactions. (0.5%)

(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates.

i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.

ii. No later than April 1, 2022:

(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September

30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use,

ii. Number of ICU beds available for use,

iii. Number of Medical-Surgical beds in use,

iv. Number of Medical-Surgical beds available for use,

v. Number of Telemetry beds in use,

vi. Number of Telemetry beds available for use.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified;

a. By April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:

i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.

ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

(1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.

(3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.

iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.

iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.

vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.

x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below.

(1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.

(2) Meet a minimum performance standard of at least 60% based on March 2022 data.

(3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 8.0% if criteria are met for all categories indicating a DAP.

(1) Data source and data site information must be submitted on all ADT transactions. (1.0%)

(2) Event type must be properly coded on all ADT transactions. (1.0%)

(3) Patient class must be properly coded on all appropriate ADT transactions. (0%)

(4) Patient demographic information must be submitted on all ADT transactions. (0%)

(5) Race must be submitted on all ADT transactions. (2.0%)

(6) Ethnicity must be submitted on all ADT transactions. (2.0%)

(7) Diagnosis must be submitted on all ADT transactions. (2.0%)

(8) Overall completeness of the ADT message. (0%)

b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;

i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.

ii. No later than April 1, 2022:

(1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.

(3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.

c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:

i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.

ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.

iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.

iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.

v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.

vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.

d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

i. Number of ICU beds in use,

ii. Number of ICU beds available for use,

iii. Number of Medical-Surgical beds in use,

iv. Number of Medical-Surgical beds available for use,

v. Number of Telemetry beds in use,

vi. Number of Telemetry beds available for use.

F. For inpatient services with a date of discharge from October 1, 2023 through September 30, 2024 (CYE 2024), the Inpatient Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a per- centage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2023. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype. If a hospital receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (F), the hospital shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1)(a), (b), (c), or (d):

a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. Which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the

system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in (2)(a), (b), (c) or (d):

a. No later than April 1, 2023, the hospital must have in place an active participation agreement with the Health Information Exchange (HIE) organization and submit a signed Health Information Exchange Statement of Work (HIE SOW) to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding National Provider Identifier(s) (NPI), that the hospital requests to participate in the DAP.

i. No later than May 1, 2023, the hospital must have actively accessed, and continue to access on an ongoing basis, patient health information via the HIE organization, utilizing one or more HIE services, such as the HIE Portal, ADT Alerts, Clinical Notifications, or an interface that delivers patient data into the hospital's system.

ii. No later than May 1, 2023, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the HIE on their behalf.

iii. No later than May 1, 2023, the hospital must electronically submit the following actual patient identifiable information to the production environment of the HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.

iv. No later than May 1, 2023, the hospital must have or obtain a unique Object Identifier (OID) created by a registration authority, the hospital, and Health Level Seven (HL7). The OID is a globally unique International Organization for Standardization identifier for the hospital. Contact the HIE's Quality Improvement Team for instructions and to ensure the hospital is compliant.

v. No later than July 1, 2023, the hospital must sign a DAP SOW amendment to include HIE integration requirements. Which will include the steps and expectations and timeline to transition to the hospital's HIE connection to the new HIE platform. The hospital must continue to meet the HIE integration requirements through September 30, 2024.

b. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) indicating AzHDR participation to the HIE. The HIE SOW must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP HIE requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the AzHDR platform operated by the HIE organization.

(2) After all the onboarding requirements have been met and the provider has access to the platform (Go-Live), the hospital must regularly utilize the AzHDR platform which will be measured by facilitating at least 10 patient document uploads or queries of advance directives per month per registered AHCCCS ID from the Go-Live date through September 30, 2024. Both uploads entered into the system and queries of the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024. Uploading is defined by submitting a document or multiple documents for a patient into the registry and a query is defined as querying for documents within the Registry.

ii. For hospitals that have not participated in DAP HIE requirements in CYE 2023:

(1) No later than November 1, 2023, complete the AzHDR Participant Agreement, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the platform.

c. No later than April 1, 2023, the hospital must submit a signed Health Information Exchange Statement of Work (HIE SOW) and the Community Cares Access Agreement indicating SDOH participation to the HIE organization. The HIE SOW must contain each

facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. For hospitals that have participated in DAP SDOH requirements in CYE 2023:

(1) No later than September 30, 2023, initiate use of the Community Cares referral system operated by the HIE organization.

(2) No later than May 1, 2024: After all the onboarding requirements have been met and the provider has access to the system and through September 30, 2024, the hospital must regularly utilize the Community Cares referral system operated by the HIE organization. This will be measured by facilitating at least 10 referrals per month per registered AHCCCS ID that resulted from utilizing the social-needs screening tool in Community Cares. The referral is created by the provider or support staff member and sent directly to a social service provider. All referrals entered into the system by the hospital will be counted toward volume requirements, tracked monthly, and reported as a final deliverable by June 1, 2024.

ii. For hospitals that have not participated in DAP SDOH requirements in CYE 2023:

(1) No later than November 1, 2023, complete the Community Cares Access Agreement and the HIE Participant Agreement, as required, and

(2) No later than April 1, 2024, have onboarding completed by working with the HIE to submit all HIE requirements prior to gaining access to the system.

d. No later than April 30, 2023, the hospital must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP). The LOI must contain each facility, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.

i. No later than November 30, 2023, develop and submit a facility policy that meets AHCCCS/ADHS standards for a NDP.

ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the facility's policy.

R9-22-712.90. Reimbursement of Hospital-based Freestanding Emergency Departments

A. "Hospital-based freestanding emergency department" (hospital-based FSED) means an outpatient treatment center, as defined in R9-10-101, that: (1) provides emergency room services under R9-10-1019, (2) is subject to the requirements of 42 ~~CFR~~C.F.R. 489.24, and (3) shares an ownership interest with a hospital, regardless of whether the outpatient treatment center operates under a hospital's single group license as described in A.R.S. § 36-422.

B. A hospital-based FSED shall register with the Administration separately from the hospital with which an ownership interest is shared and shall obtain a separate provider identification number. The Administration shall not charge a separate provider enrollment fee for registration of a hospital-based FSED. The Administration shall accept a hospital's compliance with the provider screening and enrollment requirements of 42 CFR Part 455 as compliance by the hospital-based FSED.

C. For dates of service on and after March 1, 2017, and except as provided in subsection (D), services provided by a hospital-based FSED for evaluation and management CPT codes 99281 through 99285 shall be reimbursed at the following percentages of the amounts otherwise reimbursable under R9-22-712.20 through R9-22-712.30. All other covered codes shall be reimbursed in accordance with R9-22-712.20 through R9- 22-712.30 without a percentage reduction.

1. 60 percent for a level 1 emergency department visit as indicated by CPT 99281.
2. 80 percent for a level 2 emergency department visit as indicated by CPT 99282.
3. 90 percent for a level 3 emergency department visit as indicated by CPT 99283.
4. 100 percent for a level 4 or 5 emergency department visit as indicated by CPT codes 99284 and 99285.

D. A hospital-based FSED located in a city or town in a county with less than 500,000 residents, where the only hospital in the city or town operating an emergency department closed on or after January 1, 2015, shall be reimbursed under R9-22-712.20 through R9-22-712.35 using the adjustment in R9-22-712.35 associated with the nearest hospital with which the freestanding emergency department shares an ownership interest.

E. Services provided by an outpatient treatment center that provides emergency room services under R9-10-1019, but does not otherwise meet the criteria in subsection A, shall be reimbursed based on the non-hospital AHCCCS capped fee-for- service schedule under R9-22-710.

F. The Administration shall not reimburse a hospital for services provided at a hospital-based FSED if the member is admitted directly from a hospital-based FSED to a hospital with an ownership interest in the hospital-based FSED. As provided in R9-22-712.60(B), payments made for the inpatient stay using the DRG methodology shall be the sole reimbursement.

G. For dates of service from October 1, 2023 through September 30, 2024 (CYE 2024), the payment otherwise required for hospital-based FSED services provided by qualifying hospital-based FSEDs shall be increased by a percentage established by the Administration and shall be applied to the payment methodology as described in subsection (C). The percentage is published on the Administration's public website as part of

its fee schedule, subsequent to the public notice published no later than September 1, 2023. A hospital-based FSED will qualify for an increase if it meets the criteria specified below. If a hospital-based FSED receives a DAP for CYE 2024 but fails to meet all of the requirements in subsection (G), the hospital-based FSED shall be disqualified from participating in a DAP for dates of service October 1, 2024 through September 30, 2025 (CYE 2025), if a DAP would be available at that time.

1. A outpatient treatment center designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital-based freestanding emergency department will qualify for an increase if it meets the criteria in subsection (1)(a):
    a. No later than April 30, 2023, the hospital-based FSED must submit a Letter of Intent (LOI) to AHCCCS to the following email address: AHCCCSDAP@azahcccs.gov, indicating that they will participate in the Naloxone Distribution Program (NDP).
    b. The LOI must contain each hospital-based FSED, including AHCCCS ID(s) and corresponding NPI(s), that the hospital requests to participate in the DAP.
        i. No later than November 30, 2023, develop and submit a hospital-based FSED policy that meets AHCCCS/ADHS standards for a NDP.
        ii. No later than January 1, 2024, begin distribution of Naloxone to individuals at risk of overdose as identified through the hospital-based FSEDs' policy.

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.

36-2903.01. 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.

Gmail

Patricia Grant <patricia.grant@azdoa.gov>

current rulemaking for R9-22-712.35, et. al

Nicole Fries <nicole.fries@azahcccs.gov> Fri, Sep 15, 2023 at 10:29 AM
To: Patricia Grant <patricia.grant@azdoa.gov>
Cc: Sladjana Kuzmanovic <sladjana.kuzmanovic@azahcccs.gov>

Hi Patricia, yes it is available on our website.

The Final DAP Public Notice is posted on the AHCCCS website and it has the DAP increases associated with the specific DAPs referenced in the rulemaking. As an agency, we make the determination of the DAP percentage increases to provider rates based on requests from agency subject matter experts and external stakeholders, but within the limits of available DAP funding. We have a public comment period and we take the public comments into consideration before finalizing the DAP percentages in the Final DAP Public Notice on our website. This is all done in advance of us issuing the Notice of Proposed Rulemaking.

Let me know if there are any questions you had that I missed and apologies for the delay in response since I was out of the office earlier this week.

Nicole Fries

Deputy General Counsel

Office of the General Counsel

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C-8.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 16

Amend: R18-16-201, R18-16-202, R18-16-401, R18-16-402, R18-16-404, R18-16-408, R18-16-413, R18-16-415, R18-16-501, R18-16-503

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: **Sep 11, 2023**

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 16

Amend: R18-16-201, R18-16-202, R18-16-401, R18-16-402, R18-16-404, R18-16-408, R18-16-413, R18-16-415, R18-16-501, R18-16-503

Summary:

This expedited rulemaking for the Arizona Department of Environmental Quality seeks to amend ten (10) rules in Title 18, Chapter 16 related to the Water Quality Assurance Revolving Fund Program. Specifically, this rulemaking seeks to make corrections such as changing language from passive to active voice, rewording and updating language for clarity, updating the Department's address, and updating citations. With this rulemaking, the Department is correcting items identified in the August 2022 Five Year Review Report.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

To qualify for expedited rulemaking, the rulemaking must not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and meet one or more criteria listed in A.R.S. § 41-1027(A). The Department states the rules satisfy the criteria for expedited rulemaking under ARS § 41-1027(A)(3) and (A)(6) as this rulemaking will correct typographical errors, clarify language, and amend redundant or outdated rules.

2. 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.

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

The Department states no public comments were received regarding this rulemaking.

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

The Department indicates that there was no substantial change between the final and proposed rules.

5. 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 that there is no corresponding federal law. They do say that there is a similar federal law, but no federal or state requirement that the federal law be adhered to.

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

The Department indicates that the rules do not require a permit or license.

7. 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 that no study was relied upon or reviewed that is relevant to the associated rules.

8. Conclusion

This expedited rulemaking for the Arizona Department of Environmental Quality seeks to amend ten (10) rules in Title 18, Chapter 16 related to the Water Quality Assurance Revolving Fund Program. With this rulemaking, the Department is changing language from passive to active voice, rewording and updating language for clarity, updating the Department's address, and updating citations.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Katie Hobbs
Governor

Karen Peters
Director

August 18, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Expedited Rulemaking: Title 18. Environmental Quality, Chapter 16. Department of Environmental Quality – Water Quality Assurance Revolving Fund Articles 2, 4, and 5

Dear Chair Sornsin:

Enclosed is a final Arizona Department of Environmental Quality (ADEQ) expedited rule package. I respectfully request that you place it on the Governor's Regulatory Review Council agenda for approval. Pursuant to A.A.C. R1-6-202, I provide the following information:

- The close of record date was April 24, 2022.
- The rule meets the criteria in A.R.S. § 41-1027(A) because it does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, under A.R.S. §§ 41-1027(A)(3) and 41-1027(A)(6), this rulemaking will correct typographical errors, clarify language and amend redundant or outdated rules.
- This rule relates to a five-year review report approved by the Council on August 2, 2022.
- No written comments were received.
- No competitive analysis was submitted.

I certify that the preamble contains a reference to any study relevant to the rules that ADEQ reviewed and either did or did not rely on in our evaluation and justification for the rule.

As required by the Administrative Procedure Act, the Notice of Rulemaking Docket Opening and Notice of Proposed Expedited Rulemaking were filed with the Secretary of State, and published in the Arizona Administrative Register on April 8, 2022, and September 23, 2022, respectively. Please do not hesitate to call ADEQ or Dominic Trader, Legal Analyst, at 602-771-2230, if you have any questions. Thank you for your timely review and approval.

Sincerely,

Karen Peters, Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 16. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER QUALITY ASSURANCE REVOLVING FUND

PREAMBLE

1.	**Article, Part, or Section Affected (as applicable)**	**Rulemaking action**
	R18-16-201	Amend
	R18-16-202	Amend
	R18-16-401	Amend
	R18-16-402	Amend
	R18-16-404	Amend
	R18-16-408	Amend
	R18-16-413	Amend
	R18-16-415	Amend
	R18-16-501	Amend
	R18-16-503	Amend

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

Authorizing statutes: A.R.S. § 49-104(B)(4).

Implementing statutes: A.R.S. §§ 49-282.03(D), 49-282.06(B), 49-287.01, and Laws 1997, Chapter 287, Section 56(B).

3. The effective date of the rule:

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the notice of final expedited rulemaking with the Secretary of State.

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:

Notice of Rulemaking Docket Opening: 28 A.A.R. 726, April 8, 2022.

Notice of Proposed Expedited Rulemaking: 28 A.A.R. 2472, September 23, 2022.

Notice of Public Information: 29 A.A.R. 788, March 24, 2023.

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

Name: Dominic Trader

Address: Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 771-7315

E-mail: trader.dominic@azdeq.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered under A.R.S. § 41-1027(A), to include an explanation about the rulemaking:

ADEQ identified the need for technical corrections to the WQARF rules during the prior five-year review of 18 A.A.C. 16. An expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A) because it will not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and will merely correct typographical errors, makes address and name changes, and clarify language without changing its effect, as well as amend outdated and redundant rules pursuant to subsections (3) and (6), respectively. The following table summarizes the amendments and their specific justification under A.R.S. § 41-1027(A).

Rule	A.R.S. § 41-1027(A) Justification	Amendment Summary
R18-16-201. Preliminary Investigations	(A)(3) because it clarified language of a rule without changing its effect.	The language in 201(I) was changed from passive voice to active voice to clarify the rule meaning.
R18-16-202. Site Scoring	(A)(3) because it made an address change without changing its effect. (A)(3) because it clarified language of a rule without changing its effect and (A)(6) because it amended rules that are redundant.	The department address was updated to prevent confusion. Removed redundant sentences to consolidate the rule and increase clarity.
R18-16-401. Definitions	(A)(3) because it clarified language of a rule without changing its effect. (A)(3) because it clarified language of a rule without changing its effect.	The term “hazardous substances” was made singular to reflect the language in the cited A.R.S. § 49-281(8). The citation in the definition of “vadose zone” was updated from A.R.S. § 49-201(39) to A.R.S. § 49-201.
R18-16-402. Applicability	(A)(3) because it clarified the language of a rule without changing its effect. (A)(3) because it clarified the language of a rule without changing its effect.	The second sentence in (B) was reworded for clarity. Language in (F) was updated to clarify language referring to remedial objectives to conform with the R18-16-406(I) citation.
R18-16-404. Community Involvement Requirements	(A)(3) because it clarified the language of a rule without changing the rule effect.	Language in (C)(1)(c) was updated so the phrase conforms with the citation to R18-16-406(J).

R18-16-408. Proposed Remedial Action Plan	(A)(3) because it corrected typographical errors without changing the rule effect.	This change corrected capitalization and lowercase issues in rule citations to refer to correct statute provisions.
R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)	(A)(3) because it made name changes without changing its effect.	The reference to the Board of Technical "Registrations" in (A)(9) was updated to accurately reflect the name "Board of Technical Registration."
R18-16-415. Soil Remediation	(A)(6) because it amended a rule that is outdated.	The citation in (A)(3) to R18-7-209 was updated to R18-16-210 because the referenced rule was renumbered.
R18-16-501. Definitions	(A)(3) because it corrected a typographical error without changing the rule effect.	The citation to 42 U.S.C. § 300(f) was corrected to 42 U.S.C. § 300f.
R18-16-503. Request for Interim Remedial Action	(A)(3) because it corrected a typographical error without changing the rule effect.	The reference to 12 A.A.C. 7, Article 15 was corrected to the intended 12 A.A.C. 15, Article 7.

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:

Not applicable.

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:

Not applicable. The agency is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

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

No substantive changes were made between the proposed and final rulemakings. A Notice of Public Information was published on March 24, 2023, that reopened the comment period to end on April 24, 2023.

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 made regarding this 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:

a. Whether the rule requires a permit, license, or agency authorization under A.R.S. § 41-1037(A), and 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:

There is similar federal law - CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980) - but no federal or state requirement that the Arizona WQARF rules (governing cleanup with state funds) be consistent with CERCLA (federally funded cleanups).

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:

Not applicable.

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

Incorporated material	Location
Eligibility and evaluation site scoring model established October 3, 1996	R18-6-202

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 18. ENVIRONMENTAL QUALITY

CHAPTER 16. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER QUALITY ASSURANCE REVOLVING FUND PROGRAM

ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING

Section

ARTICLE 4. REMEDY SELECTION

Section

ARTICLE 5. INTERIM REMEDIAL ACTIONS

Section

ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING

R18-16-201. Preliminary Investigations

A. No change

B. No change

1. No change
2. No change

C. No change

D. No change

E. No change

1. No change
2. No change
    a. No change
    b. No change

F. No change

G. No change

1. No change
2. No change
3. No change
    a. No change
    b. No change
    c. No change
4. No change

H. No change

1. No change
    a. No change
    b. No change
    c. No change
2. No change
    a. No change
    b. No change
    c. No change
    d. No change

I. Following completion of the preliminary investigation, the Department or any person identified under subsection (L) shall prepare a preliminary investigation report ~~shall be prepared~~. The report shall contain the following information:

1. Information gathered and reviewed under subsection (G), including a summary of the information with references to relevant reports.

2. If applicable, the conceptual site model developed under subsection (H).
3. If sampling was conducted under subsection (H):
    a. A description of the sampling activities.
    b. Analytical results including a summary of the results with references to relevant reports.
    c. A map of sample locations.
    d. Data quality information including a summary with references to relevant reports.

J. No change

K. No change

1. No change
2. No change

L. No change

1. No change
2. No change
3. No change
4. No change
5. No change

R18-16-202. Site Scoring

In order to score a site or portion of a site, the Department shall use the eligibility and evaluation site scoring model established by the Department on October 3, 1996, which is incorporated by reference. ~~The eligibility and evaluation site scoring model as established on October 3, 1996, is incorporated by reference.~~ This incorporation by reference does not include any later amendments or editions. A copy of the incorporated material is available for inspection and reproduction at the Arizona Department of Environmental Quality, ~~3033 North Central Avenue, Phoenix, Arizona 85012-2809~~ 1110 W. Washington St, Phoenix, AZ 85007 ~~and the Office of the Secretary of State~~. ~~A copy of the incorporated material can be obtained from the Arizona Department of Environmental Quality, 3033 north Central Avenue, Phoenix, Arizona 85012-2809.~~

ARTICLE 4. REMEDY SELECTION

R18-16-401. Definitions

The following definitions shall apply in this Article, unless the context otherwise requires:

"Alternative remedy" means a combination of remedial strategies and remedial measures different from the reference remedy that is capable of achieving remedial objectives. The alternative remedies are compared with the reference remedy for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

"Comparison criteria" means risk, cost, benefit, and practicability, as those terms are described in R18-16-407(H)(3).

"Community involvement area" has the same meaning as defined in A.R.S. § 49-281(3).

"Contaminant of concern" means a hazardous substance that results from a release and that has been identified by the Department as the subject of remedial action at a site.

"Hazardous ~~substances~~ substance" has the same meaning as in A.R.S. § 49-281(8).

"Nonrecoverable costs" has the same meaning as in A.R.S. § 49-281(9).

"Proposed remedy" means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives that is identified at the conclusion of a feasibility study and is incorporated in the proposed remedial action plan.

"Reference remedy" means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives. The reference remedy is compared with the alternative remedies for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

"Remedial measure" means a specific action taken in conjunction with remedial strategies as part of the remedy to achieve one or more of the remedial objectives. For example, remedial measures may include well replacement, well modification, water treatment, provision of replacement water supplies, and engineering controls.

"Remedial objective" means the goal, as established through the process in R18-16-406, to be achieved by a remedy selected under this Article. Remedial objectives include the following elements:

Protecting against the loss or impairment of identified uses of land and waters of the state;

Restoring, replacing, or otherwise providing for identified uses of land and waters of the state;

Time-frames when action is needed to protect against or provide for the impairment or loss of the use; and

The projected duration of the action needed to protect or provide for the use.

"Remedial strategy" means one or a combination of the six general approaches described in R18-16-407(F) which may be employed in conjunction with remedial measures as part of the remedy to achieve the remedial objectives.

"Remedy" has the same meaning as in A.R.S. § 49-281(13).

"Site-specific human health risk assessment" means a scientific evaluation of the probability of an adverse effect to human health from exposure to specific types and concentrations of contaminants at or from a site. A site-specific human health risk assessment contains four components: identification of potential contaminants; an exposure assessment; a toxicity assessment; and a risk characterization.

"Site registry" or "registry" means the registry of scored sites maintained by the Department under A.R.S. § 49-287.01(D).

"Vadose zone" has the same meaning as in A.R.S. § ~~49-201(39)~~ 49-201.

"Water provider" means the owner or operator of a public water system, an agricultural improvement district, or an irrigation and water conservation district.

R18-16-402. Applicability

A. No change

B. No change

C. No change

D. No change

1. No change
2. No change
3. No change

E. No change

F. Notwithstanding subsections (D) and (E), neither a remedial investigation nor a feasibility study shall be considered complete under this Article until the information described in R18-16-406(D) is collected, a draft remedial investigation report is prepared and distributed under R18-16-406(F), and remedial objectives are ~~selected~~ developed under R18-16-406(I) and reported under R18-16-406(J). Thereafter, the procedures set forth in R18-16-407 through R18-16-412 shall apply to the selection of a remedy based upon the remedial investigation or feasibility study. To the extent that any of the alternative remedies discussed in a feasibility study that is substantially complete before the effective date of this Article will not achieve the remedial objectives, the feasibility study shall be modified so that the alternative remedies achieve remedial objectives. Additional evaluation of alternative remedies, if necessary, shall be conducted in accordance with R18-16-407 and reported in a supplemental report before preparation of a ~~final~~ feasibility study report under R18-16-407(I).

G. No change

1. No change
2. No change
3. No change

R18-16-404. Community Involvement Requirements

A. No change

B. No change

C. No change

1. No change
    a. No change
    b. No change
    c. Notice to the public of the opportunity to comment on remedial objectives proposed under R18-16-406(I)(5) and the availability of the final remedial investigation report prepared by the Department under R18-16-406(J).
    d. No change
    e. No change
    f. No change
    g. No change
    h. No change
    i. No change
    j. No change
    k. No change
    l. No change
    m. No change
    n. No change
    o. No change

2. No change
    a. No change
    b. No change
    c. No change
    d. No change
3. No change
    a. No change
    b. No change
    c. No change

D. No change

1. No change
2. No change
    a. No change
    b. No change
    c. No change
    d. No change

E. No change

F. No change

R18-16-408. Proposed Remedial Action Plan

A. No change

B. No change

1. No change
2. The information required in A.R.S. § 49-287.04(~~a~~A).
3. No change
4. No change

C. No change

1. At a site where the A.R.S. § 49-287.03 notice has been provided, notice shall be provided by the Department in accordance with A.R.S. § 49-287.04(~~b~~B) and the community involvement plan prepared under R18-16-404. If the Department intends to seek recovery of costs and conduct a cost allocation proceeding for the site, the notice shall also include the following:
    a. The information required by A.R.S. § 49-287.04(~~c~~C).
    b. No change
    c. No change
    d. No change
2. No change

D. Any person, other than a person proposing to perform work under an agreement under A.R.S. § 49-287.03(~~c~~C), may submit a proposed remedial action plan to the Department for approval under R18-16-413. The plan may be

accompanied by a request for a determination of whether cost recovery by the Department may be appropriate under A.R.S. § 49-287.02. If the Department determines that cost recovery by the Department is not appropriate, notice shall be provided under subsection (C)(2).

R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)

A. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
    a. No change
    b. No change
9. An original seal imprint and signature of a registered professional if required by the Arizona Board of Technical ~~Registrations~~ Registration under A.R.S. Title 32, Chapter 1 and the rules made under that Chapter.

B. No change

C. No change

D. No change

E. No change

F. No change

G. No change

H. No change

I. No change

R18-16-415. Soil Remediation

A. No change

1. No change
2. No change
3. A notice of remediation under ~~R18-7-209~~ R18-7-210 is prepared and submitted to the Department before the remediation is conducted. The notice of remediation shall be accompanied by a written report including the information described in R18-16-406(C)(1), (2), and (3). If the Department has issued a notice under A.R.S. § 49-287.03 for the site or portion of a site, the notice of remediation shall be submitted to the Department 15 calendar days before commencing the remediation or, if the remediation has commenced prior to the Department's notice, within 15 calendar days after the Department's notice is given.

B. No change

C. No change

D. No change

ARTICLE 5. INTERIM REMEDIAL ACTIONS

R18-16-501. Definitions

In addition to the definitions set forth in A.R.S. § 49-281, the following definitions shall apply in this Article, unless the context otherwise requires:

"Abandoned well" means a well that has been permanently sealed or closed with cement or a cement-bentonite mixture that cannot be re-entered except by redrilling the wellbore, or a well that has been formally abandoned under R12-15-816.

"Currently supplies water" means a well that supplies water at the time the request for interim remedial action is submitted to the Department. Wells that supply water as needed to meet demand, including wells that serve water on an infrequent basis, are considered to currently supply water under this definition.

"Department" means the Arizona Department of Environmental Quality.

"Interim remedial action" means an action taken by the Department or by a well owner or operator under A.R.S. § 49-282.03.

"Part of a public water system" means a well that is owned or operated by an operator of a public water system, but has not been abandoned. A well that has been capped, air gapped or closed due to contamination, but not abandoned, shall be considered part of a public water system.

"Public water system" has the same meaning as defined in 42 U.S.C. § ~~300(f)~~ 300f.

"Registry sites" means sites that have been investigated and placed on the Water Quality Assurance Revolving Fund registry of sites.

"Remedy" has the same meaning as defined in A.R.S. § 49-281(13).

R18-16-503. Request for Interim Remedial Action

A. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. A description of any impacts the loss of the well would have on any assured water supply designation or any adequacy statement under 12 A.A.C. ~~7~~ 15, Article ~~15~~ 7, or on the ability of the water system to meet its legal obligations or its customer or user needs.
8. No change

B. No change

§ R18-16-201. Preliminary Investigations

A. Based on information of a possible release or threatened release of a hazardous substance, the Department may conduct a preliminary investigation to obtain additional information necessary to determine the potential risk to public health, welfare, and the environment in order to score the site and include it on the registry established under A.R.S. §49-287.01(D).

B. Before conducting a preliminary investigation, the Department shall consider whether the possible release or threatened release of a hazardous substance:

1. Is being addressed by or should be referred to another applicable program administered by the Department or another federal, state or local governmental agency with jurisdiction over the matter; or

2. Is being adequately addressed through voluntary action.

C. At any time before or during a preliminary investigation, if the Department determines that a possible release or threatened release of a hazardous substance is being adequately addressed by another program or agency or voluntarily, the Department may suspend or terminate a preliminary investigation under this Section.

D. A preliminary investigation is a screening level investigation based primarily upon existing information. The Department may collect existing information regarding a release or threatened release of a hazardous substance from any appropriate source, including Department programs, governmental agencies, water providers, complainants, and owners and operators of facilities where the release may have occurred. When existing information, such as soil or water sampling data, cannot be validated, or when sufficient data does not exist, additional data may be collected as necessary.

E. The Department shall terminate the preliminary investigation prior to completion if:

1. The Department determines that the release of a hazardous substance has not occurred and is not likely to occur; or

2. The Department determines:

a. Based on valid sampling data, that soil contaminated by a release of a hazardous substance meets the requirements of A.R.S. §49-152 and 18 A.A.C. 7, Article 2; and

b. Based on valid sampling data, that the release or a threatened release of a hazardous substance does not and will not result in an exceedance of water quality standards, or if there is no water quality standard, a risk level approved by the Department to protect public health, welfare, and the environment.

F. The Department shall notify affected water providers of the termination of a preliminary investigation under R18-16-201(E).

G. If the Department does not terminate or suspend a preliminary investigation under subsections (C) or (E), the Department shall proceed with the preliminary investigation by collecting any additional information necessary to score a potential site using the eligibility and evaluation site scoring model under R18-16-202. The Department shall notify affected water providers and affected local governments of the initiation of the preliminary investigation. A work plan shall be developed and implemented to collect additional information and shall include the following information:

1. The location and description of the potential site, including a map.

2. A list of hazardous substances known or suspected to have been released.

3. A proposal to search available records to determine:

a. The historic and current uses of facilities within the potential site.

b. The physical and environmental conditions within the potential site.

c. Any previous environmental investigations or regulatory involvement by federal, state, or local authorities.

4. A proposal to obtain information from any affected water providers.

H. If the Department determines that additional information is necessary to score a potential site using the eligibility and evaluation site scoring model under R18-16-202, the work plan shall be supplemented with the following information:

1. A conceptual site model to determine:

a. Potential sources of contamination.

b. Potential exposure pathways.

c. Potential human, aquatic, and terrestrial receptors.

2. If sampling is necessary, the work plan shall contain the following information:

a. The objectives of the sampling.

b. A quality assurance project plan.

c. A sampling and analysis plan to verify whether a suspected release has occurred, and if the release has occurred, to adequately characterize the release to score the site using the eligibility and evaluation site scoring model.

d. A health and safety plan consistent with 29 CFR. 1910.120.

I. Following completion of the preliminary investigation, a preliminary investigation report shall be prepared. The report shall contain the following information:

1. Information gathered and reviewed under subsection (G), including a summary of the information with references to relevant reports.

2. If applicable, the conceptual site model developed under subsection (H).

3. If sampling was conducted under subsection (H):

a. A description of the sampling activities.

b. Analytical results including a summary of the results with references to relevant reports.

c. A map of sample locations.

d. Data quality information including a summary with references to relevant reports.

J. The Department shall approve the preliminary investigation report prepared under subsection (I) if it contains sufficient valid information to score the site using the eligibility and evaluation site scoring model under R18-16-202 or to make a determination that no further investigation or action is needed under subsection (K).

K. Based on a review of the preliminary investigation report prepared under subsection (I), the Department shall:

1. Determine that no further investigation or action is needed using the criteria in subsection (E); or

2. Prepare a draft site registry report under A.R.S. §49-287.01(B).

L. The Department may allow any person to conduct any part of the preliminary investigation by written agreement. A person requesting to conduct all or any part of a preliminary investigation shall submit a written request to the Department that includes the following information:

1. The name and address of the person making the request and the nature of the relationship of the person to the site.

2. The portion of the preliminary investigation the person wants to conduct.

3. A work plan to conduct the preliminary investigation in accordance with subsection (G).

4. A schedule for completion of the activities specified in the work plan.

5. If requested by the Department, information regarding the financial capability of the person to conduct the work plan.

History:

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

§ R18-16-202. Site Scoring

In order to score a site or portion of a site, the Department shall use the eligibility and evaluation site scoring model established by the Department on October 3, 1996. The eligibility and evaluation site scoring model as established on October 3, 1996, is incorporated by reference. This incorporation by reference does not include any later amendments or editions. A copy of the incorporated material is available for inspection and reproduction at the Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012-2809 and the Office of the Secretary of State. A copy of the incorporated material can be obtained from the Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012-2809.

History:

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

§ R18-16-401. Definitions

The following definitions shall apply in this Article, unless the context otherwise requires:

"Alternative remedy" means a combination of remedial strategies and remedial measures different from the reference remedy that is capable of achieving remedial objectives. The alternative remedies are compared with the reference remedy for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

"Comparison criteria" means risk, cost, benefit, and practicability, as those terms are described in R18-16-407(H)(3).

"Community involvement area" has the same meaning as defined in A.R.S. §49-281(3).

"Contaminant of concern" means a hazardous substance that results from a release and that has been identified by the Department as the subject of remedial action at a site.

"Hazardous substances" has the same meaning as in A.R.S. §49-281(8).

"Nonrecoverable costs" has the same meaning as in A.R.S. §49-281(9).

"Proposed remedy" means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives that is identified at the conclusion of a feasibility study and is incorporated in the proposed remedial action plan.

"Reference remedy" means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives. The reference remedy is compared with the alternative remedies for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

"Remedial measure" means a specific action taken in conjunction with remedial strategies as part of the remedy to achieve one or more of the remedial objectives. For example, remedial measures may include well replacement, well modification, water treatment, provision of replacement water supplies, and engineering controls.

"Remedial objective" means the goal, as established through the process in R18-16-406, to be achieved by a remedy selected under this Article. Remedial objectives include the following elements:

Protecting against the loss or impairment of identified uses of land and waters of the state;

Restoring, replacing, or otherwise providing for identified uses of land and waters of the state;

Time-frames when action is needed to protect against or provide for the impairment or loss of the use; and

The projected duration of the action needed to protect or provide for the use.

"Remedial strategy" means one or a combination of the six general approaches described in R18-16-407(F) which may be employed in conjunction with remedial measures as part of the remedy to achieve the remedial objectives.

"Remedy" has the same meaning as in A.R.S. §49-281(13).

"Site-specific human health risk assessment" means a scientific evaluation of the probability of an adverse effect to human health from exposure to specific types and concentrations of contaminants at or from a site. A site-specific human health risk assessment contains four components: identification of potential contaminants; an exposure assessment; a toxicity assessment; and a risk characterization.

"Site registry" or "registry" means the registry of scored sites maintained by the Department under A.R.S. §49-287.01(D).

"Vadose zone" has the same meaning as in A.R.S. §49-201(39).

"Water provider" means the owner or operator of a public water system, an agricultural improvement district, or an irrigation and water conservation district.

History:

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

§ R18-16-402. Applicability

A. This Article applies to sites on the site registry and as otherwise made applicable by law.

B. This Article applies only to remedial actions as defined in A.R.S. §49-281. Nothing in this Article is intended to require a remedial action, including a remedy or early response action, to provide for or cover any costs that a property owner, a well owner, or water provider would incur if the release of hazardous substances that is the subject of the remedial action had not affected the property or water supply of the property owner, well owner or water provider. A property owner, well owner or water provider shall not be required to provide reimbursement for coincidental benefits resulting from a remedial action otherwise necessary and appropriate to address a release or threatened release of a hazardous substance. Nothing in this Article shall be interpreted to require remedial action to address a land use that is impaired by properties of materials located on or under that land other than the current or potential exposure to hazardous substances contained in that material.

C. For purposes of this Section, "transition site" means a site that is on the site registry where some remedial action has occurred prior to the effective date of this Article.

D. Any person who has performed any remedial action prior to the effective date of this Article at a transition site may submit a written request for the Department's approval of the remedial action under R18-16-413 if the remedial action has not been approved by the Department prior to the effective date of this Article. The request shall include a description of the remedial action, a demonstration that the work is reasonable and necessary and meets the applicable purposes of this Article, and copies of all documentation of the remedial action for which approval is requested. The Department shall approve:

1. Remedial investigation work performed prior to the effective date of this Article if the work meets the applicable purposes stated in R18-16-406(A),

2. Feasibility study work performed prior to the effective date of this Article if the work meets the purposes stated in R18-16-407(A), and

3. Early response action work performed prior to the effective date of this Article if the work meets the purposes stated in R18-16-405(A).

E. Remedial action work approved by the Department prior to the effective date of this Article shall be deemed approved for purposes of this Article.

Remedial action work conducted under a work plan approved by the Department prior to the effective date of this Article shall be evaluated for approval by the Department under the terms of the approved work plan.

F. Notwithstanding subsections (D) and (E), neither a remedial investigation nor a feasibility study shall be considered complete under this Article until the information described in R18-16-406(D) is collected, a draft remedial investigation report is prepared and distributed under R18-16-406(F), and remedial objectives are selected under R18-16-406(I) and reported under R18-16-406(J). Thereafter, the procedures set forth in R18-16-407 through R18-16-412 shall apply to the selection of a remedy based upon the remedial investigation or feasibility study. To the extent that any of the alternative remedies discussed in a feasibility study that is substantially complete before the effective date of this Article will not achieve the remedial objectives, the feasibility study shall be modified so that the alternative remedies achieve remedial objectives. Additional evaluation of alternative remedies, if necessary, shall be conducted in accordance with R18-16-407 and reported in a supplemental report before preparation of a final feasibility study report under R18-16-407(I).

G. Notwithstanding anything to the contrary in this Article, this Article shall not apply to certain remedial action plans, written agreements, and court decrees or judgements approved, made or entered prior to the effective date of this Article as follows:

1. If prior to the effective date of this Article, the Department has approved a remedial action plan or entered into a written agreement for work under Title 49, Chapter 2, Article 5, Arizona Revised Statutes, that includes the implementation of a remedy or the substantial equivalent of a remedy for a site or a portion of a site, the terms and conditions of the Department's approval or agreement, and not this Article, shall govern work within the scope of the approved remedial action plan or agreement and any modification thereto.

2. The terms and conditions of any court decree or judgement entered prior to the effective date of this Article, and not this Article, shall govern the work that is within the scope of the court decree and any modification thereto. If the work required by the court decree or judgement does not include the implementation of a remedy or the substantial equivalent of a remedy at a site or a portion of a site, then the selection of a remedy for the site or portion of the site shall be under this Article, and this Article may require additional remedial actions before a remedy can be selected, but a party to the consent decree shall not be required to conduct or pay for the additional remedial actions if the liability of the party is resolved by the court decree.

3. If an approval, agreement, court decree or judgement subject to subsection (G)(1) or (2) addresses only a portion of a site on the site registry and includes the implementation of a remedy or the substantial equivalent of a remedy for that portion of the site, then the work covered by the approval, agreement or decree shall be included as part of the remedial action plan and the record of decision selecting a remedy under this Article for the remainder of the site if agreed to by the parties to the approval, agreement, court decree or judgement.

History:

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

§ R18-16-404. Community Involvement Requirements

A. The Department or any person who conducts remedial action work at a site on the registry shall conduct community involvement activities in accordance with the requirements of this Section.

B. If the Department has prepared a community involvement plan under subsection (C) or adopted a plan under subsection (D)(1), the Department or any person conducting remedial action work at a site on the registry shall conduct community involvement activities at the site according to the community involvement plan. If the Department has issued a notice under A.R.S. §49-287.03 for a site, a person may conduct community involvement activities only under a written agreement with the Department. However, a person who submits a notice of remediation under R18-16-415(A) may conduct community involvement activities for the soil remediation described in the notice according to the community involvement plan prepared or adopted by the Department for the site without a written agreement.

C. Unless the Department determines that the necessary remedy at a site can be completed within 180 calendar days, the Department shall prepare and implement a community involvement plan prior to initiating or approving a work plan to implement the remedial investigation or a feasibility study under A.R.S. §49-287.03. The community involvement plan shall:

1. Be updated annually and shall provide information, if applicable, regarding the establishment of a selection committee and community advisory board. The plan also shall provide for the following required activities:

a. Notification to interested persons of the availability of the work plan developed under R18-16-406(B) to implement the remedial investigation and the solicitation of information from interested persons under R18-16-406(D) regarding the current and reasonably foreseeable uses of the land and waters of the state.

b. Notice to the public of the opportunity to comment on the draft remedial investigation report developed under R18-16-406(F) and public meetings to establish remedial objectives under R18-16-406(I).

c. Notice to the public of the opportunity to comment on remedial objectives proposed under R18-16-406(I)(5) and the availability of the final report prepared by the Department under R18-16-406(J).

d. Notification to interested persons of the availability of the work plan developed under R18-16-407(B) to implement the feasibility study.

e. Notice to the public and notification to interested persons of the availability of the proposed remedial action plan prepared under R18-16-408(A) and of the opportunity to comment on the proposed remedial action plan.

f. Notice to the public of the availability of the record of decision and responsiveness summary prepared by the Department under R18-16-410.

g. Notice to the public and notification to interested persons of availability of and opportunity to comment on the operation and maintenance plan prepared under R18-16-411(E).

h. Notice to the public and notification to interested persons of a request for approval of work under R18-16-413.

i. Newsletters to be distributed to residents and interested persons regarding the status of the remedial action and other pertinent information.

j. Notice within the community involvement area regarding public meetings to provide and discuss information regarding sites on the registry.

k. The location of and types of information contained in a public document repository.

l. Notice to the public and notification to interested persons of a request for a waiver under A.R.S. §49-290.

m. Notice to the public of field work that is conducted to remove contaminants of concern or that may result in noise, light, odor, dust or other adverse impacts off of the site.

n. Notice to the public of a determination under R18-16-416(B).

o. Notice to the public of community advisory board meetings.

2. Describe the following procedures for conducting each of the required activities listed in subsection (C)(1).

a. Methods of notice and notification.

b. Identification of a spokesperson to inform the public and act as a liaison.

c. The means to identify interested persons to receive notices.

d. Coordination of community involvement activities with the Department for community involvement conducted by persons other than the Department.

3. In determining how the community involvement activities are to be implemented, the Department shall consider the following:

a. A community profile.

b. Assessment of community concerns and issues through community interviews, public comment, and other means.

c. Public health and environmental impacts.

D. If the Department has not provided notice under A.R.S. §49-287.03(C) and has not prepared a community involvement plan under subsection (C) or adopted a plan under subsection (D)(1), a person who proposes to conduct remedial action work at a site on the registry shall either:

1. Prepare a community involvement plan for the site according to the requirements set forth in subsection (C) and submit a request under R18-16-413 for the Department to approve the plan and adopt it as the community involvement plan for the site. The Department may approve and adopt a community involvement plan if the plan complies with the requirements of subsection (C).

2. Conduct community involvement activities appropriate to the scope and schedule of the work performed including, as applicable, all of the following:

a. For field work conducted to remove contaminants of concern or that may result in noise, light, odor, dust and other adverse impacts off of the site, provide general public notice prior to conducting the work. The general public notice may be in the form of signage, direct mailing, door hangings, news articles, or any other form of notice that is distributed in an manner sufficient to reach those who may be impacted. The general public notice shall provide a general description of the field work and anticipated adverse impacts, and the name and telephone number of a person who may be contacted for information regarding the field work.

b. Prior to conducting a remedial action that will take more than 180 calendar days to complete, provide general notice regarding the nature of the action and establish a document repository accessible to the public where information regarding the site and the remedial action is available for review. The general notice may be in the form of fact sheets, newsletters, or news articles distributed by direct mailings, door hangings or any other method of distribution sufficient to reach or be accessible to local

government agencies, persons within the community involvement area for the site and other persons who have requested information regarding the site. Notice to affected water providers shall be by direct mail. The general notice shall describe the nature and progress of the remedial action, the location of the repository, and provide the name and telephone number of a person who may be contacted for information regarding the remedial action. The document repository shall be accessible during normal business hours and shall contain all documents and information required to be prepared or maintained by this Article and any other documents and information deemed appropriate by the person conducting the work. An updated general notice shall be provided at least once per year while the remedial action is being conducted.

c. Comply with the process for establishing remedial objectives under R18-16-406(F) through R18-16-406(J).

d. Provide notice of the availability of the proposed remedial action plan prepared under R18-16-408 and convene a public meeting prior to the close of the public comment period to provide information concerning the proposed remedial action plan.

E. Copies of notices and notifications required under this Section shall be provided to the Department five days before publication, mailing, posting, or other distribution.

F. Community involvement under this Article shall comply with Article 3 of this Chapter, except that the community involvement plan may provide for additional requirements.

History:

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

§ R18-16-408. Proposed Remedial Action Plan

A. Following the completion of the feasibility study report under R18-16-407(I), the Department or any person shall prepare a proposed remedial action plan, except once the Department has issued a notice under A.R.S. §49-287.03, a person may prepare a proposed remedial action plan only under a written agreement with the Department.

B. The proposed remedial action plan shall include the following:

1. A description of the proposed remedy.

2. The information required in A.R.S. §49-287.04(a).

3. A description of how the proposed remedy will achieve each of the remedial objectives identified in the final remedial investigation report under R18-16-406(J) and how accomplishment of the remedial objectives is to be measured.

4. A description of all recharge, reinjection, discharge, transportation and use of remediated water as defined in A.R.S. §49-283.01.

C. Notice of the proposed remedial action plan shall be provided as follows:

1. At a site where the A.R.S. §49-287.03 notice has been provided, notice shall be provided by the Department in accordance with A.R.S. §49-287.04(b) and the community involvement plan prepared under R18-16-404. If the Department intends to seek recovery of costs and conduct a cost allocation proceeding for the site, the notice shall also include the following:

a. The information required by A.R.S. §49-287.04(c).

b. A statement of costs incurred at the site by the Department prior to the date of the notice and projected future costs for the site.

c. All necessary information regarding the opportunities to submit costs, object to costs, or respond to objections to costs under R18-16-409, including a schedule for such submittal, review, objection and response to objection. The time period for submittal of costs shall not be less than 90 calendar days.

d. If on the basis of new information or investigation notice is required to newly-identified parties, the notice sent under A.R.S. §49-287.04 shall also include the information required by this Section.

2. At a site where the A.R.S. §49-287.03 notice has not been provided, the person who prepared the plan shall provide notice under R18-16-404. The notice shall include the information contained in A.R.S. §49-287.04(C).

D. Any person, other than a person proposing to perform work under an agreement under A.R.S. §49-287.03(c), may submit a proposed remedial action plan to the Department for approval under R18-16-413. The plan may be accompanied by a request for a determination of whether cost recovery by the Department may be appropriate under A.R.S. §49-287.02. If the Department determines that cost recovery by the Department is not appropriate, notice shall be provided under subsection (C)(2).

History:

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

§ R18-16-413. Approval of Remedial Actions under A.R.S. Section 49-285(b)

A. Any person who seeks approval of a remedial action at a site or a portion of a site on the registry under A.R.S. §49-285(B) shall submit a written request to the Department that contains all of the following:

1. The name and address of the person submitting the request and the nature of the relationship of the person to the site, if any.

2. The location and boundaries of the site or portion of the site addressed by the remedial action

3. The nature, degree, and extent of the hazardous substance contamination, if known.

4. A description of any remedial action performed before the request is submitted.

5. A work plan for any remedial action to be performed after the request is submitted.

6. A demonstration of how the remedial action complied, or will comply, with this Article.

7. A proposal for public notice and an opportunity for public comment on the application for approval under this Section. The proposal shall include a list of the names and addresses of persons whom the applicant believes to be responsible parties under A.R.S. §49-283 and a summary of the basis for that belief.

8. An agreement in which the person requesting the approval agrees:

a. To grant access to the Department as necessary to evaluate the request for approval.

b. To reimburse the Department for the Department's costs under subsection (G).

9. An original seal imprint and signature of a registered professional if required by the Arizona Board of Technical Registrations under A.R.S. Title 32, Chapter 1 and the rules made under that Chapter.

B. A request for approval under this Section may be combined with a no further action request under R18-16-414.

C. The Department may request additional information necessary to evaluate or to take action on the request for approval.

D. The Department shall provide notice of the request for approval and of the opportunity to comment on the request for approval.

E. The Department shall, after considering public comments, approve a remedial action under this Section if the Department determines that the remedial action is in substantial compliance with this Article. The Department's approval shall be in writing and shall state the basis for the approval.

F. The Department may deny approval of a remedial action under this Section if the remedial action does not meet the requirements of this Article, may request additional information, may request modification of the remedial action, or may condition approval of the remedial action on modifications necessary to achieve substantial compliance with this Article.

G. The person making the request for approval shall reimburse the Department for the total reasonable cost of the Department's review and action under this Section, including costs of notices, unless the Department waives all or part of the reimbursement. The total reasonable costs include direct and indirect costs to the Department in conducting these activities.

H. Approval of a remedial action under this Section does not constitute approval of the costs of conducting the remedial action.

I. A remedial action approved by the Department under this Section shall be deemed to be in substantial compliance with this Article. The Department's approval under this Section is not required to preserve any right to recover remedial action costs under A.R.S. § 49-285.

History:

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

§ R18-16-415. Soil Remediation

A. Soil remediation may be conducted as part of a remedy selected under R18-16-410 or may be conducted by any person at a site or portion of a site on the registry prior to the selection of a remedy if the following requirements are met:

1. The soil remediation is performed in accordance with A.R.S. §49-152 and 18 A.A.C. 7, Article 2.

2. Community involvement activities are conducted in accordance with R18-16-404.

3. A notice of remediation under R18-7-209 is prepared and submitted to the Department before the remediation is conducted. The notice of remediation shall be accompanied by a written report including the information described in R18-16-406(C)(1), (2), and (3). If the Department has issued a notice under A.R.S. §49-287.03 for the site or portion of a site, the notice of remediation shall be submitted to the Department 15 calendar days before commencing the remediation or, if the remediation has commenced prior to the Department's notice, within 15 calendar days after the Department's notice is given.

B. Submission of the information required under subsection (A) to the Department shall not be considered to be an approval of the soil remediation. Approval of a work plan for soil remediation work to be performed or approval for remediation performed under this Section may be obtained by submitting a request under R18-16-413. The Department shall approve the request if the request demonstrates that the soil remediation was conducted in accordance with this Section.

C. The Department may request any additional information regarding the soil remediation in accordance with A.R.S. §49-288.

D. The Department may include information regarding soil remediation conducted under this Section in a record of decision for a remedy for the site or portion of the site under R18-16-410.

History:

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

§ R18-16-501. Definitions

In addition to the definitions set forth in A.R.S. §49-281, the following definitions shall apply in this Article, unless the context otherwise requires:

"Abandoned well" means a well that has been permanently sealed or closed with cement or a cement-bentonite mixture that cannot be re-entered except by redrilling the wellbore, or a well that has been formally abandoned under R12-15-816.

"Currently supplies water" means a well that supplies water at the time the request for interim remedial action is submitted to the Department. Wells that supply water as needed to meet demand, including wells that serve water on an infrequent basis, are considered to currently supply water under this definition.

"Department" means the Arizona Department of Environmental Quality.

"Interim remedial action" means an action taken by the Department or by a well owner or operator under A.R.S. §49-282.03.

"Part of a public water system" means a well that is owned or operated by an operator of a public water system, but has not been abandoned. A well that has been capped, air gapped or closed due to contamination, but not abandoned, shall be considered part of a public water system.

"Public water system" has the same meaning as defined in 42 U.S.C. § 300(f).

"Registry sites" means sites that have been investigated and placed on the Water Quality Assurance Revolving Fund registry of sites.

"Remedy" has the same meaning as defined in A.R.S. §49-281(13).

History:

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

§ R18-16-503. Request for Interim Remedial Action

A. Any person may request that the Department perform or provide a grant for an interim remedial action. The request shall be in writing and shall include a statement describing the eligibility of the well under R18-16-502 and a statement describing the reasons why interim remedial action is appropriate considering the factors in R18-16-504(A)(1) through (4). The request shall also include all of the following information that is in the possession of or is readily available to the person submitting the request:

1. A description of the well, including its location, Arizona Department of Water Resources registration number, construction details, and water production history.

2. An explanation of any water rights associated with the well and uses of the well, including any quality and quantity requirements associated with the end use of the water.

3. Any available water quality and water level data from the requesting party's wells that are the subject of the request.

4. Information that demonstrates that the well is contaminated or threatened by contamination from a release of hazardous substance from a registry site.

5. A proposal for interim remedial action, including a description of the proposed action, a schedule for implementation, and an estimate of the cost of the action.

6. A description of reasonable alternate interim remedial actions, costs associated with each alternative, and documentation supporting a finding that the proposed interim remedial action is the minimum necessary to address the loss or reduction of available water until a remedy is selected.

7. A description of any impacts the loss of the well would have on any assured water supply designation or any adequacy statement under 12 A.A.C. 7, Article 15, or on the ability of the water system to meet its legal obligations or its customer or user needs.

8. A description of the person's interest in the well and any limitations on the owner or operator's legal rights to use the well.

B. If the person requesting interim remedial action intends to perform all or part of the remedial action work, the Department may require submittal of a detailed work plan for the proposed action.

History:

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

§ R18-16-503. Request for Interim Remedial Action

A. Any person may request that the Department perform or provide a grant for an interim remedial action. The request shall be in writing and shall include a statement describing the eligibility of the well under R18-16-502 and a statement describing the reasons why interim remedial action is appropriate considering the factors in R18-16-504(A)(1) through (4). The request shall also include all of the following information that is in the possession of or is readily available to the person submitting the request:

1. A description of the well, including its location, Arizona Department of Water Resources registration number, construction details, and water production history.

2. An explanation of any water rights associated with the well and uses of the well, including any quality and quantity requirements associated with the end use of the water.

3. Any available water quality and water level data from the requesting party's wells that are the subject of the request.

4. Information that demonstrates that the well is contaminated or threatened by contamination from a release of hazardous substance from a registry site.

5. A proposal for interim remedial action, including a description of the proposed action, a schedule for implementation, and an estimate of the cost of the action.

6. A description of reasonable alternate interim remedial actions, costs associated with each alternative, and documentation supporting a finding that the proposed interim remedial action is the minimum necessary to address the loss or reduction of available water until a remedy is selected.

7. A description of any impacts the loss of the well would have on any assured water supply designation or any adequacy statement under 12 A.A.C. 7, Article 15, or on the ability of the water system to meet its legal obligations or its customer or user needs.

8. A description of the person's interest in the well and any limitations on the owner or operator's legal rights to use the well.

B. If the person requesting interim remedial action intends to perform all or part of the remedial action work, the Department may require submittal of a detailed work plan for the proposed action.

History:

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. 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.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of 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 health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly

related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. 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.

D-1.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 11, Article 6

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: **September 5, 2023**

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 11, Article 6

Summary

This Five Year Review Report (5YRR) from the Department of Environmental Quality (Department) or (DEQ) covers six (6) rules in Title 18, Chapter 11, Article 6 related to Impaired Water Identification. Specifically, the rules in Title 18, Chapter 11 establish water quality standards for surface waters and the rules in Article 6 establish the process that Arizona uses to meet requirements set by the Clean Water Act. A.R.S. § 49-232(A) requires that at least every five years, DEQ prepares a list of waters that are impaired. DEQ uses the rules in Article 6 as guidelines to evaluate physical, chemical, and biological data gathered by the agency to make a determination if a surface water should be included on the list submitted to the EPA.

Proposed Action

In the previous two 5YRRs, the Department proposed conducting a rulemaking to address the errors identified in their current report, however these rulemakings were not completed. On May 26, 2023, the Department requested an exception from the rulemaking moratorium for the Governor's Office and received approval to conduct a rulemaking on July 17, 2023.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department of Environmental Quality (Department) has not amended the rules since they were adopted, nor have they received any written comment that indicates that the EIS submitted during the original rulemaking inaccurately forecasted the cost of implementing the rule.

Stakeholders include the Department, persons or entities holding a surface water discharge permit, 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 these rules impose the least burden and expense to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department states they have received no written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are generally clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are generally consistent with other rules and statutes, however Rules 603, 605 have inconsistent references to surface water quality standards.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department indicates the rules are generally effective in achieving their objectives, however does state that the outdated rules in Article 6 prohibit the agency from using improved scientific practices when making listing or removal decisions of impaired surface waters. The Department provides the following examples for rules that should be amended:

R18-11-602: Should be streamlined as the rules require more data than necessary to make an impairment determination.

R18-11-603: Some methodologies for interpreting data are vague and require explanation or prior knowledge; these rules should be updated to be more transparent

R18-11-604: the Planning List is an obsolete mechanism that has not been implemented in quite some time and should be removed

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states the rules are generally enforced as written, however, there are small portions of the rules that are not consistent with the EPA that need to be updated.

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 states the rules are consistent with and are no more stringent than 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 Department states this section is not applicable as the rules do not require a permit or license.

11. **Conclusion**

This 5YRR from DEQ covers six rules in Title 18, Chapter 11, Article 6 related to Impaired Water Identification. Specifically, the rules Article 6 establish the process that Arizona uses to meet requirements set by the Clean Water Act. The Department received approval on July 17, 2023, to initiate a rulemaking to address the issues identified in this report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Katie Hobbs
Governor

Karen Peters
Director

May 22, 2023

Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

Re: Five Year Rule Review Report, Title 18, Chapter 11, Article 6 (Impaired Water Identification)

Ms. Sornsin,

The Arizona Department of Environmental Quality has reviewed Title 18, Chapter 11, Article 6, Impaired Water Identification, pursuant to A.R.S. § 41-1056 and A.AC. Rl-6-301. The report is attached to this email. Additionally, ADEQ's submission contains electronic copies of the rules being reviewed, the general and specific statutes authorizing the rules, and the applicable economic, small business, and consumer impact statement.

I certify that this agency is in compliance with A.R.S. § 41-1091.

You may contact Jonathan Quinsey with questions on the report at (602)771-8193 or email at quinsey.jonathan@azdeq.gov.

Sincerely,

DocuSigned by:
Amanda Stone
A11A68124C2C413...

Amanda E. Stone
Deputy Director

FIVE-YEAR REVIEW REPORT
TITLE. 18 ENVIRONMENTAL QUALITY
CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS
ARTICLE 6. IMPAIRED WATER IDENTIFICATION

I. INFORMATION THAT IS IDENTICAL FOR ALL RULES IN TITLE 18, CHAPTER 11, ARTICLE 6, UNLESS OTHERWISE STATED IN PART II

1. Authorization of rules by existing statutes:

A.R.S. §§ 49-203(A)(1), 49-232(C), 49-233(C), 49-235

2. Objective of the rules:

Section 305(b) of the Clean Water Act (CWA) requires that Arizona submit a biennial report that describes the water quality of all surface waters in the state to the U.S. Environmental Protection Agency (EPA). Arizona must monitor water quality and review available data and information from various sources to determine if water quality standards are being met. From this 305(b) report and other sources of information, the CWA 303(d) list of water quality impairments is created.

The rules in Title 18 Chapter 11 establish water quality standards for surface waters that protect public health, the health of fish and wildlife, and set appropriate standards for recreational, agricultural, industrial and other uses of surface water in the State. The rules in Title 18 Chapter 11, Article 6 (Article 6) establish the process that Arizona uses to meet the requirements in Section 305(b) of the CWA and build the 303(d) list.

The 303(d) list identifies those waterbodies that need a total maximum daily load (TMDL) but do not meet Arizona's water quality standards. These waters are known as "impaired waters." A.R.S. § 49-232(A) requires that at least every five years, the Arizona Department of Environmental Quality (ADEQ) prepares a list of waters that are impaired. ADEQ uses the rules in Article 6 as guidelines to evaluate physical, chemical, and biological data gathered by the agency to make a determination if a surface water should be included on the 303(d) list submitted to the EPA.

3. Effectiveness of the rules in achieving the objectives:

ADEQ has not modified these rules since their initial adoption in 2002. As reported in previous five-year reviews, the rules are effective in achieving their objective, except as otherwise stated below. In the last two submitted rule reports, ADEQ has proposed a rulemaking action to correct errors identified in the rules. ADEQ has not completed those rulemakings at the time this report is being submitted.

However, as a result of new resources provided by legislative appropriations, ADEQ has begun to make progress on updating these rules this year and requested an exception from the Rulemaking Moratorium (A.R.S. § 41-1039) to update Arizona's process for listing and removing surface waters from the impaired waters list. The requested rulemaking will modify A.C.C. Title 18, Chapter 11 to accomplish the following goals:

1. Update the Impaired Waters Identification Rule (IWIR) for Waters of the United States (WOTUS) for the first time since 2002.
2. Respond to findings by the Auditor General with regards to Arizona's impaired waters listing and removal process.
3. Correct minor typographical errors in the existing rules.

ADEQ submitted the request for an exception to the Rulemaking Moratorium on May 26, 2023. The Governor's Office approved ADEQ's request on July 17, 2023. The approval and request are submitted along with this general review for GRRC.

The rules in Article 6 prohibit the agency from using improved scientific practices when making listing or removal decisions. For example - minimum sample requirements in ADEQ's rules ignore mathematical principles and prevent known impairments from being listed or delisted. The outdated provisions of Article 6 stunt the amount of mission good ADEQ can accomplish through the implementation of TMDLs or other non-regulatory programs to improve these impaired waters. A modernized IWIR would allow ADEQ to utilize the most recent science, enabling the agency to focus resources on real, fixable issues in Arizona's surface waters.

ADEQ began our plan to engage in value-based stakeholder engagement after approval from the Governor's office during the summer of 2023. The agency has enclosed a draft version of the stakeholder engagement plan for this rulemaking as a part of this 5 Year Report. The kick-off meeting for ADEQ's Surface Water Quality Rulemakings took place on August 23, 2023.

4. Consistency of the rule 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.

The rules are consistent with the statutes and constitutions of Arizona and the United States. The rules are not entirely consistent with EPA guidance.

A.R.S. §§ 49-203(A)(1), 49-232(C), 49-233(C), 49-235 - State statutes and sections authorizing adoption of these rules and standards

A.R.S. §§ 49-232, 49-233, 49-234 - Statutes prescribing the impaired waters and total maximum daily load implementation programs

A.R.S. § 49-104(A)(17) - State regulations adopted under Title 49 are "to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter" unless authorized by the legislature

33 U.S.C. 1313(d) - Federal statute mandating that states identify impaired waters for which and also mandating EPA to either approve or disapprove such identification and if disapproved, the EPA shall identify waters EPA determines necessary to implement the water quality standards

33 U.S.C. 1315(b) - Federal statute requiring each state to periodically assess and report on the water quality of all navigable waters in the state

40 C.F.R. § 130.7 - Implementing federal rule prescribing the impaired waters identification process

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

ADEQ enforces the IWIR by gathering data and preparing the biennial reports for EPA and the public. The IWIR works in conjunction with the rules in Title 18, Chapter 11 to create Arizona's Integrated Report, which consists of two sections called a 305(b) report and a 303(d) list. The report fulfills requirements of the federal Clean Water Act sections 305(b) (assessments), 303(d) (impaired water identification), and 314 (status of lake water quality).

Small portions of these rules are not consistent with EPA guidance. Under Clean Water Act section 303(d)(2), EPA may disapprove a state's impaired water list and reasonably identify additional impaired waters based on EPA guidance. See also 40 C.F.R. § 130.7(b)(6)(iv). In previous reports, ADEQ has noted that these inconsistencies have resulted in the EPA unilaterally making impaired water identifications in Arizona in past reports. During the 2022 assessment cycle, the EPA added two impairments to Arizona's impaired waters list. These impairments were added because the current IWIR doesn't have a mechanism to impair waters due to fish advisories.

6. **Analysis of clarity, conciseness, and understandability:**

ADEQ believes that the rules are generally clear, concise, and understandable.

Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings:

ADEQ has received no written criticisms of the rules within the past five years.

7. **Comparison of economic, small business, and consumer impact with economic impact statement:**

These rules do not directly regulate any entities that discharge to Arizona Surface Waters pursuant to a permit issued by ADEQ. Thus, the costs for implementing these rules falls primarily to ADEQ.

ADEQ has not amended the rules since they were adopted. The agency has not received any written comment that indicates that the EIS submitted during the original rulemaking inaccurately forecasted the cost of implementing the rule.

8. **Any analysis submitted to ADEQ by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:**

ADEQ has not received any analysis submitted by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states.

9. **If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report:**

The Governor's Regulatory Review Council approved the last Five-Year Review report at its October 2, 2017 meeting. ADEQ proposed to amend some of the Article 6 rules, mostly to reflect updates to EPA's guidance documents. ADEQ proposed to submit a Notice of Final Rulemaking to Council by July 2018. ADEQ has not yet completed this action but has begun the rulemaking process in receiving an exception from the rulemaking moratorium to the Governor's office. The letter requesting the exception is enclosed with this 5YRR.

10. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

ADEQ believes that these rules impose the least burden and expense to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

11. **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 are consistent with and are no more stringent than corresponding federal law.

12. **For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

Not applicable. This Article does not require a permit, license, or agency authorization.

13. Proposed course of action:

ADEQ has begun the process of amending Article 6. The agency has a communications and engagement plan for the stakeholder process and has received an exception from the rulemaking moratorium to begin a process to update Article 6.

II. SECTION-BY-SECTION ANALYSIS OF RULES

R18-11-601. Definitions

1. Objective of the rules:

The objectives of the definition section are to define:

- Important terms used in the impaired water identification rules so that the rules are understandable to members of the general public;
- Legal terms of art, words with uncommon meanings, and scientific terms; and
- Acronyms and abbreviations used in the rules.
- Analysis of effectiveness of the rules in achieving the objective:

The rule effectively defines important terms used in the rules.

2. Status of the enforcement of the rule:

Definitions are not enforceable on their own, but provide context for other sections.

3. Proposed course of action:

ADEQ intends to update certain definitions to be consistent with changes in other rule sections. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by December 2024.

R18-11-602. Credible Data

1. Objective of the rules:

R18-11-602 provides the minimum quality assurance/quality control requirements for data to be considered credible and relevant for assessment and listing purposes. The monitoring entity must:

- Develop and submit a Quality Assurance Plan (QAP) that includes certain required elements, including the methods used for sample collection, field and laboratory

analysis, and data management, and provide assurances that field and laboratory personnel are adequately trained and supervised;
- Develop and submit a site-specific or project-specific Sampling and Analysis Plan (SAP) containing required elements, including data quality objectives of the project and a sound rationale for the selection of sampling sites, water quality parameters, sampling frequency and methods that assure the samples are spatially and temporally representative of the surface water, representative of conditions within the targeted segment at the time of sampling, and are reproducible;
- Ensure that data collection, preservation, and analytical procedures are those established in A.A.C. R9-14-610 by the Arizona Department of Health Services;
- Ensure that laboratory analyses are performed by a laboratory licensed by Arizona Department of Health Services, a laboratory exempted by the Arizona Department of Health Services for specific analyses under A.R.S. § 36-495.02, or a federal or academic laboratory that can demonstrate proper quality assurance/quality control equal to the requirements for state licensure; and
- Provide other information necessary to assist ADEQ in interpreting or validating the data.

2. Analysis of effectiveness of the rules in achieving the objective:

The concept of credible data ensures that only those surface waters are included on the 303(d) list for which there is adequate documentation that water quality standards are not attaining or will not be attaining based on modeling. The rule effectively informs third parties that the data needs to be of high quality and must accurately reflect the surface water conditions. However, the rule requirements could be more streamlined to achieve this objective. This rule currently requires more data than is necessary for ADEQ to use in making an impairment determination (e.g. monitoring results, dates, latitude and longitude).

3. Proposed course of action:

ADEQ intends to streamline minimum data reporting requirements. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by December 2024.

R18-11-603. General Data Interpretation Requirements

1. Objective of the rules:

To determine whether data is credible and scientifically defensible, this rule sets up data conventions for how data will be used. Data conventions determine whether there is sufficient samples and sampling events to support an assessment, or to adjust field measurements or certain analytical methods due to error or method imprecision.

2. Analysis of effectiveness of the rules in achieving the objective:

The rule effectively informs stakeholders on the data conventions that ADEQ uses for interpreting data. However, some of the methodologies in the rule are vague and require explanation or prior knowledge, in part because of obsolete incorporations by reference. While listing technical methodologies are explained and published with impaired waters listings, the impaired waters identification process would be more transparent if the rules more clearly reflected current practices.

3. Analysis of consistency with state and federal statutes and rules:

There are some inconsistent references to the surface water quality standards in 18 A.A.C. 11, Article 1, which were amended in 2009. See Notice of Final Rulemaking, 14 A.A.R. 4708 (Dec. 26, 2008). For example, R18-11-603(A)(4) references water quality standards for outstanding waters in R18-11-112, which were repealed in 2009.

4. Proposed course of action:

ADEQ intends to update outdated incorporations by references in this rule. ADEQ also intends to update the rules to better reflect current and long standing technical data interpretation practices. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by December 2024.

R18-11-604. Types of Surface Waters Placed on the Planning List and 303(d) List

1. Objective of the rules:

This rule provides the basis of the two-part consolidated list for assessment and listing decisions. The rule describes what surface waters will go on the Planning List or the 303(d) list, what surface waters will not be listed, and how surface waters are segmented for listing. It also establishes that surface waters or segments can move back and forth between the Planning List and the 303(d) list for individual pollutants based on the criteria in the rule.

2. Analysis of effectiveness of the rules in achieving the objective:

The rule effectively describes what surface waters will go on the Planning List or the 303(d) list. However, the Planning List is an obsolete mechanism that has not been implemented in recent history. The concept appears to have derived from older federal guidance and from other states' EPA approved rules as of 2002 (e.g. Florida). See Final Rule for Impaired Waters Identification, 8 A.A.R. 3380, 3416 (Aug. 9, 2002). However, the Planning List does not serve current practices at ADEQ.

3. Proposed course of action:

ADEQ intends to remove most of the antiquated subsections of this rule because the subsections refer to the Planning List, and an obsolete mechanism. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by December 2024.

R18-11-605. Evaluating A Surface Water or Segment For Listing and Delisting

1. Objective of the rule:

This rule identifies the process ADEQ uses to determine: (1) if a surface water or segment is not attaining standards or is impaired, and whether it is placed on the Planning List or the 303(d) list; or (2) whether there is water quality evidence or factors to support the removal of a surface water, segment or pollutant from either List.

2. Analysis of effectiveness of the rules in achieving the objective:

The rule effectively identifies the process ADEQ uses to determine listing or delisting a surface water or segment on the Planning List or the 303(d) list.

3. Analysis of consistency with state and federal statutes and rules:

There are some inconsistent references to the surface water quality standards in 18 A.A.C. 11, Article 1, which were amended in 2009. See Notice of Final Rulemaking, 14 A.A.R. 4708 (Dec. 26, 2008). For example, R18-605(C)(2)(c) references R18-11-109(G) standards for radiochemicals, which was repealed in 2009. However, subsection (C) of this rule covers when water segments are placed on a Planning List, an obsolete concept.

4. Proposed course of action:

ADEQ intends to modify this rule to clarify how exceedances of narrative standards may be used to list a water as impaired in certain circumstances under A.R.S. § 49-232(E) & (F). ADEQ also intends to remove all antiquated references to the Planning List, an obsolete mechanism that is not currently used, nor has been used in Arizona in a very long time. ADEQ also intends to update inconsistent incorporations by reference, if not already modified by the above changes. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by December 2024.

R18-11-606. TMDL Priority Criteria for 303(d) Listed Surface Water or Segments

1. Objective of the rules:

A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet surface water quality standards. A.R.S. § 49-233 requires ADEQ to prioritize listed surface waters for development of a TMDL and identifies 17 factors that ADEQ must use. These categories take into account factors, such as the severity of the impairment; impacts to

designated uses of the receiving water; seriousness of the water quality problems; value of the resource; risk to human health, aquatic life, and wildlife; and the likelihood of success of TMDL implementation. Generally, impaired surface waters are given high priority if the pollutant poses a substantial threat to the health and safety of humans, aquatic life, or wildlife.

2. Analysis of effectiveness of the rules in achieving the objective:

The rule effectively describes the factors ADEQ uses to prioritize listed surface waters for development of a TMDL.

3. Proposed course of action:

ADEQ intends to update the language in this rule to be consistent with other proposed changes in Article 6. ADEQ anticipates it will submit a Notice of Final Rulemaking to the Council by December 2024.

b. Identification of groundwater withdrawal rights, on file with the Department of Water Resources, within the aquifer or part of the aquifer being proposed for reclassification.
c. A comprehensive list of agencies, persons and other information sources consulted for aquifer use documentation.

5. A cost-benefit analysis developed pursuant to the requirements of A.R.S. § 49-224(C)(3), except for petitions submitted pursuant to A.R.S. § 49-224(D). This analysis shall identify potential future uses of the aquifer being proposed for reclassification, as well as other opportunity costs associated with reclassification, and shall contain a description of the cost-benefit methodology used, including all assumptions, data, data sources and criteria considered and all supporting statistical analyses.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-504. Agency action on petition

A. Upon receipt of a petition for reclassification, the Director shall review the petition for compliance with the requirements of R18-11-503. If additional information is necessary, the petitioner shall be notified of specific deficiencies in writing within 30 calendar days of receipt of the petition.

B. Within 120 calendar days after receipt of a complete petition, and after consultation with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C) and 49-204, the Director shall make a final decision to grant or deny the petition and shall notify the petitioner of such decision and the reason for such determination in writing.

C. Upon a decision to grant a petition for aquifer reclassification, the Director shall initiate proceedings for promulgation of aquifer water quality standards and, if applicable, for aquifer boundary designation for the reclassified aquifers.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-505. Public participation

A. Within 30 days of receipt of a complete petition for reclassification filed pursuant to A.R.S. § 49-224(D), or if the Director deems it necessary to consider a reclassification under A.R.S. § 49-224(C), the Director shall give public notice of the proposed reclassification pursuant to A.A.C. R18-1-401.

B. The Director shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification. The Director shall give notice of each public hearing and conduct the public hearing in accordance with the provisions of A.A.C. R18-1-402.

Historical Note
Adopted effective June 29, 1989 (Supp. 89-2).

R18-11-506. Rescission of reclassification

The Director may, by rule, rescind an aquifer reclassification and return an aquifer to a drinking water protected use if he determines that any of the conditions under which the reclassification was granted are no longer valid. If the Director initiates a change under this Section, he shall consult with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C) and 49-204.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

ARTICLE 6. IMPAIRED WATER IDENTIFICATION

Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-601. Definitions

In addition to the definitions established in A.R.S. §§ 49-201 and 49-231, and A.A.C. R18-11-101, the following terms apply to this Article:

1. "303(d) List" means the list of surface waters or segments required under section 303(d) of the Clean Water Act and A.R.S. Title 49, Chapter 2, Article 2.1, for which TMDLs are developed and submitted to EPA for approval.
2. "Attaining" means there is sufficient, credible, and scientifically defensible data to assess a surface water or segment and the surface water or segment does not meet the definition of impaired or not attaining.
3. "AZPDES" means the Arizona Pollutant Elimination Discharge System.
4. "Credible and scientifically defensible data" means data submitted, collected, or analyzed using:
   a. Quality assurance and quality control procedures under A.A.C. R18-11-602;
   b. Samples or analyses representative of water quality conditions at the time the data were collected;
   c. Data consisting of an adequate number of samples based on the nature of the water in question and the parameters being analyzed; and
   d. Methods of sampling and analysis, including analytical, statistical, and modeling methods that are generally accepted and validated by the scientific community as appropriate for use in assessing the condition of the water.
5. "Designated use" means those uses specified in 18 A.A.C. 11, Article 1 for each surface water or segment whether or not they are attaining.
6. "EPA" means the U.S. Environmental Protection Agency.
7. "Impaired water" means a Navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 United States Code § 1313(d) and the regulations implementing that statute. A.R.S. § 49-231(1).
8. "Laboratory detection limit" means a "Method Reporting Limit" (MRL) or "Reporting Limit" (RL). These analogous terms describe the laboratory reported value, which is the lowest concentration level included on the calibration curve from the analysis of a pollutant that can be quantified in terms of precision and accuracy.
9. "Monitoring entity" means the Department or any person who collects physical, chemical, or biological data used for an impaired water identification or a TMDL decision.
10. "Naturally occurring condition" means the condition of a surface water or segment that would have occurred in the absence of pollutant loadings as a result of human activity.
11. "Not attaining" means a surface water is assessed as impaired, but is not placed on the 303(d) List because:
    a. A TMDL is prepared and implemented for the surface water;
    b. An action, which meets the requirements of R18-11-604(D)(2)(h), is occurring and is expected to bring the surface water to attaining before the next 303(d) List submission; or

c. The impairment of the surface water is due to pollution but not a pollutant, for which a TMDL load allocation cannot be developed.

12. "NPDES" means National Pollutant Discharge Elimination System.
13. "Planning List" means a list of surface waters and segments that the Department will review and evaluate to determine if the surface water or segment is impaired and whether a TMDL is necessary.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. 1362(6). Characteristics of water, such as dissolved oxygen, pH, temperature, turbidity, and suspended sediment are considered pollutants if they result or may result in the non-attainment of a water quality standard.
15. "Pollution" means "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water." 33 U.S.C. 1362(19).
16. "QAP" means a quality assurance plan detailing how environmental data operations are planned, implemented, and assessed for quality during the duration of a project.
17. "Sampling event" means one or more samples taken under consistent conditions on one or more days at a distinct station or location.
18. "SAP" means a site specific sampling and analysis plan that describes the specifics of sample collection to ensure that data quality objectives are met and that samples collected and analyzed are representative of surface water conditions at the time of sampling.
19. "Spatially independent sample" means a sample that is collected at a distinct station or location. The sample is independent if the sample was collected:
    a. More than 200 meters apart from other samples, or
    b. Less than 200 meters apart, and collected to characterize the effect of an intervening tributary, outfall or other pollution source, or significant hydrographic or hydrologic change.
20. "Temporally independent sample" means a sample that is collected at the same station or location more than seven days apart from other samples.
21. "Threatened" means that a surface water or segment is currently attaining its designated use, however, trend analysis, based on credible and scientifically defensible data, indicates that the surface water or segment is likely to be impaired before the next listing cycle.
22. "TMDL" means total maximum daily load.
23. "TMDL decision" means a decision by the Department to:
    a. Prioritize an impaired water for TMDL development,
    b. Develop a TMDL for an impaired water, or
    c. Develop a TMDL implementation plan.
24. *"Total maximum daily load" means an estimation of the total amount of a pollutant from all sources that may be added to a water while still allowing the water to achieve and maintain applicable surface water quality standards. Each total maximum daily load shall include allocations for sources that contribute the pollutant to the water, as required by section 303(d) of the clean water act (33 United States Code section 1313(d)) and regulations implementing that statute to achieve applicable surface water quality standards.* A.R.S. § 49-231(4).
25. "Water quality standard" means a standard composed of designated uses (classification of waters), the numerical and narrative criteria applied to the specific water uses or classification, the antidegradation policy, and moderating provisions, for example, mixing zones, site-specific alternative criteria, and exemptions, in A.A.C. Title 18, Chapter 11, Article 1.
26. "WQARF" means the water quality assurance revolving fund established under A.R.S. § 49-282.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-602. Credible Data

A. Data are credible and relevant to an impaired water identification or a TMDL decision when:

1. Quality Assurance Plan. A monitoring entity, which contribute data for an impaired water identification or a TMDL decision, provides the Department with a QAP that contains, at a minimum, the elements listed in subsections (A)(1)(a) through (A)(1)(f). The Department may accept a QAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be sampled, the type of surface water, and the purpose of the sampling.
    a. An approval page that includes the date of approval and the signatures of the approving officials, including the project manager and project quality assurance manager;
    b. A project organization outline that identifies all key personnel, organizations, and laboratories involved in monitoring, including the specific roles and responsibilities of key personnel in carrying out the procedures identified in the QAP and SAP, if applicable;
    c. Sampling design and monitoring data quality objectives or a SAP that meets the requirements of subsection (A)(2) to ensure that:
        i. Samples are spatially and temporally representative of the surface water,
        ii. Samples are representative of water quality conditions at the time of sampling, and
        iii. The monitoring is reproducible;
    d. The following field sampling information to assure that samples meet data quality objectives:
        i. Sampling and field protocols for each parameter or parametric group, including the sampling methods, equipment and containers, sample preservation, holding times, and any analysis proposed for completion in the field or outside of a laboratory;
        ii. Field and laboratory methods approved under subsection (A)(5);
        iii. Handling procedures to identify samples and custody protocols used when samples are brought from the field to the laboratory for analysis;
        iv. Quality control protocols that describe the number and type of field quality control samples for the project that includes, if appropriate

for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;

v. Procedures for testing, inspecting, and maintaining field equipment;

vi. Field instrument calibration procedures that describe how and when field sampling and analytical instruments will be calibrated;

vii. Field notes and records that describe the conditions that require documentation in the field, such as weather, stream flow, transect information, distance from water edge, water and sample depth, equipment calibration measurements, field observations of watershed activities, and bank conditions. Indicate the procedures implemented for maintaining field notes and records and the process used for attaching pertinent information to monitoring results to assist in data interpretation;

viii. Minimum training and any specialized training necessary to do the monitoring, that includes the proper use and calibration of field equipment used to collect data, sampling protocols, quality assurance/quality control procedures, and how training will be achieved;

e. Laboratory analysis methods and quality assurance/quality control procedures that assure that samples meet data quality objectives, including:

i. Analytical methods and equipment necessary for analysis of each parameter, including identification of approved laboratory methods described in subsection (A)(5), and laboratory detection limits for each parameter;

ii. The name of the designated laboratory, its license number, if licensed by the Arizona Department of Health Services, and the name of a laboratory contact person to assist the Department with quality assurance questions;

iii. Quality controls that describe the number and type of laboratory quality control samples for the project, including, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;

iv. Procedures for testing, inspecting, and maintaining laboratory equipment and facilities;

v. A schedule for calibrating laboratory instruments, a description of calibration methods, and a description of how calibration records are maintained; and

vi. Sample equipment decontamination procedures that outline specific methods for sample collection and preparation of equipment, identify the frequency of decontamination, and describe the procedures used to verify decontamination;

f. Data review, management, and use that includes the following:

i. A description of the data handling process from field to laboratory, from laboratory to data review and validation, and from validation to data storage and use. Include the role and responsibility of each person for each step of the process, type of database or other storage used, and how laboratory and field data qualifiers are related to the laboratory result;

ii. Reports that describe the intended frequency, content, and distribution of final analysis reports and project status reports;

iii. Data review, validation, and verification that describes the procedure used to validate and verify data, the procedures used if errors are detected, and how data are accepted, rejected, or qualified; and

iv. Reconciliation with data quality objectives that describes the process used to determine whether the data collected meets the project objectives, which may include discarding data, setting limits on data use, or revising data quality objectives.

2. Sampling and analysis plan.

a. A monitoring entity shall develop a SAP that contains, at a minimum, the following elements:

i. The experimental design of the project, the project goals and objectives, and evaluation criteria for data results;

ii. The background or historical perspective of the project;

iii. Identification of target conditions, including a discussion of whether any weather, seasonal variations, stream flow, lake level, or site access may affect the project and the consideration of these factors;

iv. The data quality objectives for measurement of data that describe in quantitative and qualitative terms how the data meet the project objectives of precision, accuracy, completeness, comparability, and representativeness;

v. The types of samples scheduled for collection;

vi. The sampling frequency;

vii. The sampling periods;

viii. The sampling locations and rationale for the site selection, how site locations are benchmarked, including scaled maps indicating approximate location of sites; and

ix. A list of the field equipment, including tolerance range and any other manufacturer's specifications relating to accuracy and precision.

b. The Department may accept a SAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be samples, the type of surface water, and the purpose of the sampling.

3. The monitoring entity may include any of the following in the QAP or SAP:

a. The name, title, and role of each person and organization involved in the project, identifying specific roles and responsibilities for carrying out the procedures identified in the QAP and SAP;

b. A distribution list of each individual and organization receiving a copy of the approved QAP and SAP;

c. A table of contents;

d. A health and safety plan;

e. The inspection and acceptance requirements for supplies;

f. The data acquisition that describes types of data not obtained through this monitoring activity, but used in the project;
g. The audits and response actions that describe how field, laboratory, and data management activities and sampling personnel are evaluated to ensure data quality, including a description of how the project will correct any problems identified during these assessments; and
h. The waste disposal methods that identify wastes generated in sampling and methods for disposal of those wastes.

4. Exceptions. The Department may determine that the following data are also credible and relevant to an impaired water identification or TMDL decision when data were collected, provided the conditions in subsections (A)(5), (A)(6), and (B) are met, and where the data were collected in the surface water or segment being evaluated for impairment:
a. The data were collected before July 12, 2002 and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2);
b. The data were collected after July 12, 2002 as part of an ongoing monitoring effort by a governmental agency and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2); or
c. The instream water quality data were or are collected under the terms of a NPDES or AZPDES permit or a compliance order issued by the Department or EPA, a consent decree signed by the Department or EPA, or a sampling program approved by the Department or EPA under WQARF or CERCLA, and the Department determines that the data yield results of comparable reliability to data collected under subsections (A)(1) and (A)(2).

5. Data collection, preservation, and analytical procedures. The monitoring entity shall collect, preserve, and analyze data using methods of sample collection, preservation, and analysis established under A.A.C. R9-14-610.
6. Laboratory. The monitoring entity shall ensure that chemical and toxicological samples are analyzed in a state-licensed laboratory, a laboratory exempted by the Arizona Department of Health Services for specific analyses, or a federal or academic laboratory that can demonstrate proper quality assurance/quality control procedures substantially equal to those required by the Arizona Department of Health Services, and shall ensure that the laboratory uses approved methods identified in A.A.C. R9-14-610.

B. Documentation for data submission. The monitoring entity shall provide the Department with the following information either before or with data submission:
1. A copy of the QAP or SAP, or both, revisions to a previously submitted QAP or SAP, and any other information necessary for the Department to evaluate the data under subsection (A)(4);
2. The applicable dates of the QAP and SAP, including any revisions;
3. Written assurance that the methods and procedures specified in the QAP and SAP were followed;
4. The name of the laboratory used for sample analyses and its certification number, if the laboratory is licensed by the Arizona Department of Health Services;
5. The quality assurance/quality control documentation, including the analytical methods used by the laboratory, method number, detection limits, and any blank, duplicate, and spike sample information necessary to properly interpret the data, if different from that stated in the QAP or SAP;
6. The data reporting unit of measure;
7. Any field notes, laboratory comments, or laboratory notations concerning a deviation from standard procedures, quality control, or quality assurance that affects data reliability, data interpretation, or data validity; and
8. Any other information, such as complete field notes, photographs, climate, or other information related to flow, field conditions, or documented sources of pollutants in the watershed, if requested by the Department for interpreting or validating data.

C. Recordkeeping. The monitoring entity shall maintain all records, including sample results, for the duration of the listing cycle. If a surface water or segment is added to the Planning List or to the 303(d) List, the Department shall coordinate with the monitoring entity to ensure that records are kept for the duration of the listing.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-603. General Data Interpretation Requirements

A. The Department shall use the following data conventions to interpret data for impaired water identifications and TMDL decisions:
1. Data reported below laboratory detection limits.
a. When the analytical result is reported as <X, where X is the laboratory detection limit for the analyte and the laboratory detection limit is less than or equal to the surface water quality standard, consider the result as meeting the water quality standard:
i. Use these statistically derived values in trend analysis, descriptive statistics or modeling if there is sufficient data to support the statistical estimation of values reported as less than the laboratory detection limit; or
ii. Use one-half of the value of the laboratory detection limit in trend analysis, descriptive statistics, or modeling, if there is insufficient data to support the statistical estimation of values reported as less than the laboratory detection limit.
b. When the sample value is less than or equal to the laboratory detection limit but the laboratory detection limit is greater than the surface water quality standard, shall not use the result for impaired water identifications or TMDL decisions;
2. Identify the field equipment specifications used for each listing cycle or TMDL developed. A field sample measurement within the manufacturer's specification for accuracy meets surface water quality standards;
3. Resolve a data conflict by considering the factors identified under the weight-of-evidence determination in R18-11-605(B);
4. When multiple samples from a surface water or segment are not spatially or temporally independent, or when lake

samples are from multiple depths, use the following resultant value to represent the specific dataset:

a. The appropriate measure of central tendency for the dataset for:
   i. A pollutant listed in the surface water quality standards 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
   ii. A chronic water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2;
   iii. A surface water quality standard for a pollutant that is expressed as an annual or geometric mean;
   iv. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
   v. The surface water quality standard for radiochemicals in R18-11-109(G); or
   vi. Except for chromium, all single sample maximum water quality standards in R18-11-112.
b. The maximum value of the dataset for:
   i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and acute water quality standard in R18-11-112;
   ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1;
   iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A); or
   iv. The 90th percentile water quality standard for nitrogen and phosphorus in R18-11-109(F) and R18-11-112.
c. The worst case measurement of the dataset for:
   i. Surface water quality standard for dissolved oxygen under R18-11-109(E). For purposes of this subsection, worst case measurement means the minimum value for dissolved oxygen;
   ii. Surface water quality standard for pH under R18-11-109(B). For purposes of this subsection, "worst case measurement" means both the minimum and maximum value for pH.

B. The Department shall not use the following data for placing a surface water or segment on the Planning List, the 303(d) List, or in making a TMDL decision.
1. Any measurement outside the range of possible physical or chemical measurements for the pollutant or measurement equipment,
2. Uncorrected data transcription errors or laboratory errors, and
3. An outlier identified through statistical procedures, where further evaluation determines that the outlier represents a valid measure of water quality but should be excluded from the dataset.

C. The Department may employ fundamental statistical tests if appropriate for the collected data and type of surface water when evaluating a surface water or segment for impairment or in making a TMDL decision. The statistical tests include descriptive statistics, frequency distribution, analysis of variance, correlation analysis, regression analysis, significance testing, and time series analysis.

D. The Department may employ modeling when evaluating a surface water or segment for impairment or in making a TMDL decision, if the method is appropriate for the type of waterbody and the quantity and quality of available data meet the requirements of R18-11-602. Modeling methods include:
1. Better Assessment Science Integrating Source and Nonpoint Sources (BASINS),
2. Fundamental statistics, including regression analysis,
3. Hydrologic Simulation Program-Fortran (HSPF),
4. Spreadsheet modeling, and
5. Hydrologic Engineering Center (HEC) programs developed by the Army Corps of Engineers.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-604. Types of Surface Waters Placed on the Planning List and 303(d) List

A. The Department shall evaluate, at least every five years, Arizona's surface waters by considering all readily available data.
1. The Department shall place a surface water or segment on:
   a. The Planning List if it meets any of the criteria described in subsection (D), or
   b. The 303(d) List if it meets the criteria for listing described in subsection (E).
2. The Department shall remove a surface water or segment from the Planning List based on the requirements in R18-11-605(E)(1) or from the 303(d) List, based on the requirements in R18-11-605(E)(2).
3. The Department may move surface waters or segments between the Planning List and the 303(d) List based on the criteria established in R18-11-604 and R18-11-605.

B. When placing a surface water or segment on the Planning List or the 303(d) List, the Department shall list the stream reach, derived from EPA's Reach File System or National Hydrography Dataset, or the entire lake, unless the data indicate that only a segment of the stream reach or lake is impaired or not attaining its designated use, in which case, the Department shall describe only that segment for listing.

C. Exceptions. The Department shall not place a surface water or segment on either the Planning List or the 303(d) List if the non-attainment of a surface water quality standard is due to one of the following:
1. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
2. The data were collected within a mixing zone or under a variance or nutrient waiver established in a NPDES or AZPDES permit for the specific parameter and the result does not exceed the alternate discharge limitation established in the permit. The Department may use data collected within these areas for modeling or allocating loads in a TMDL decision; or
3. An activity exempted under R18-11-117, R18-11-118, or a condition exempted under R18-11-119.

D. Planning List.
1. The Department shall:
   a. Use the Planning List to prioritize surface waters for monitoring and evaluation as part of the Department's watershed management approach;
   b. Provide the Planning List to EPA; and
   c. Evaluate each surface water and segment on the Planning List for impairment based on the criteria in

R18-11-605(D) to determine the source of the impairment.

2. The Department shall place a surface water or segment on the Planning List based the criteria in R18-11-605(C). The Department may also include a surface water or segment on the Planning List when:
   a. A TMDL is completed for the pollutant and approved by EPA;
   b. The surface water or segment is on the 1998 303(d) List but the dataset used for the listing:
      i. Does not meet the credible data requirements of R18-11-602, or
      ii. Contains insufficient samples to meet the data requirements under R18-11-605(D);
   c. Some monitoring data exist but there are insufficient data to determine whether the surface water or segment is impaired or not attaining, including:
      i. A numeric surface water quality standard is exceeded, but there are not enough samples or sampling events to fulfill the requirements of R18-11-605(D);
      ii. Evidence exists of a narrative standard violation, but the amount of evidence is insufficient, based on narrative implementation procedures and the requirements of R18-11-605(D)(3);
      iii. Existing monitoring data do not meet credible data requirements in R18-11-602; or
      iv. A numeric surface water quality standard is exceeded, but there are not enough sample results above the laboratory detection limit to support statistical analysis as established in R18-11-603(A)(1).
   d. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act, but insufficient current or original monitoring data exist to determine whether the surface water or segment will meet current surface water quality standards;
   e. Trend analysis using credible and scientifically defensible data indicate that surface water quality standards may be exceeded by the next assessment cycle;
   f. The exceedance of surface water quality standards is due to pollution, but not a pollutant;
   g. Existing data were analyzed using methods with laboratory detection limits above the numeric surface water quality standard but analytical methods with lower laboratory detection limits are available;
   h. The surface water or segment is expected to attain its designated use by the next assessment as a result of existing or proposed technology-based effluent limitations or other pollution control requirements under local, state, or federal authority. The appropriate entity shall provide the Department with the following documentation to support placement on the Planning List:
      i. Verification that discharge controls are required and enforceable;
      ii. Controls are specific to the surface water or segment, and pollutant of concern;
      iii. Controls are in place or scheduled for implementation; and
      iv. There are assurances that the controls are sufficient to bring about attainment of water quality standards by the next 303(d) List submission; or
   i. The surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are no federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.

E. 303(d) List. The Department shall:
1. Place a surface water or segment on the 303(d) List if the Department determines:
   a. Based on R18-11-605(D), that the surface water or segment is impaired due to a pollutant and that a TMDL decision is necessary; or
   b. That the surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.
2. Provide public notice of the 303(d) List according to the requirements of A.R.S. § 49-232 and submit the 303(d) List according to section 303(d) of the Clean Water Act.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-605. Evaluating A Surface Water or Segment For Listing and Delisting

A. The Department shall compile and evaluate all reasonably current, credible, and scientifically defensible data to determine whether a surface water or segment is impaired or not attaining.

B. Weight-of-evidence approach.
1. The Department shall consider the following concepts when evaluating data:
   a. Data or information collected during critical conditions may be considered separately from the complete dataset, when the data show that the surface water or segment is impaired or not attaining its designated use during those critical conditions, but attaining its uses during other periods. Critical conditions may include stream flow, seasonal periods, weather conditions, or anthropogenic activities;
   b. Whether the data indicate that the impairment is due to persistent, seasonal, or recurring conditions. If the data do not represent persistent, recurring, or seasonal conditions, the Department may place the surface water or segment on the Planning List;
   c. Higher quality data over lower quality data when making a listing decision. Data quality is established by the reliability, precision, accuracy, and representativeness of the data, based on factors identified in R18-11-602(A) and (B), including monitoring methods, analytical methods, quality control procedures, and the documented field and laboratory quality control information submitted with the data. The Department shall consider the following factors when determining higher quality data:
      i. The age of the measurements. Newer measurements are weighted heavier than older measure-

ments, unless the older measurements are more representative of critical flow conditions;

ii. Whether the data provide a direct measure of an impact on a designated use. Direct measurements are weighted heavier than measurements of an indicator or surrogate parameter; or

iii. The amount or frequency of the measurements. More frequent data collection are weighted heavier than nominal datasets.

2. The Department shall evaluate the following factors to determine if the water quality evidence supports a finding that the surface water or segment is impaired or not attaining:

a. An exceedance of a numeric surface water quality standard based on the criteria in subsections (C)(1), (C)(2), (D)(1), and (D)(2);

b. An exceedance of a narrative surface water quality standard based on the criteria in subsections (C)(3) and (D)(3);

c. Additional information that determines whether a water quality standard is exceeded due to a pollutant, suspected pollutant, or naturally occurring condition:

i. Soil type, geology, hydrology, flow regime, biological community, geomorphology, climate, natural process, and anthropogenic influence in the watershed;

ii. The characteristics of the pollutant, such as its solubility in water, bioaccumulation potential, sediment sorption potential, or degradation characteristics, to assist in determining which data more accurately indicate the pollutant's presence and potential for causing impairment; and

iii. Available evidence of direct or toxic impacts on aquatic life, wildlife, or human health, such as fish kills and beach closures, where there is sufficient evidence that these impacts occurred due to water quality conditions in the surface water.

d. Other available water quality information, such as NPDES or AZPDES water quality discharge data, as applicable.

e. If the Department determines that a surface water or segment does not merit listing under numeric water quality standards based on criteria in subsections (C)(1), (C)(2), (D)(1), or (D)(2) for a pollutant, but there is evidence of a narrative standard exceedance in that surface water or segment under subsection (D)(3) as a result of the presence of the same pollutant, the Department shall list the surface water or segment as impaired only when the evidence indicates that the numeric water quality standard is insufficient to protect the designated use of the surface water or segment and the Department justifies the listing based on any of the following:

i. The narrative standard data provide a more direct indication of impairment as supported by professionally prepared and peer-reviewed publications;

ii. Sufficient evidence of impairment exists due to synergistic effects of pollutant combinations or site-specific environmental factors; or

iii. The pollutant is bioaccumulative, relatively insoluble in water, or has other characteristics that indicate it is occurring in the specific surface water or segment at levels below the laboratory detection limits, but at levels sufficient to result in an impairment.

3. The Department may consider a single line of water quality evidence when the evidence is sufficient to demonstrate that the surface water or segment is impaired or not attaining.

C. Planning List.

1. When evaluating a surface water or segment for placement on the Planning List.

a. Consider at least ten spatially or temporally independent samples collected over three or more temporally independent sampling events; and

b. Determine numeric water quality standards exceedances. The Department shall:

i. Place a surface water or segment on the Planning List following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 1, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 80 percent confidence level using a binomial distribution for a given sample size; or

ii. For sample datasets exceeding those shown in Table 1, calculate the number of exceedances using the following equation: $(X \geq x | n, p)$ where n = number of samples; p = exceedance probability of 0.1; x = smallest number of exceedances required for listing with "n" samples; and confidence level ≥ 80 percent.

Table 1. Minimum Number of Samples Exceeding the Numeric Standard

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
10	15	3	173	181	22	349	357	41
16	23	4	182	190	23	358	367	42
24	31	5	191	199	24	368	376	43
32	39	6	200	208	25	377	385	44
40	47	7	209	218	26	386	395	45
48	56	8	219	227	27	396	404	46
57	65	9	228	236	28	405	414	47

66	73	10	237	245	29	415	423	48
74	82	11	246	255	30	424	432	49
83	91	12	256	264	31	433	442	50
92	100	13	265	273	32	443	451	51
101	109	14	274	282	33	452	461	52
110	118	15	283	292	34	462	470	53
119	126	16	293	301	35	471	480	54
127	136	17	302	310	36	481	489	55
137	145	18	311	320	37	490	499	56
146	154	19	321	329	38	500		57
155	163	20	330	338	39			
164	172	21	339	348	40			

2. When there are less than ten samples, the Department shall place a surface water or segment on the Planning List following subsection (B), if three or more temporally independent samples exceed the following surface water quality standards:
   a. The surface water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
   b. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
   c. The surface water quality standard for radiochemicals in R18-11-109(G);
   d. The surface water quality standard for dissolved oxygen under R18-11-109(E);
   e. The surface water quality standard for pH under R18-11-109(B); or
   f. The following surface water quality standards in R18-11-112:
      i. Single sample maximum standards for nitrogen and phosphorus,
      ii. All metals except chromium, or
      iii. Turbidity.
3. The Department shall place a surface water or segment on the Planning List if information in subsections (B)(2)(c), (B)(2)(d), and (B)(2)(e) indicates that a narrative water quality standard violation exists, but no narrative implementation procedure required under A.R.S. § 49-232(F) exists to support use of the information for listing.

D. 303(d) List.
1. When evaluating a surface water or segment for placement on the 303(d) List.
   a. Consider at least 20 spatially or temporally independent samples collected over three or more temporally independent sampling events; and
   b. Determine numeric water quality standards exceedances. The Department shall:
      i. Place a surface water or segment on the 303(d) List, following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 2, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 90 percent confidence level using a binomial distribution, for a given sample size; or
      ii. For sample datasets exceeding those shown in Table 2, calculate the number of exceedances using the following equation: $(X \geq x \mid n, p)$ where n = number of samples; p = exceedance probability of 0.1; x = smallest number of exceedances required for listing with "n" samples; and confidence level ≥ 90 percent.

Table 2. Minimum Number of Samples Exceeding the Numeric Standard

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
20	25	5	174	182	24	344	352	43
26	32	6	183	191	25	353	361	44
33	40	7	192	199	26	362	370	45
41	47	8	200	208	27	371	379	46
48	55	9	209	217	28	380	388	47
56	63	10	218	226	29	389	397	48
64	71	11	227	235	30	398	406	49
72	79	12	236	244	31	407	415	50
80	88	13	245	253	32	416	424	51
89	96	14	254	262	33	425	434	52
97	104	15	263	270	34	435	443	53
105	113	16	271	279	35	444	452	54

114	121	17	280	288	36	453	461	55
122	130	18	289	297	37	462	470	56
131	138	19	298	306	38	471	479	57
139	147	20	307	315	39	480	489	58
148	156	21	316	324	40	490	498	59
157	164	22	325	333	41	499	500	60
165	173	23	334	343	42			

2. The Department shall place a surface water or segment on the 303(d) List, following subsection (B) without the required number of samples or numeric water quality standard exceedances under subsection (D)(1), if either the following conditions occur:
   a. More than one temporally independent sample in any consecutive three-year period exceeds the surface water quality standard in:
      i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and the acute water quality standards in R18-11-112;
      ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1; or
      iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A).
   b. More than one exceedance of an annual mean, 90th percentile, aquatic and wildlife chronic water quality standard, or a bacteria 30-day geometric mean water quality standard occurs, as specified in R18-11-109, R18-11-110, R18-11-112, or 18 A.A.C. 11, Article 1, Appendix A, Table 2.
3. Narrative water quality standards exceedances. The Department shall place a surface water or segment on the Planning List if the listing requirements are met under A.R.S. § 49-232(F).

E. Removing a surface water, segment, or pollutant from the Planning List or the 303(d) List.
1. Planning List. The Department shall remove a surface water, segment, or pollutant from the Planning List when:
   a. Monitoring activities indicate that:
      i. There is sufficient credible data to determine that the surface water or segment is impaired under subsection (D), in which case the Department shall place the surface water or segment on the 303(d) List. This includes surface waters with an EPA approved TMDL when the Department determines that the TMDL strategy is insufficient for the surface water or segment to attain water quality standards; or
      ii. There is sufficient credible data to determine that the surface water or segment is attaining all designated uses and standards.
   b. All pollutants for the surface water or segment are delisted.
2. 303(d) List. The Department shall:
   a. Remove a pollutant from a surface water or segment from the 303(d) List based on one or more of the following criteria:
      i. The Department developed, and EPA approved, a TMDL for the pollutant;
      ii. The data used for previously listing the surface water or segment under R18-11-605(D) is superseded by more recent credible and scientifically defensible data meeting the requirements of R18-11-602, showing that the surface water or segment meets the applicable numeric or narrative surface water quality standard. When evaluating data to remove a pollutant from the 303(d) List, the monitoring entity shall collect the more recent data under similar hydrologic or climatic conditions as occurred when the samples were taken that indicated impairment, if those conditions still exist;
      iii. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act;
      iv. The surface water or segment no longer meets the criteria for impairment for the specific narrative water quality standard based on a change in narrative water quality standard implementation procedures;
      v. A re-evaluation of the data indicate that the surface water or segment does not meet the criteria for impairment because of a deficiency in the original analysis; or
      vi. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
   b. Remove a surface water, segment, or pollutant from the 303(d) List, based on criteria that are no more stringent than the listing criteria under subsection (D);
   c. Remove a surface water or segment from the 303(d) List if all pollutants for the surface water or segment are removed from the list;
   d. Remove a surface water, segment, or pollutant, from the 303(d) List and place it on the Planning List, if:
      i. The surface water, segment or pollutant was on the 1998 303(d) List and the dataset used in the original listing does not meet the credible data requirements under R18-11-602, or contains insufficient samples to meet the data requirements under subsection (D); or
      ii. The monitoring data indicate that the impairment is due to pollution, but not a pollutant.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-606. TMDL Priority Criteria for 303(d) Listed Surface Waters or Segments

A. In addition to the factors specified in A.R.S. § 49-233(C), the Department shall consider the following when prioritizing an impaired water for development of TMDLs:
1. A change in a water quality standard;

2. The date the surface water or segment was added to the 303(d) List;
3. The presence in a surface water or segment of species listed as threatened or endangered under section 4 of the Endangered Species Act;
4. The complexity of the TMDL;
5. State, federal, and tribal policies and priorities; and
6. The efficiencies of coordinating TMDL development with the Department's surface water monitoring program, the watershed monitoring rotation, or with remedial programs.

B. The Department shall prioritize an impaired surface water or segment for TMDL development based on the factors specified in A.R.S. § 49-233(C) and subsection (A) as follows:
1. Consider an impaired surface water or segment a high priority if:
   a. The listed pollutant poses a substantial threat to the health and safety of humans, aquatic life, or wildlife based on:
      i. The number and type of designated uses impaired;
      ii. The type and extent of risk from the impairment to human health, aquatic life, or wildlife;
      iii. The pollutant causing the impairment, or
      iv. The severity, magnitude, and duration the surface water quality standard was exceeded;
   b. A new or modified individual NPDES or AZPDES permit is sought for a new or modified discharge to the impaired water;
   c. The listed surface water or segment is listed as a unique water in A.A.C. R18-11-112 or is part of an area classified as a "wilderness area," "wild and scenic river," or other federal or state special protection of the water resource;
   d. The listed surface water or segment contains a species listed as threatened or endangered under the federal Endangered Species Act and the presence of the pollutant in the surface water or segment is likely to jeopardize the listed species;
   e. A delay in conducting the TMDL could jeopardize the Department's ability to gather sufficient credible data necessary to develop the TMDL;
   f. There is significant public interest and support for the development of a TMDL;
   g. The surface water or segment has important recreational and economic significance to the public; or
   h. The pollutant is listed for eight years or more.
2. Consider an impaired surface water or segment a medium priority if:
   a. The surface water or segment fails to meet more than one designated use;
   b. The pollutant exceeds more than one surface water quality standard;
   c. A surface water quality standard exceedance is correlated to seasonal conditions caused by natural events, such as storms, weather patterns, or lake turnover;
   d. It will take more than two years for proposed actions in the watershed to result in the surface water attaining applicable water quality standards;
   e. The type of pollutant and other factors relating to the surface water or segment make the TMDL complex; or
   f. The administrative needs of the Department, including TMDL schedule commitments with EPA, permitting requirements, or basin priorities that require completion of the TMDL.
3. Consider an impaired surface water or segment a low priority if:
   a. The Department has formally submitted a proposal to delist the surface water, segment, or pollutant to EPA based on R18-11-605(E)(2). If the Department makes the submission outside the listing process cycle, the change in priority ranking will not be effective until EPA approves the submittal;
   b. The Department has modified, or formally proposed for modification, the designated use or applicable surface water quality standard, resulting in an impaired water no longer being impaired, but the modification has not been approved by EPA;
   c. The surface water or segment is expected to attain surface water quality standards due to any of the following:
      i. Recently instituted treatment levels or best management practices in the drainage area,
      ii. Discharges or activities related to the impairment have ceased, or
      iii. Actions have been taken and controls are in place or scheduled for implementation that will likely to bring the surface water back into compliance;
   d. The surface water or segment is ephemeral or intermittent. The Department shall re-prioritize the surface water or segment if the presence of the pollutant in the listed water poses a threat to the health and safety of humans, aquatic life, or wildlife using the water, or the pollutant is contributing to the impairment of a downstream perennial surface water or segment;
   e. The pollutant poses a low ecological and human health risk;
   f. Insufficient data exist to determine the source of the pollutant load;
   g. The uncertainty of timely coordination with national and international entities concerning international waters;
   h. Naturally occurring conditions are a major contributor to the impairment; and
   i. No documentation or effective analytical tools exist to develop a TMDL for the surface water or segment with reasonable accuracy.

C. The Department will target surface waters with high priority factors in subsections (B)(1)(a) through (B)(1)(d) for initiation of TMDLs within two years following EPA approval of the 303(d) List.

D. The Department may shift priority ranking of a surface water or segment for any of the following reasons:
1. A change in federal, state, or tribal policies or priorities that affect resources to complete a TMDL;
2. Resource efficiencies for coordinating TMDL development with other monitoring activities, including the Department's ambient monitoring program that monitors watersheds on a five-year rotational basis;
3. Resource efficiencies for coordinating TMDL development with Department remedial or compliance programs;

4. New information is obtained that will revise whether the surface water or segment is a high priority based on factors in subsection (B); and
5. Reduction or increase in staff or budget involved in the TMDL development.

E. The Department may complete a TMDL initiated before July 12, 2002 for a surface water or segment that was listed as impaired on the 1998 303(d) List but does not qualify for listing under the criteria in R18-11-605, if:

1. The TMDL investigation establishes that the water quality standard is not being met and the allocation of loads is expected to bring the surface water into compliance with standards,
2. The Department estimates that more than 50 percent of the cost of completing the TMDL has been spent,
3. There is community involvement and interest in completing the TMDL, or
4. The TMDL is included within an EPA-approved state workplan initiated before July 12, 2002.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

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49-203. Powers and duties of the director and department

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.

2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:

(a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.

(b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.

(c) Maintenance but not construction of drainage ditches.

(d) Construction and maintenance of irrigation ditches.

(e) Maintenance of structures such as dams, dikes and levees.

4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.

5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.

6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.

8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.

9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection B shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State agencies are exempt from all fees imposed pursuant to this chapter except for those fees associated with the dredge and fill permit program established pursuant to article 3.2 of this chapter. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

10. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.

11. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

12. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants

change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case-by-case basis, taking into account site conditions and operational factors.

13. Consider evidence gathered by the Arizona navigable stream adjudication commission established by section 37-1121 when deciding whether a permit is required to discharge pursuant to article 3.1 of this chapter.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1, 3.2 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

9. Adopt by rule a permit program for the discharge of dredged or fill material into WOTUS for purposes of implementing the permit program established by 33 United States Code section 1344.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant to assist the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection B, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 9 of this section.

D. The director shall integrate all of the programs authorized in this section and other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

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49-232. Lists of impaired waters; data requirements; rules

A. At least once every five years, the department shall prepare a list of impaired WOTUS to comply with section 303(d) of the clean water act (33 United States Code section 1313(d)). The department shall provide public notice and allow for comment on a draft list of impaired WOTUS prior to its submission to the United States environmental protection agency. The department shall prepare written responses to comments received on the draft list. The department shall publish the list of impaired WOTUS that it plans to submit initially to the regional administrator and a summary of the responses to comments on the draft list in the Arizona administrative register at least forty-five days before submission of the list to the regional administrator. Publication of the list in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 that may be appealed by any party that submitted written comments on the draft list. If the department receives a notice of appeal of a listing pursuant to section 41.1092.03 within forty-five days after the publication of the list in the Arizona administrative register, the department shall not include the challenged listing in its initial submission to the regional administrator. The department may subsequently submit the challenged listing to the regional administrator if the listing is upheld in the director's final administrative decision pursuant to section 41-1092.08, or if the challenge to the listing is withdrawn prior to a final administrative decision.

B. On or before December 31, 2022 and at least once every five years thereafter, the department shall prepare a list of impaired non-WOTUS protected surface waters. The department shall provide public notice and opportunity to comment on a draft list of impaired non-WOTUS protected surface waters prepared under this subsection. The department shall prepare written responses to comments received on the draft list. The department shall publish the list of impaired non-WOTUS protected surface waters and a summary of the responses to comments on the draft list in the Arizona administrative register. Publication of the list in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 and may be appealed by any party that submitted written comments on the draft list.

C. In determining whether a water is impaired, the department shall consider only reasonably current credible and scientifically defensible data that the department has collected or has received from another source. Results of water sampling or other assessments of water quality, including physical or biological health, shall be considered credible and scientifically defensible data only if the department has determined all of the following:

data only if the department has determined all of the following:

1. Appropriate quality assurance and quality control procedures were followed and documented in collecting and analyzing the data.

2. The samples or analyses are representative of water quality conditions at the time the data was collected.

3. The data consists of an adequate number of samples based on the nature of the water in question and the parameters being analyzed.

4. The method of sampling and analysis, including analytical, statistical and modeling methods, is generally accepted and validated in the scientific community as appropriate for use in assessing the condition of the water.

D. The department shall adopt by rule the methodology to be used in identifying waters as impaired. The rules shall specify all of the following:

1. Minimum data requirements and quality assurance and quality control requirements that are consistent with subsection C of this section and that must be satisfied in order for the data to serve as the basis for listing and delisting decisions.

2. Appropriate sampling, analytical and scientific techniques that may be used in assessing whether a water is impaired.

3. Any statistical or modeling techniques that the department uses to assess or interpret data.

4. Criteria for including and removing waters from the list of impaired waters, including any implementation procedures developed pursuant to subsection G of this section. The criteria for removing a water from the list of impaired waters shall not be any more stringent than the criteria for adding a water to that list.

E. In assessing whether a water is impaired, the department shall consider the data available in light of the nature of the water in question, including whether the water is an ephemeral water. A water in which pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable surface water quality standards shall not be listed as impaired.

F. If the department has adopted a numeric surface water quality standard for a pollutant and that standard is not being exceeded in a water, the department shall not list the water as impaired based on a conclusion that the pollutant causes a violation of a narrative or biological standard unless:

1. The department has determined that the numeric standard is insufficient to protect water quality.

2. The department has identified specific reasons that are appropriate for the water in question, that are based on generally accepted scientific principles and that support the department's determination.

G. Before listing a water as impaired based on a violation of a narrative or biological surface water quality standard and after

G. Before listing a water as impaired based on a violation of a narrative or biological surface water quality standard and after providing an opportunity for public notice and comment, the department shall adopt implementation procedures that specifically identify the objective basis for determining that a violation of the narrative or biological criterion exists. A total maximum daily load designed to achieve compliance with a narrative or biological surface water quality standard shall not be adopted until the implementation procedure for the narrative or biological surface water quality standard has been adopted.

H. On request, the department shall make available to the public data used to support the listing of a water as impaired and may charge a reasonable fee to persons requesting the data.

I. By January 1, 2002, the department shall review the list of waters identified as impaired as of January 1, 2000 to determine whether the data that supports the listing of those waters complies with this section. If the data that supports a listing does not comply with this section, the listed water shall not be included on future lists submitted to the United States environmental protection agency pursuant to 33 United States Code section 1313(d) unless in the interim data that satisfies the requirements of this section has been collected or received by the department.

J. The department shall add a water to or remove a water from the list using the process described in subsection A or B of this section outside of the normal listing cycle if it collects or receives credible and scientifically defensible data that satisfies the requirements of this section and that demonstrates that the current quality of the water is such that it should be removed from or added to the list. A listed water may no longer warrant classification as impaired or an unlisted water may be identified as impaired if the applicable surface water quality standards, implementation procedures or designated uses have changed or if there is a change in water quality.

K. The director shall apply the rules adopted pursuant to subsection D of this section for identification of impaired waters to non-WOTUS protected surface waters until specifically changed by rule. The director shall amend rules to update the impaired waters identification rules within one year after adopting surface water quality standards for non-WOTUS protected surface waters pursuant to section 49-221, subsection A, paragraph 2.

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49-233. Priority ranking and schedule

A. Each list developed by the department pursuant to section 49-232 shall contain a priority ranking of WOTUS identified as impaired and for which total maximum daily loads are required pursuant to section 49-234 and a schedule for the development of all required total maximum daily loads.

B. In the first list submitted to the United States environmental protection agency after July 18, 2000, the schedule shall be sufficient to ensure that all required total maximum daily loads will be developed within fifteen years after the date the list is approved by the environmental protection agency. Total maximum daily loads that are required to be developed for WOTUS that are included for the first time on subsequent lists shall be developed within fifteen years of the initial inclusion of the water on the list.

C. As part of the rulemaking prescribed by section 49-232, subsection D, the department shall identify the factors that it will use to prioritize WOTUS that require development of total maximum daily loads. At a minimum and to the extent relevant data is available, the department shall consider the following factors in prioritizing WOTUS for development of total maximum daily loads:

1. The designated uses of the WOTUS.

2. The type and extent of risk from the impairment to human health or aquatic life.

3. The degree of public interest and support, or its lack.

4. The nature of the WOTUS, including whether it is an ephemeral, intermittent or effluent-dependent water.

5. The pollutants causing the impairment.

6. The severity, magnitude and duration of the violation of the applicable surface water quality standard.

7. The seasonal variation caused by natural events such as storms or weather patterns.

8. Existing treatment levels and management practices.

9. The availability of effective and economically feasible treatment techniques, management practices or other pollutant loading reduction measures.

10. The recreational and economic importance of the water.

11. The extent to which the impairment is caused by discharges or activities that have ceased.

12. The extent to which natural sources contribute to the impairment.

13. Whether the water is accorded special protection under federal or state water quality law.

14. Whether action that is taken or that is likely to be taken under other programs, including voluntary programs, is likely to make significant progress toward achieving applicable standards even if a total maximum daily load is not developed.

15. The time expected to be required to achieve compliance with applicable surface water quality standards.

16. The availability of documented, effective analytical tools for developing a total maximum daily load for the water with reasonable accuracy.

17. Department resources and programmatic needs.

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The Arizona Revised Statutes have been updated to include the revised sections from the 55th Legislature, 2nd Regular Session. Please note that the next update of this compilation will not take place until after the conclusion of the 56th Legislature, 1st Regular Session, which convenes in January 2023.

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This online version of the Arizona Revised Statutes is primarily maintained for legislative drafting purposes and reflects the version of law that is effective on January 1st of the year following the most recent legislative session. The official version of the Arizona Revised Statutes is published by Thomson Reuters.

49-235. Rules

The department shall adopt any rules necessary to implement this article.

Gmail Jonathan Quinsey <quinsey.jonathan@azdeq.gov>

Fwd: ADEQ request for Governor's Office Approval to Proceed with Surface Water Quality Rulemakings

5 messages

Edwin Slade <slade.edwin@azdeq.gov> Fri, May 26, 2023 at 1:22 PM
To: Tiffany Andersen Volcko <andersen.tiffany@azdeq.gov>, Jonathan Quinsey <quinsey.jonathan@azdeq.gov>

---------- Forwarded message ---------
From: **Karen Peters** <peters.karen@azdeq.gov>
Date: Fri, May 26, 2023 at 12:49 PM
Subject: Fwd: ADEQ request for Governor's Office Approval to Proceed with Surface Water Quality Rulemakings
To: Maren Mahoney <mmahoney@az.gov>, Patrick Adams <padams@az.gov>
Cc: Edwin Slade <slade.edwin@azdeq.gov>, Trevor Baggiore <baggiore.trevor@azdeq.gov>, Amanda Stone <stone.amanda@azdeq.gov>

Good afternoon Maren -

As discussed in your recent meeting with Eddie, ADEQ is requesting Governor's Office approval to proceed with two rulemakings for Surface Water Quality rules. The exemption memos and draft stakeholder engagement plan for those rulemakings are attached. We would appreciate your approval to proceed with the rulemaking.

1. Water Quality Standards
ADEQ must update surface water quality standards to levels required by EPA, pursuant to the Clean Water Act. This process is also known as the Triennial Review because it is required every three years.
2. Impaired Waters
ADEQ seeks to update its outdated process for listing and removing surface waters from the impaired waters list pursuant to the Clean Water Act, to conform to the best available science. ADEQ must also establish a process for listing impaired waters for the new state Surface Water Protection Program.

Please let me know if you have any questions or concerns - thank you!

Best regards,

Karen Peters
Director
Arizona Department of Environmental Quality
Ph: 602-771-6656

--
Edwin Slade
Administrative Counsel
O: 602-771-2242
M: 602-540-0972

azdeq.gov

Your feedback matters to ADEQ. Visit azdeq.gov/feedback

3 attachments

Water Quality Standard Exception Memo.docx
35K

IWIR Exception Memo.docx
314K

Gov's Office Communications and Engagement Plan - 2023 Surface Water Rulemakings (DRAFT).docx
14K

Trevor Baggiore <baggiore.trevor@azdeq.gov> Mon, Jul 17, 2023 at 2:07 PM
To: Jonathan Quinsey <quinsey.jonathan@azdeq.gov>, Erin Jordan <jordan.erin@azdeq.gov>, Josephine Maressa <maressa.josephine@azdeq.gov>

FYI

Thanks,

Trevor Baggiore
Water Quality Division Director
Ph: 602-771-2321

azdeq.gov

Your feedback matters to ADEQ. Visit azdeq.gov/feedback

---------- Forwarded message ---------
From: **Patrick Adams** <padams@az.gov>
Date: Mon, Jul 17, 2023 at 11:41 AM
Subject: Re: ADEQ request for Governor's Office Approval to Proceed with Surface Water Quality Rulemakings
To: Karen Peters <peters.karen@azdeq.gov>
Cc: Maren Mahoney <mmahoney@az.gov>, Edwin Slade <slade.edwin@azdeq.gov>, Trevor Baggiore <baggiore.trevor@azdeq.gov>, Amanda Stone <stone.amanda@azdeq.gov>

Good morning, Director Peters -

The Governor's Office has reviewed ADEQ's request to initiate Rulemakings for *A.A.C. Title 18, Chapter 11, Article 1 – Water Quality Standards* and *A.A.C. Title 18, Chapter 11, Article 1 – Water Quality Standards* (attached).

ADEQ is approved to proceed with the Rulemakings. Please keep us apprised as the process moves forward.

Thank you,

OFFICE OF THE GOVERNOR
KATIE HOBBS

Patrick J. Adams
Water Policy Advisor

Office of Governor Katie Hobbs
padams@az.gov
Cell: 480-904-7591

1700 W Washington St.
Phoenix, AZ 85007
https://azgovernor.gov

[Quoted text hidden]

2 attachments

Water Quality Standard Exception Memo.docx
35K

IWIR Exception Memo.docx
314K

Trevor Baggiore <baggiore.trevor@azdeq.gov> Wed, Jul 19, 2023 at 7:40 AM
To: Erin Jordan <jordan.erin@azdeq.gov>, Jonathan Quinsey <quinsey.jonathan@azdeq.gov>, Josephine Maressa <maressa.josephine@azdeq.gov>

FYI

Thanks,

Trevor Baggiore
Water Quality Division Director
Ph: 602-771-2321

azdeq.gov

Your feedback matters to ADEQ. Visit azdeq.gov/feedback

---------- Forwarded message ---------
From: **Patrick Adams** <padams@az.gov>
Date: Wed, Jul 19, 2023 at 7:32 AM
Subject: Re: ADEQ request for Governor's Office Approval to Proceed with Surface Water Quality Rulemakings
To: Karen Peters <peters.karen@azdeq.gov>
Cc: Amanda Stone <stone.amanda@azdeq.gov>, Edwin Slade <slade.edwin@azdeq.gov>, Maren Mahoney <mmahoney@az.gov>, Trevor Baggiore <baggiore.trevor@azdeq.gov>

Hi, Karen -

Thanks for the clarification. Both are approved:

- A.A.C. Title 18, Chapter 11, Article 1 – Water Quality Standards
- A.A.C. Title 18, Chapter 11, Article 6 – Impaired Waters

Best,

PJA

On Tue, Jul 18, 2023 at 12:48 PM Karen Peters <peters.karen@azdeq.gov> wrote:

> Thanks very much Patrick! I just want to confirm, as there were two rulemakings pending - while you attached both of them, your note references just one of them. Did you also approve A.A.C. Title18, Chapter 11, Article 6 - Impaired Waters? Many thanks again...
>
> Best regards,
>
> **Karen Peters**
> Director
> Arizona Department of Environmental Quality
> Ph: 602-771-6656
> She/Her/Hers
>
> [Quoted text hidden]

Erin Jordan <jordan.erin@azdeq.gov> Wed, Jul 19, 2023 at 7:43 AM
To: Tiffany Andersen Volcko <andersen.tiffany@azdeq.gov>, Rik Gay <gay.richard@azdeq.gov>, Gwen Minnier <minnier.gwen@azdeq.gov>, Jonathan Quinsey <quinsey.jonathan@azdeq.gov>

We are officially good to go! Thanks Tiffany for helping document so we can move forward.

Erin Jordan, PhD
Surface Water Quality Improvement Section Manager
M: 602-509-0472
azdeq.gov

[Quoted text hidden]
[Quoted text hidden]

Erin Jordan <jordan.erin@azdeq.gov> Tue, Sep 5, 2023 at 1:57 PM
To: Jonathan Quinsey <quinsey.jonathan@azdeq.gov>

Email string.

Erin Jordan, PhD
Surface Water Quality Improvement Section Manager
M: 602-509-0472
azdeq.gov

Your feedback matters to ADEQ. Visit azdeq.gov/feedback

---------- Forwarded message ---------
From: **Erin Jordan** <jordan.erin@azdeq.gov>
Date: Wed, Jul 19, 2023 at 6:53 PM
Subject: Re: ADEQ request for Governor's Office Approval to Proceed with Surface Water Quality Rulemakings
To: Tiffany Andersen Volcko <andersen.tiffany@azdeq.gov>
Cc: Edwin Slade <slade.edwin@azdeq.gov>

Thanks!

This is the NDO and it's already in RTF form. I can resend to Rhonda. I made a few minor changes. I think it's ready to go otherwise.

Rhonda says "I'll need you to email me one agency receipt – it can be in Word **or** RTF but I just want one version of the agency receipt. I'll also need the actual Notice of Rulemaking Docket Opening but that needs to come to me in **both** Word and RTF (if you can do that)."

Attached is the NDO. What is the receipt she needs?

Thank you for your time. - Erin

Erin Jordan, PhD
Surface Water Quality Improvement Section Manager
M: 602-509-0472
azdeq.gov

Your feedback matters to ADEQ. Visit azdeq.gov/feedback

On Wed, Jul 19, 2023 at 9:08 AM Tiffany Andersen Volcko <andersen.tiffany@azdeq.gov> wrote:

> Happy to help!
>
> Best regards,
> Tiffany
> [Quoted text hidden]

2023 TR NDO for SOS Submitted.rtf
121K

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 11

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: **September 19, 2023**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 11

Summary

This Five Year Review Report (5YRR) from Arizona Health Care Cost Containment System (AHCCCS) or (Administration), covers ten (10) rules in Title 9, Chapter 22, Article 11 regarding Civil Monetary Penalties and Assessments. These rules relate to grounds for imposing civil monetary penalties and assessments, methods for determining the proper dollar amount, mitigating and aggravating circumstances to consider in making a determination, and notice and hearing requirements and procedures.

In the prior 5YRR for these rules, which was approved by the Council in October 2018, the Administration had recommended similar changes to the rules. The Administration indicates it was unable to enact the changes due to an agency hold on rulemakings during the COVID Public Health Emergency. The Administration has requested an exemption from the statutory rulemaking moratorium, and it was approved by the Governor's office on June 28, 2023. AHCCCS is currently drafting the Notice of Proposed Rulemaking and anticipates submitting it to the Secretary of State's office for publication as soon as possible. The Administration anticipates being able to supplement this filing with the filed Notice of Proposed Rulemaking in advance of the Council's Study Session.

Proposed Action

The Administration has initiated the rulemaking process to amend three (3) rules to improve clarity, consistency, and effectiveness. The Administration indicates that it plans to amend these rules by December 2023.

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:

According to the Administration, the economic impact of the chapter under review remains the same as the prior 5YRR.

Stakeholders include the Administration and entities that have been assessed a penalty by the Administration.

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 rules do not impose any additional burden or costs to regulated persons. Moreover, they impose the least burden and cost to achieve the same benefits as the Article currently provides to regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

The Administration states 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 identifies three (3) rules that are not clear, concise, or understandable, and proposes the following changes:

R9-22-1101(C)(7) "'Reason to know' or 'had reason to know' means that a person~~,~~ acts in deliberate ignorance of the truth or falsity of~~,~~ information or with reckless disregard of the truth or falsity of information. No proof of specific intent to defraud is required."

R9-22-1104(1) "Nature and circumstances of ~~a claim~~ each claim." (To match R9-22-1105)
(2)(a) "Each service is the result of an unintentional and unrecognized error in the process that the person followed in presenting or in causing to present ~~the service~~ a claim for the service,"

R9-22-1105(1)(a) "A person has forged, altered, recreated, ~~or~~ destroyed, or failed to maintain records;"
(1)(c) "The services are of ~~several~~ multiple billing code types,"
(1)(d) "All the dates of services ~~did not occur within six months or less~~ occurred in a period of greater than six months."
(2) "The degree of culpability of a person who presents or causes to present each claim is an aggravating circumstance, including but not limited to, if:"
(2)(d) "The person knows or had reason to know that the payment would violate state or federal law."
(4) "The adverse effect on patient care that resulted, or could have resulted, from the failure to provide medically necessary care by a person in connection with a claim is an aggravating circumstance."

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Administration indicates that the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Administration indicates that the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Administration indicates 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 states that the rules are not more stringent than 31 U.S.C. 3729-3733.

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 Administration indicates that the rules do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

As indicated above, the rules are not clear, concise, and understandable. The Administration has initiated the rulemaking process and the Governor's office approved their exemption request on June 28, 2023. The Administration indicates that it will be submitting the Notice of Proposed rulemaking this week, and anticipates that the rules will come before the Council by December 2023.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Director

June 29, 2023

VIA EMAIL: grrc@azdoa.gov

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

RE: AHCCCS Title 9, Chapter 22, Article 11;

Dear Ms. Sornsin:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 11 due on June 29, 2023.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4232 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

www.azahcccs.gov
602-417-4000
801 East Jefferson Street, Phoenix, AZ 85034

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 11

July 2023

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 36-2918.

Specific Statutory Authority: A.R.S. § 36-2957.

2. **The objective of each rule:**

Rule	Objective
R9-22-1101	Provides definitions and general requirements for Civil Monetary Penalties.
R9-22-1102	Provides requirements of how to determine the amount of a penalty.
R9-22-1104	Provides mitigating circumstances considered when determining a penalty.
R9-22-1105	Provides aggravating circumstances considered when determining a penalty.
R9-22-1106	Describes the notice requirements for Civil Monetary Penalties.
R9-22-1108	Describes how to request a compromise with AHCCCS.
R9-22-1109	Describes what occurs due to a failure to respond to the Notice of Intent.
R9-22-1110	Describes how to request a state fair hearing.
R9-22-1111	Describes the Burden of Proof in a state fair hearing.
R9-22-1112	Provides AHCCCS's right to withdraw or seek a continuance.

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
R9-22-1101	Change to read: "Reason to know" or "had reason to know" means that a person acts in deliberate ignorance of the truth or falsity of information or with reckless disregard of the truth or falsity of information. No proof of specific intent to defraud is required.

R9-22-1104	Change “a claim” to “each claim” to match R9-22-1105. Change 2.a. to read “Each service is the result of an unintentional and unrecognized error in the process that the person followed in presenting or in causing to present a claim for the service,”
R9-22-1105	Change 1.a. to read “A person has forged, altered, recreated, destroyed, or failed to maintain records;” Change 1.c. to read “The services are of multiple billing code types,” Change 1.d. to read “All the dates of services occurred in a period of greater than six months,” Change 2. To read “The degree of culpability of a person who presents or causes to present each claim is an aggravating circumstance, including but not limited to, if:” Add 2.d. “The person knows or had reason to know that the payment would violate state or federal law.” Change 4. To read: The adverse effect on patient care that resulted, or could have resulted, from the failure to provide medically necessary care by a person in connection with a claim is an aggravating circumstance.

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:

No changes to the rule are proposed so substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. Therefore, the economic impact of this chapter remains the same as the prior 5YRR.

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?

The prior 5YRR proposed to request from the Governor’s office to begin an expedited rulemaking within 180 days of GRRC’s approval of this report in order to make these changes and update the cross references for the ease of use of AHCCCS’s members. Those rules were not enacted following the last 5YRR due to an agency hold on rulemakings during the COVID Public Health Emergency.

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 current rule still creates the least burden and cost for regulated persons. Currently the structure of AHCCCS rules is that each Chapter applies to a different part of AHCCCS program, usually pertaining to eligibility criteria. Thus Chapter 22 pertains to AHCCCS's acute-care-eligible population, which is the largest proportion of our members, and this is the reason the cross-reference references Chapter 22 as it is where AHCCCS houses vast majority of its rules. Chapter 28 pertains to AHCCCS's long-term care population, Chapter 21 to Seriously Mentally Ill population, Chapter 31 to Kidscare/CHIP eligible population and Chapter 29 to dual-Medicare eligible population. At this time, AHCCCS believes this is the most easily understandable method for its members, providers, and contractors to identify where rules are located, and which rules apply to the population they are either a part of, or provide services to. Therefore, AHCCCS believes the cross reference is still necessary because it shows long-term care providers, and members, that if the Office of Inspector General assess an overpayment against them as a result of an investigation, they can still apply the civil monetary penalties via aggravating or mitigating factors, to get to a final overpayment amount.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X__

The rules are not more stringent than 31 U.S.C. 3729-3733.

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

The Administration proposes to enact the recommended changes in this 5YRR via a regular rulemaking following GRRC's approval of this 5YRR, and we have already received approval from the Governor's Office for an exemption from the moratorium for a regular rulemaking. AHCCCS will be submitted the Notice of Proposed rulemaking this week, in advance of the Study Session. This should allow for enough time to have the Notice of Final Rulemaking submitted to the Council by the December deadline.

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

AHCCCS shall consider any of the following to be mitigating circumstances when determining the amount of a penalty, assessment, or penalty and assessment.

1. Nature and circumstances of a claim. The following are mitigating circumstances:
   a. All the services are of the same type,
   b. All the dates of services occurred within six months or less,
   c. The number of claims submitted is less than 25,
   d. The nature and circumstances do not indicate a pattern of inappropriate claims for the services, and
   e. The total amount claimed for the services is less than $1,000.
2. Degree of culpability. The degree of culpability of a person who presents or causes to present a claim is a mitigating circumstance if:
   a. Each service is the result of an unintentional and unrecognized error in the process that the person followed in presenting or in causing to present the service,
   b. Corrective steps were taken promptly by the person after the error was discovered, and
   c. The person had a fraud and abuse control plan that was operating effectively at the time each claim was presented or caused to be presented.
3. Financial condition. The financial condition of a person who presents or causes to present a claim is a mitigating circumstance if the imposition of a penalty, assessment, or penalty and assessment without reduction will render the provider incapable to continue providing services. AHCCCS shall consider the resources available to the person when determining the amount of the penalty, assessment, or penalty and assessment.
4. Other matters as justice may require. AHCCCS shall take into account other circumstances of a mitigating nature, if in the interest of justice, the circumstances require a reduction of the penalty, assessment, or penalty and assessment.

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). 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).

R9-22-1105. Aggravating Circumstances

AHCCCS shall consider any of the following to be aggravating circumstances when determining the amount of a penalty, assessment, or penalty and assessment.

1. Nature and circumstances of each claim. The nature and circumstances of each claim and the circumstances under which the claim is presented or caused to be presented are aggravating circumstances if:
   a. A person has forged, altered, recreated, or destroyed records;
   b. The person refuses to provide pertinent documentation to AHCCCS for a claim or refuses to cooperate with investigators;
   c. The services are of several types;
   d. All the dates of services did not occur within six months or less;
   e. The number of claims submitted is greater than 25;
   f. The nature and circumstances indicate a pattern of inappropriate claims for the services; and
   g. The total amount claimed for the services is $5,000 or greater.
2. Degree of culpability. The degree of culpability of a person who presents or causes to present each claim is an aggravating circumstance if:
   a. The person knows or had reason to know that each service was not provided as claimed,
   b. The person knows or had reason to know that no payment could be made because the person had been excluded from reimbursement by AHCCCS, or
   c. The person knows or had reason to know that the payment would violate the terms of an agreement between the person and AHCCCS system.
3. Prior offenses. The prior offenses of a person who presents or causes to present each claim are an aggravating circumstance if:
   a. At any time before the submittal of the claim the person was held criminally or civilly liable for any act, or
   b. The person had received an administrative sanction in connection with:
      i. A Medicaid program,
      ii. A Medicare program, or
      iii. Any other public or private program of reimbursement for medical services.
4. Effect on patient care. The adverse effect on patient care that resulted, or could have resulted, from the failure to provide medically necessary care by a person in connection with a claim.
5. Other matters as justice may require. AHCCCS shall take into account other circumstances of an aggravating nature, if in the interest of justice, the circumstances require an increase of the penalty, assessment, or penalty and assessment.

Historical Note

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).

R9-22-1106. Notice of Intent

If AHCCCS imposes a penalty, assessment, or a penalty and assessment, AHCCCS shall hand deliver or send by certified mail return receipt requested or Federal Express to the person, a written Notice of Intent to impose a penalty, assessment, or a penalty and assessment. The Notice of Intent shall include:

1. The statutory basis for the penalty, assessment, or the penalty and assessment;
2. Identification of the state or federal regulation and state or federal law that AHCCCS alleges has been violated;
3. The factual basis for AHCCCS' determination that the penalty, assessment, or the penalty and assessment should be imposed;
4. The amount of the penalty, assessment, or penalty and assessment;
5. The process for the person to accept or request a compromise of the penalty, assessment, or penalty and assessment; and
6. The process for requesting a State Fair Hearing.

Historical Note

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).

R9-22-1107. Reserved

R9-22-1108. Request for a Compromise

A. To request a compromise, the person shall file a written request with AHCCCS within 30 days from the date of receipt of the Notice of Intent. The written request for compromise shall contain the person's reasons for the reduction or modification of the penalty, assessment, or penalty and assessment.

B. Within 30 days from the date of receipt of the request for compromise from the person, AHCCCS shall send a Notice of Compromise Decision that accepts, denies, or offers a counter proposal to the person's request for compromise. If AHCCCS offers a counter proposal the amount of the counter proposal shall represent the penalty, assessment, or penalty and assessment.
   1. If AHCCCS does not withdraw the Notice of Intent under R9-22-1112 or denies the request for compromise the original penalty, assessment, or penalty and assessment is upheld.
   2. To dispute the Compromise Decision, the person shall file a request for a State Fair Hearing under R9-22-1110 within 30 days from the date of receipt of the Notice of Compromise Decision.

Historical Note

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).

R9-22-1109. Failure to Respond to the Notice of Intent

If a person fails to respond timely to the Notice of Intent, AHCCCS shall uphold the original penalty, assessment, or penalty and assessment.

Historical Note

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).

R9-22-1110. Request for State Fair Hearing

A. To request a State Fair Hearing regarding a dispute concerning a penalty, assessment, or penalty and assessment, the person

shall file a written request for a State Fair Hearing with AHCCCS within 60 days from the date of the receipt of the Notice of Intent under R9-22-1106 or within 30 days from the date of receipt of the Notice of Compromise Decision under R9-22-1108, if applicable.

B. AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the person.

C. AHCCCS shall mail a Director's Decision to the person no later than 30 days after the date the Administrative Law Judge sends the decision of the Office of Administrative Hearings (OAH) to AHCCCS.

D. AHCCCS shall accept a written request for withdrawal of a hearing request if the written request for withdrawal is received from the person before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092 et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092 et seq., a person may withdraw the hearing request only by sending a written request for withdrawal to OAH.

Historical Note

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).

R9-22-1111. Issues and Burden of Proof

A. Preponderance of evidence. In any State Fair Hearing conducted under R9-22-1110, AHCCCS shall prove by a preponderance of the evidence that a person presented or caused to be presented each claim in violation of this Article and any aggravating circumstances under R9-22-1105. A person shall bear the burden of producing and proving by a preponderance of the evidence any circumstance that would justify reducing the amount of the penalty, assessment, or penalty and assessment.

B. Statistical sampling.

1. In meeting the burden of proof described in subsection (A), AHCCCS may introduce the results of a statistical sampling study as evidence of the number and amount of claims that were presented or caused to be presented by the person. A statistical sampling study constitutes prima facie evidence of the number and amount of claims if computed by valid statistical methods.
2. The burden of proof shall shift to the person to produce evidence reasonably calculated to rebut the findings of the statistical sampling study once AHCCCS has made a prima facie case as described in subsection (B)(1). AHCCCS shall be given the opportunity to rebut this evidence.

Historical Note

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).

R9-22-1112. Withdrawal and Continuances

AHCCCS may withdraw the Notice of Intent at any time. Prior to referring a matter to the Office of Administrative Hearings the parties may mutually agree to a continuance.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-22-1201. Definitions

Definitions. The following definitions apply to this Article:

"Adult behavioral health therapeutic home" as defined in 9 A.A.C. 10, Article 1.

"Agency" for the purposes of this Article means a behavioral health facility, a classification of a health care institution, including a mental health treatment agency defined in A.R.S. § 36-501, that is licensed to provide behavioral health services according to A.R.S. Title 36, Chapter 4.

"Assessment" means an analysis of a patient's need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.

"Behavior management services" means services that assist the member in carrying out daily living tasks and other activities essential for living in the community, including personal care services.

"Behavioral health therapeutic home care services" means interactions that teach the client living, social, and communication skills to maximize the client's ability to live and participate in the community and to function independently, including assistance in the self-administration of medication and any ancillary services indicated by the client's treatment plan, as appropriate.

"Behavioral health services" means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual's behavioral health issue.

"Behavioral health technician" means an individual who is not a behavioral health professional who provides behavioral health services at or for a health care institution according to the health care institution's policies and procedures that:

If the behavioral health services were provided in a setting other than a licensed health care institution, the individual would be required to be licensed as a behavioral professional under A.R.S. Title 32, Chapter 33; and

Are provided with clinical oversight by a behavioral health professional.

"Case management" for the purposes of this Article, means services and activities that enhance treatment, compliance, and effectiveness of treatment.

"Certified psychiatric nurse practitioner" means a registered nurse practitioner who meets the psychiatric specialty area requirements under A.A.C. R4-19-505(C).

"Clinical oversight" means as described under 9 A.A.C. 10.

"Cost avoid" means to avoid payment of a third-party liability claim when the probable existence of third-party liability has been established under 42 CFR 433.139(b).

"Court-ordered evaluation" has the same meaning as "evaluation" in A.R.S. § 36-501.

"Court-ordered pre-petition screening" has the same meaning as "pre-petition screening" in A.R.S. § 36-501.

"Court-ordered treatment" means treatment provided according to A.R.S. Title 36, Chapter 5.

36-2957. Prohibited acts; penalties

A. No person may present or cause to be presented to the administration or to a program contractor:

1. A claim for an item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for an item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment which the person knows or has reason to know may not be made by the system because:

(a) The person was not a member on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of care.

4. A claim for a physician's service, or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained a license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the person was not certified.

5. A request for payment which the person knows or has reason to know is in violation of an agreement between the person and the administration or the program contractor.

B. A person who violates a provision of subsection A is subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or his designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or his designee in accordance with criteria established in rules. The director or his designee may make a determination in the same proceeding to exclude the person from system participation.

D. A person adversely affected by a determination of the director or his designee under this section may appeal that decision in accordance with grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the Arizona long-term care system fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented.

36-2918. Prohibited acts; penalties; subpoena power

A. A person may not present or cause to be presented to this state or to a contractor:

1. A claim for a medical or other item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for a medical or other item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment that the person knows or has reason to know may not be made by the system because:

(a) The person was terminated or suspended from participation in the program on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of health care.

(c) The patient was not a member on the date for which the claim is being made.

4. A claim for a physician's service or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained the license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the individual was not certified.

5. A request for payment that the person knows or has reason to know is in violation of an agreement between the person and this state or the administration.

B. A person who violates a provision of subsection A of this section is subject, in addition to any other penalties that may be prescribed by federal or state law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or the director's designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or the director's designee in accordance with criteria established in rules. The director or director's designee may make this determination in the same proceeding to exclude the person from system participation.

D. A person who is adversely affected by a determination of the director or the director's designee under this section may appeal that decision in accordance with provider grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the state general fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration or this state to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C of this section is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa

county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented, except that the time to file a collection action is tolled either:

1. After any administrative action arising out of or referencing the wrongful acts is commenced and until the action's final resolution, including any legal challenges to the action.

2. While the state and the administration did not know, and with the exercise of reasonable diligence, should not have known, that a claim was false, fraudulent or not provided as claimed.

G. Pursuant to an investigation of prohibited acts or fraud and abuse involving the system, the director, and any person designated by the director in writing, may examine any person under oath and issue a subpoena to any person to compel the attendance of a witness. The administration by subpoena may compel the production of any record in any form necessary to support an investigation or an audit. The administration shall serve the subpoenas in the same manner as subpoenas in a civil action. If the subpoenaed person does not appear or does not produce the record, the director or the director's designee by affidavit may apply to the superior court in the county in which the controversy occurred and the court in that county shall proceed as though the failure to comply with the subpoena had occurred in an action in the court in that county.

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedLimited on Constitutional Grounds by U.S. v. Hawley, N.D.Iowa, Aug. 01, 2011

KeyCite Yellow Flag - Negative TreatmentProposed Legislation

United States Code Annotated
Title 31. Money and Finance (Refs & Annos)
Subtitle III. Financial Management
Chapter 37. Claims (Refs & Annos)
Subchapter III. Claims Against the United States Government (Refs & Annos)

31 U.S.C.A. § 3729

§ 3729. False claims

Currentness

(a) Liability for certain acts.--

(1) In general.--Subject to paragraph (2), any person who--

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410[1]), plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.--If the court finds that--

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions.--A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.--For purposes of this section--

(1) the terms “knowing” and “knowingly” --

(A) mean that a person, with respect to information--

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term “claim”--

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that--

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government--

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption from disclosure.--Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion.--This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

CREDIT(S)

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 978; Pub.L. 99-562, § 2, Oct. 27, 1986, 100 Stat. 3153; Pub.L. 103-272, § 4(f)(1)(O), July 5, 1994, 108 Stat. 1362; Pub.L. 111-21, § 4(a), May 20, 2009, 123 Stat. 1621.)

Footnotes

1 So in original. Probably should read "Public Law 101-410".

31 U.S.C.A. § 3729, 31 USCA § 3729

Current through P.L.118-13. Some statute sections may be more current, see credits for details.

End of Document

31 U.S.C.A. § 3730

§ 3730. Civil actions for false claims

Effective: December 27, 2022
Currentness

(a) Responsibilities of the Attorney General.--The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) Actions by private persons.--(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure.[1] The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall--

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the parties to qui tam actions.--(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as--

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government

has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to qui tam plaintiff.--(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting[2] Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain Actions Barred.--(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 13103(f) of title 5.

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed--

(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2)[3] who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

(f) Government not liable for certain expenses.--The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) Fees and expenses to prevailing defendant.--In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

(h) Relief from retaliatory actions.--

(1) In general.--Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any

other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.

(2) Relief.--Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

(3) Limitation on bringing civil action.--A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.

CREDIT(S)

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 978; Pub.L. 99-562, §§ 3, 4, Oct. 27, 1986, 100 Stat. 3154, 3157; Pub.L. 100-700, § 9, Nov. 19, 1988, 102 Stat. 4638; Pub.L. 101-280, § 10(a), May 4, 1990, 104 Stat. 162; Pub.L. 103-272, § 4(f)(1)(P), July 5, 1994, 108 Stat. 1362; Pub.L. 111-21, § 4(d), May 20, 2009, 123 Stat. 1624; Pub.L. 111-148, Title X, § 10104(j)(2), Mar. 23, 2010, 124 Stat. 901; Pub.L. 111-203, Title X, § 1079A(c), July 21, 2010, 124 Stat. 2079; Pub.L. 117-286, § 4(c)(36), Dec. 27, 2022, 136 Stat. 4358.)

Footnotes

1 See, now, Rule 4(i) of the Federal Rules of Civil Procedure.

2 So in original. Probably should be “Accountability”.

3 So in original. Probably should be “or (ii) has”.

31 U.S.C.A. § 3730, 31 USCA § 3730
Current through P.L.118-13. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 31. Money and Finance (Refs & Annos)
Subtitle III. Financial Management
Chapter 37. Claims (Refs & Annos)
Subchapter III. Claims Against the United States Government (Refs & Annos)

31 U.S.C.A. § 3733

§ 3733. Civil investigative demands

Currentness

(a) In general.--

(1) Issuance and service.--Whenever the Attorney General, or a designee (for purposes of this section), has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b), issue in writing and cause to be served upon such person, a civil investigative demand requiring such person--

(A) to produce such documentary material for inspection and copying,

(B) to answer in writing written interrogatories with respect to such documentary material or information,

(C) to give oral testimony concerning such documentary material or information, or

(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act[1] investigation.

(2) Contents and deadlines.--

(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

(B) If such demand is for the production of documentary material, the demand shall--

(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(iii) identify the false claims law investigator to whom such material shall be made available.

(C) If such demand is for answers to written interrogatories, the demand shall--

(i) set forth with specificity the written interrogatories to be answered;

(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

(iii) identify the false claims law investigator to whom such answers shall be submitted.

(D) If such demand is for the giving of oral testimony, the demand shall--

(i) prescribe a date, time, and place at which oral testimony shall be commenced;

(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(b) Protected material or information.--

(1) In general.--A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under--

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(2) Effect on other orders, rules, and laws.--Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service; jurisdiction.--

(1) By whom served.--Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

(2) Service in foreign countries.--Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

(d) Service upon legal entities and natural persons.--

(1) Legal entities.--Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by--

(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Natural persons.--Service of any such demand or petition may be made upon any natural person by--

(A) delivering an executed copy of such demand or petition to the person; or

(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) Proof of service.--A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) Documentary Material.--

(1) Sworn certificates.--The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by--

(A) in the case of a natural person, the person to whom the demand is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(2) Production of materials.--Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) Interrogatories.--Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by--

(1) in the case of a natural person, the person to whom the demand is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral Examinations.--

(1) Procedures.--The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

(2) Persons present.--The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken.--The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) Transcript of testimony.--When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) Certification and delivery to custodian.--The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) Furnishing or inspection of transcript by witness.--Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

(7) Conduct of oral testimony.--(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

(8) Witness fees and allowances.--Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

(i) Custodians of documents, answers, and transcripts.--

(1) Designation.--The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

(2) Responsibility for materials; disclosure.--(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe--

(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) Use of material, answers, or transcripts in other proceedings.--Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

(4) Conditions for return of material.--If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and--

(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(5) Appointment of successor custodians.--In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly--

(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

(j) Judicial Proceedings.--

(1) Petition for enforcement.--Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2) Petition to modify or set aside demand.--(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed--

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery.--(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed--

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(4) Petition to require performance by custodian of duties.--At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(5) Jurisdiction.--Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(6) Applicability of federal rules of civil procedure.--The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(k) Disclosure exemption.--Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

(l) Definitions.--For purposes of this section--

(1) the term "false claims law" means--

(A) this section and sections 3729 through 3732; and

(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

(2) the term "false claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(3) the term "false claims law investigator" means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(4) the term "person" means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

(5) the term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

(6) the term "custodian" means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1);

(7) the term "product of discovery" includes--

(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

(C) any index or other manner of access to any item listed in subparagraph (A); and

(8) the term "official use" means any use that is consistent with the law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of a Department of Justice investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with Government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.

CREDIT(S)

(Added Pub.L. 99-562, § 6(a), Oct. 27, 1986, 100 Stat. 3159; amended Pub.L. 111-21, § 4(c), May 20, 2009, 123 Stat. 1623.)

Footnotes

1 So in original. Probably should be ''law''.

31 U.S.C.A. § 3733, 31 USCA § 3733

Current through P.L.118-13. Some statute sections may be more current, see credits for details.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 28, Article 10

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: **September 19, 2023**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 28, Article 10

Summary

This Five Year Review Report (5YRR) from Arizona Health Care Cost Containment System (AHCCCS) or (Administration), covers one (1) rule in Title 9, Chapter 28, Article 10 regarding Arizona Long-term Care Systems. This rule provides a cross-reference to R9-22-Article 11 which relates to grounds for imposing civil monetary penalties and assessments, methods for determining the proper dollar amount, mitigating and aggravating circumstances to consider in making a determination, and notice and hearing requirements and procedure.

In the prior 5YRR for this rule, which was approved by the Council in October 2018, the Administration had no recommended changes to the rule. The Administration now indicates that the rule is not clear, concise, and understandable.

Proposed Action

The Administration intends to request a rulemaking exemption to enact an expedited rulemaking to amend the one (1) rule to make it more clear, concise, and understandable. Upon GRRC approval, The Administration intends to submit a Notice of Proposed Rulemaking by November 15, 2023.

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 article deals with the basis for civil monetary penalties and assessments for fraudulent claims. The article indicates that AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of penalties. The Administration indicates it did not find any need to revise the rule in the prior five-year review and currently does not propose any changes to the rule. Stakeholders include the Administration and persons or entities that file claims with AHCCCS.

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 indicates no changes to the rule were made or proposed.

4. Has the agency received any written criticisms of the rules over the last five years?

The Administration indicates it received no written criticisms of the rules in the five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Administration indicates that the rule is not clear, concise, and understandable, and proposes that the rule be re-written as, "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"

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 indicates 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 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 Administration indicates that the rules are not more stringent than 31 U.S.C. 3729-3733.

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 Administration indicates that the rules do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Administration relates to one (1) rule in Title 9, Chapter 28, Article 10 regarding Arizona Long-term Care Systems. The Administration indicates the rule is not clear, concise, and understandable. As such, the Administration will seek to amend the rule through expedited rulemaking with an anticipated Notice of Proposed Rulemaking to be filed by November 15, 2023.

Council staff recommends approval of this report.

June 28, 2023

VIA EMAIL: grrc@azdoa.gov

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

RE: AHCCCS Title 9, Chapter 28, Article 10;

Dear Ms. Sornsin:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 28, Article 10 due on June 29, 2023.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4232 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 28, Article 10

July 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2918.

Specific Statutory Authority: A.R.S. § 36-2957.

2. The objective of each rule:

Rule	Objective
R9-28-1001	Provides a cross-reference to R9-22-Article 11.

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	Objective
R9-28-1001	Should be re-written as, "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.

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:

Since the recommended changes are clarifying in nature only, this is still the most cost effective was to administer civil monetary penalties to providers covered by ALTCS.

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?

The prior 5YRR did not find any need to revise the rules, therefore there was no proposed course of action.

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:

No changes are proposed. The current rule still creates the least burden and cost for regulated persons. Currently the structure of AHCCCS rules is that each Chapter applies to a different part of AHCCCS program, usually pertaining to eligibility criteria. Thus Chapter 22 pertains to AHCCCS's acute-care-eligible population, which is the largest proportion of our members, and this is the reason the cross-reference references Chapter 22 as it is where AHCCCS houses vast majority of its rules. Chapter 28 pertains to AHCCCS's long-term care population, Chapter 21 to Seriously Mentally Ill population, Chapter 31 to Kidscare/CHIP eligible population and Chapter 29 to dual-Medicare eligible population. At this time, AHCCCS believes this is the most easily understandable method for its members, providers, and contractors to identify where rules are located, and which rules apply to the population they are either a part of, or provide services to. Therefore, AHCCCS believes the cross reference is still necessary because it shows long-term care providers, and members, that if the Office of Inspector General assess an overpayment against them as a result of an investigation, they can still apply the civil monetary penalties via aggravating or mitigating factors, to get to a final overpayment amount.

12. Are the rules more stringent than corresponding federal laws? Yes ___No _X__

The rules are not more stringent than 31 U.S.C. 3729-3733.

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 intends to request a rulemaking exemption to enact an expedited rulemaking following GRRC's approval of this report. AHCCCS will submit the rulemaking request upon GRRC approval, with the intention of submitted a Notice of Proposed Rulemaking by November 15, 2023.

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

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, subject to all exclusions and limitations.
1. Administration. The program shall be administered under A.R.S. § 36-2932.
2. Provision of services. Behavioral health services shall be provided under A.R.S. § 36-2939, this Chapter and 9 A.A.C. 22, Article 12, as applicable.

36-2957. Prohibited acts; penalties

A. No person may present or cause to be presented to the administration or to a program contractor:

1. A claim for an item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for an item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment which the person knows or has reason to know may not be made by the system because:

(a) The person was not a member on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of care.

4. A claim for a physician's service, or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained a license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the person was not certified.

5. A request for payment which the person knows or has reason to know is in violation of an agreement between the person and the administration or the program contractor.

B. A person who violates a provision of subsection A is subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or his designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or his designee in accordance with criteria established in rules. The director or his designee may make a determination in the same proceeding to exclude the person from system participation.

D. A person adversely affected by a determination of the director or his designee under this section may appeal that decision in accordance with grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the Arizona long-term care system fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented.

36-2918. Prohibited acts; penalties; subpoena power

A. A person may not present or cause to be presented to this state or to a contractor:

1. A claim for a medical or other item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for a medical or other item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment that the person knows or has reason to know may not be made by the system because:

(a) The person was terminated or suspended from participation in the program on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of health care.

(c) The patient was not a member on the date for which the claim is being made.

4. A claim for a physician's service or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained the license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the individual was not certified.

5. A request for payment that the person knows or has reason to know is in violation of an agreement between the person and this state or the administration.

B. A person who violates a provision of subsection A of this section is subject, in addition to any other penalties that may be prescribed by federal or state law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or the director's designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or the director's designee in accordance with criteria established in rules. The director or director's designee may make this determination in the same proceeding to exclude the person from system participation.

D. A person who is adversely affected by a determination of the director or the director's designee under this section may appeal that decision in accordance with provider grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the state general fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration or this state to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C of this section is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa

county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented, except that the time to file a collection action is tolled either:

1. After any administrative action arising out of or referencing the wrongful acts is commenced and until the action's final resolution, including any legal challenges to the action.

2. While the state and the administration did not know, and with the exercise of reasonable diligence, should not have known, that a claim was false, fraudulent or not provided as claimed.

G. Pursuant to an investigation of prohibited acts or fraud and abuse involving the system, the director, and any person designated by the director in writing, may examine any person under oath and issue a subpoena to any person to compel the attendance of a witness. The administration by subpoena may compel the production of any record in any form necessary to support an investigation or an audit. The administration shall serve the subpoenas in the same manner as subpoenas in a civil action. If the subpoenaed person does not appear or does not produce the record, the director or the director's designee by affidavit may apply to the superior court in the county in which the controversy occurred and the court in that county shall proceed as though the failure to comply with the subpoena had occurred in an action in the court in that county.

31 U.S.C.A. § 3730

§ 3730. Civil actions for false claims

Effective: December 27, 2022
Currentness

(a) Responsibilities of the Attorney General.--The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) Actions by private persons.--(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure.[1] The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall--

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the parties to qui tam actions.--(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as--

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government

has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to qui tam plaintiff.--(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting[2] Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain Actions Barred.--(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 13103(f) of title 5.

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed--

(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2)[3] who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

(f) Government not liable for certain expenses.--The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) Fees and expenses to prevailing defendant.--In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

(h) Relief from retaliatory actions.--

(1) In general.--Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any

other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.

(2) Relief.--Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

(3) Limitation on bringing civil action.--A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.

CREDIT(S)

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 978; Pub.L. 99-562, §§ 3, 4, Oct. 27, 1986, 100 Stat. 3154, 3157; Pub.L. 100-700, § 9, Nov. 19, 1988, 102 Stat. 4638; Pub.L. 101-280, § 10(a), May 4, 1990, 104 Stat. 162; Pub.L. 103-272, § 4(f)(1)(P), July 5, 1994, 108 Stat. 1362; Pub.L. 111-21, § 4(d), May 20, 2009, 123 Stat. 1624; Pub.L. 111-148, Title X, § 10104(j)(2), Mar. 23, 2010, 124 Stat. 901; Pub.L. 111-203, Title X, § 1079A(c), July 21, 2010, 124 Stat. 2079; Pub.L. 117-286, § 4(c)(36), Dec. 27, 2022, 136 Stat. 4358.)

Footnotes

1 See, now, Rule 4(i) of the Federal Rules of Civil Procedure.

2 So in original. Probably should be “Accountability”.

3 So in original. Probably should be “or (ii) has”.

31 U.S.C.A. § 3730, 31 USCA § 3730
Current through P.L.118-13. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 31. Money and Finance (Refs & Annos)
Subtitle III. Financial Management
Chapter 37. Claims (Refs & Annos)
Subchapter III. Claims Against the United States Government (Refs & Annos)

31 U.S.C.A. § 3733

§ 3733. Civil investigative demands

Currentness

(a) In general.--

(1) Issuance and service.--Whenever the Attorney General, or a designee (for purposes of this section), has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b), issue in writing and cause to be served upon such person, a civil investigative demand requiring such person--

(A) to produce such documentary material for inspection and copying,

(B) to answer in writing written interrogatories with respect to such documentary material or information,

(C) to give oral testimony concerning such documentary material or information, or

(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act[1] investigation.

(2) Contents and deadlines.--

(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

(B) If such demand is for the production of documentary material, the demand shall--

(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(iii) identify the false claims law investigator to whom such material shall be made available.

(C) If such demand is for answers to written interrogatories, the demand shall--

(i) set forth with specificity the written interrogatories to be answered;

(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

(iii) identify the false claims law investigator to whom such answers shall be submitted.

(D) If such demand is for the giving of oral testimony, the demand shall--

(i) prescribe a date, time, and place at which oral testimony shall be commenced;

(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(b) Protected material or information.--

(1) In general.--A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under--

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(2) Effect on other orders, rules, and laws.--Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service; jurisdiction.--

(1) By whom served.--Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

(2) Service in foreign countries.--Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

(d) Service upon legal entities and natural persons.--

(1) Legal entities.--Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by--

(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Natural persons.--Service of any such demand or petition may be made upon any natural person by--

(A) delivering an executed copy of such demand or petition to the person; or

(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) Proof of service.--A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) Documentary Material.--

(1) Sworn certificates.--The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by--

(A) in the case of a natural person, the person to whom the demand is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(2) Production of materials.--Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) Interrogatories.--Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by--

(1) in the case of a natural person, the person to whom the demand is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral Examinations.--

(1) Procedures.--The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

(2) Persons present.--The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken.--The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) Transcript of testimony.--When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) Certification and delivery to custodian.--The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) Furnishing or inspection of transcript by witness.--Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

(7) Conduct of oral testimony.--(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

(8) Witness fees and allowances.--Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

(i) Custodians of documents, answers, and transcripts.--

(1) Designation.--The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

(2) Responsibility for materials; disclosure.--(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe--

(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) Use of material, answers, or transcripts in other proceedings.--Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

(4) Conditions for return of material.--If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and--

(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(5) Appointment of successor custodians.--In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly--

(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

(j) Judicial Proceedings.--

(1) Petition for enforcement.--Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2) Petition to modify or set aside demand.--(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed--

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery.--(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed--

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(4) Petition to require performance by custodian of duties.--At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(5) Jurisdiction.--Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(6) Applicability of federal rules of civil procedure.--The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(k) Disclosure exemption.--Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

(l) Definitions.--For purposes of this section--

(1) the term "false claims law" means--

(A) this section and sections 3729 through 3732; and

(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

(2) the term "false claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(3) the term "false claims law investigator" means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(4) the term "person" means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

(5) the term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

(6) the term "custodian" means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1);

(7) the term "product of discovery" includes--

(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

(C) any index or other manner of access to any item listed in subparagraph (A); and

(8) the term "official use" means any use that is consistent with the law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of a Department of Justice investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with Government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.

CREDIT(S)

(Added Pub.L. 99-562, § 6(a), Oct. 27, 1986, 100 Stat. 3159; amended Pub.L. 111-21, § 4(c), May 20, 2009, 123 Stat. 1623.)

Footnotes

1 So in original. Probably should be ''law''.

31 U.S.C.A. § 3733, 31 USCA § 3733

Current through P.L.118-13. Some statute sections may be more current, see credits for details.

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedLimited on Constitutional Grounds by U.S. v. Hawley, N.D.Iowa, Aug. 01, 2011

KeyCite Yellow Flag - Negative TreatmentProposed Legislation

United States Code Annotated
Title 31. Money and Finance (Refs & Annos)
Subtitle III. Financial Management
Chapter 37. Claims (Refs & Annos)
Subchapter III. Claims Against the United States Government (Refs & Annos)

31 U.S.C.A. § 3729

§ 3729. False claims

Currentness

(a) Liability for certain acts.--

(1) In general.--Subject to paragraph (2), any person who--

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410[1]), plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.--If the court finds that--

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions.--A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.--For purposes of this section--

(1) the terms “knowing” and “knowingly” --

(A) mean that a person, with respect to information--

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term “claim”--

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that--

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government--

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption from disclosure.--Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion.--This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

CREDIT(S)

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 978; Pub.L. 99-562, § 2, Oct. 27, 1986, 100 Stat. 3153; Pub.L. 103-272, § 4(f)(1)(O), July 5, 1994, 108 Stat. 1362; Pub.L. 111-21, § 4(a), May 20, 2009, 123 Stat. 1621.)

Footnotes

1 So in original. Probably should read "Public Law 101-410".

31 U.S.C.A. § 3729, 31 USCA § 3729

Current through P.L.118-13. Some statute sections may be more current, see credits for details.

End of Document

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 31, Article 11

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: **Sep 8, 2023**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 31, Article 11

Summary

This Five Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) or (Agency) covers one (1) rule in Title 9, Chapter 31, Article 11 related to Civil Monetary Penalties and Assessments. AHCCCS operates Arizona's Children's Health Insurance Program (Title XXI). The federal government through Title XXI funds and through state matching funds provides funding for the health care of these members. The provisions set forth in Chapter 22, Article 11 for the determination and collection of penalties and assessments apply to the determination of fraudulent claims in the Children's Health Insurance Program.

Proposed Action

The Agency did not identify a proposed course of action in the prior 5YRR approved by Council in October 2018, however does plan on submitting a Notice of Proposed Rulemaking by November 15, 2023 to address the issue found in the report.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The article deals with the basis for civil monetary penalties and assessments for fraudulent claims. The article indicates that AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of penalties. The administration indicates it did find any need to revise the rule in the prior five-year review and currently does not propose any changes to the rule. Stakeholders include the Administration and persons or entities that file claim with AHCCCS.

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 agency indicates no changes to the rule were made or proposed.

4. **Has the agency received any written criticisms of the rules over the last five years?**

AHCCCS states they have not received any written criticisms of the rule in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

AHCCCS states the rule is not clear, concise, or understandable and that the rule should be rewritten.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

AHCCCS states the rule is consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

AHCCCS states the rule is effective in achieving its objective.

8. **Has the agency analyzed the current enforcement status of the rules?**

AHCCCS states the rule is 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?**

AHCCCS states the rules are not more stringent than 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?**

AHCCCS indicates that this subsection is not applicable.

11. Conclusion

This Five Year Review Report from AHCCCS covers one rule in Title 9, Chapter 31, Article 11 related to Civil Monetary Penalties and Assessments. As stated above, the Agency does plan on submitting a Notice of Proposed Rulemaking by November 15, 2023 to address the issue found in the report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Director

June 28, 2023

VIA EMAIL: grrc@azdoa.gov

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

RE: AHCCCS Title 9, Chapter 31, Article 11;

Dear Ms. Sornsin:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 31, Article 11 due on June 29, 2023.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4232 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

www.azahcccs.gov
602-417-4000
801 East Jefferson Street, Phoenix, AZ 85034

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 31, Article 11

July 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2918.

Specific Statutory Authority: A.R.S. § 36-2957.

2. The objective of each rule:

Rule	Objective
R9-31-1101	Provides a cross-reference to R9-22-Article 11.

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	Objective
R9-31-1101	Should be re-written as, "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.

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:

Since the recommended changes are clarifying in nature only, this is still the most cost effective was to administer civil monetary penalties to providers covered by Kidscare.

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?

The prior 5YRR did not find any need to revise the rules, therefore there was no proposed course of action.

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:

No changes are proposed.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X__

The rules are not more stringent than 31 U.S.C. 3729-3733.

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 intends to request a rulemaking exemption to enact an expedited rulemaking following GRRC's approval of this report. AHCCCS will submit the rulemaking request upon GRRC approval, with the intention of submitted a Notice of Proposed Rulemaking by November 15, 2023.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

R9-31-1005. Collections

The provisions in A.A.C. R9-22-1005 apply to this Section except:

1. Replace the reference to "Article 2," with 9 A.A.C. 31, Article 2;
2. This Section applies to Title XXI fee-for-service and reinsurance payments.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

R9-31-1006. AHCCCS Monitoring Responsibilities

With the exception of long-term care insurance, the provisions in A.A.C. R9-22-1006 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1152, effective May 1, 2004 (Supp. 04-1).

R9-31-1007. Notification for Perfection, Recording, and Assignment of Title XXI 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. 1152, effective May 1, 2004 (Supp. 04-1).

R9-31-1008. 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. 1152, effective May 1, 2004 (Supp. 04-1).

R9-31-1009. 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. 1152, effective May 1, 2004 (Supp. 04-1).

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

R9-31-1101. 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 under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3).

R9-31-1102. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3).

R9-31-1103. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3).

R9-31-1104. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed by final rulemaking at 10 A.A.R. 3067, effective September 11, 2004 (Supp. 04-3).

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-31-1201. Requirements

The requirements, services and definitions under Chapter 22, Article 2 and Article 12 apply to behavioral health services provided under this Article.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

R9-31-1202. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

R9-31-1203. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1998, Ch. 4, § 11, 4th Special Session, effective October 23, 1998 (Supp. 98-4). Section repealed; new Section adopted by exempt rulemaking at 6 A.A.R. 282, effective December 16, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4740, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1103, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 20 A.A.R. 3128, effective January 4, 2015 (Supp. 14-4).

R9-31-1204. Repealed

Historical Note

36-2918. Prohibited acts; penalties; subpoena power

A. A person may not present or cause to be presented to this state or to a contractor:

1. A claim for a medical or other item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for a medical or other item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment that the person knows or has reason to know may not be made by the system because:

(a) The person was terminated or suspended from participation in the program on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of health care.

(c) The patient was not a member on the date for which the claim is being made.

4. A claim for a physician's service or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained the license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the individual was not certified.

5. A request for payment that the person knows or has reason to know is in violation of an agreement between the person and this state or the administration.

B. A person who violates a provision of subsection A of this section is subject, in addition to any other penalties that may be prescribed by federal or state law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or the director's designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or the director's designee in accordance with criteria established in rules. The director or director's designee may make this determination in the same proceeding to exclude the person from system participation.

D. A person who is adversely affected by a determination of the director or the director's designee under this section may appeal that decision in accordance with provider grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the state general fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration or this state to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C of this section is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa

county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented, except that the time to file a collection action is tolled either:

1. After any administrative action arising out of or referencing the wrongful acts is commenced and until the action's final resolution, including any legal challenges to the action.

2. While the state and the administration did not know, and with the exercise of reasonable diligence, should not have known, that a claim was false, fraudulent or not provided as claimed.

G. Pursuant to an investigation of prohibited acts or fraud and abuse involving the system, the director, and any person designated by the director in writing, may examine any person under oath and issue a subpoena to any person to compel the attendance of a witness. The administration by subpoena may compel the production of any record in any form necessary to support an investigation or an audit. The administration shall serve the subpoenas in the same manner as subpoenas in a civil action. If the subpoenaed person does not appear or does not produce the record, the director or the director's designee by affidavit may apply to the superior court in the county in which the controversy occurred and the court in that county shall proceed as though the failure to comply with the subpoena had occurred in an action in the court in that county.

36-2957. Prohibited acts; penalties

A. No person may present or cause to be presented to the administration or to a program contractor:

1. A claim for an item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for an item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment which the person knows or has reason to know may not be made by the system because:

(a) The person was not a member on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of care.

4. A claim for a physician's service, or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained a license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the person was not certified.

5. A request for payment which the person knows or has reason to know is in violation of an agreement between the person and the administration or the program contractor.

B. A person who violates a provision of subsection A is subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or his designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or his designee in accordance with criteria established in rules. The director or his designee may make a determination in the same proceeding to exclude the person from system participation.

D. A person adversely affected by a determination of the director or his designee under this section may appeal that decision in accordance with grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the Arizona long-term care system fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented.

DEPARTMENT OF PUBLIC SAFETY
Title 13, Chapter 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: September 13, 2023

SUBJECT: **DEPARTMENT OF PUBLIC SAFETY**
Title 13, Chapter 1

Summary

This Five-Year Review Report (5YRR) from the Department of Public Safety (Department) relates to fifteen (15) rules and two (2) exhibits in Title 13, Chapter 1, Articles 1-4. The Articles in Title 13, Chapter 1 (Criminal Identification Section) relate to the following:

- Article 1 - Criminal History Records
- Article 2 - ACJIS Network
- Article 3 - Arizona Crime Statistics
- Article 4 - Applicant Fingerprint Processing

In the prior 5YRR for these rules, which was approved by the Council in August 2018, the Department proposed to amend six (6) rules and two (2) exhibits in Articles 1 through 4. The Department indicates it partially completed the prior proposed course of action. Specifically, the Department indicates it amended rules in Articles 2 and 3 by final rulemaking which became effective in October 2022. However, the Department indicates it did not amend the rules in Article 1 as outlined in the previous report due to the development of a new electronic processing System. The Department states the Arizona Automated Fingerprint Identification System (AZAFIS) was upgraded to a cloud-based system in June 2022. The Department states the system was originally slated for upgrade completion in June 2021. However, the Department

indicates delays from the state-contracted vendor in programming and resolution to issues identified during user acceptance testing delayed the overall implementation schedule. The Department states the system upgrade included additional biometric modalities calling for a name change to the system to more appropriately reflect the additional modalities. The new system is called the Arizona Biometric Information System (ABIS). The Department indicates that, since some definitions within Article 1 revolved around the system identifier, the changes to the nomenclature within Article 1 was delayed to prevent confusion by the users. Furthermore, the Department indicates temporary duty assignment changes in system management personnel delayed this five-year review and rulemaking into 2023.

Proposed Action

In the current report, the Department proposes to amend six (6) rules and two (2) exhibits in Articles 1 and 2 to make the rules more effective in achieving their objectives, as outlined in more detail below. The Department indicates the rules require additional clarification and details to meet the requirements set forth in state and federal laws to guide criminal justice agencies in the submission of arrest and disposition information providing detailed information required for the Department to maintain complete and accurate criminal history record information. To avoid user confusion with outdated terms and definitions, the Department indicates these amendments include the elimination of terms no longer used and updating terms to reflect the latest upgraded system nomenclatures. The Department indicates the rule amendments also provide the public less restrictive methods for obtaining fingerprints to review and challenge their criminal history record.

The Department indicates it can provide final rules to the Council within five (5) months of receiving an A.R.S. § 41-1039(A) exception from the rulemaking moratorium from the Governor's Office to conduct rulemaking activity. The Department indicates it received approval to engage in rulemaking activity in June 2023. As such, the Department anticipates submitting a rulemaking to the Council by November 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

The Department 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 are established to assist criminal justice agencies with their daily duties associated with establishing and submitting criminal history record information by elaborating on specific information needed that is not specified elsewhere. Not submitting this information can increase time and resources spent by both the Department of Public Safety (Department) and the submitting agency; additionally, it can be detrimental to public safety efforts by delaying the release of accurate information. Hence, the rules reduce time needed for processing records and help to ensure the needs of the public are met. The Department does not charge the public for record review and subsequent challenge processes and therefore has minimal economic impact.

The economic impacts of Article 1, Article 2, and Article 3 have remained consistent from previous rule reviews. Article 4 was found to have lesser impact on noncriminal justice agencies and the public compared to previous rule reviews. This is because the state processing fee for noncriminal justice applicants has remained the same for the last ten years and has not been adjusted for inflation. Additionally, there is a state processing fee for noncriminal justice applicants which has stayed competitively priced when compared with the nation.

Stakeholders are identified as the Department, criminal justice and law enforcement agencies, prosecutor's offices, the Arizona Department of Corrections, Rehabilitation and Reentry, criminal courts, subjects of criminal history records, the Office of Administrative Hearings, individuals who access the Central State Repository, 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 has determined that the benefits of the rules outweigh the costs associated with the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are clear, concise, and understandable. Specifically, the Department indicates in a previous rulemaking the Department made the rules more concise by removing text duplicative to existing policy manuals and then added those manuals to the rules by incorporation by reference.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are generally consistent with other rules and statutes except that Exhibits A and B must be updated in response to the passing of Proposition 207, Marijuana Legalization Initiative and HB2162 in the Fifty-Fifth Legislature, First Regular Session enacting A.R.S. §§ 13-604, 36-2862 in reference to Block #13 and Expungement.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are generally effective except for the following:

- **R13-1-101:** Remove definitions for Access Authorization List (in the ACJIS Operating Manual), ALETS (No longer used), Hot Files (associated with the TOC levels in the ACJIS Operating Manual) and TOC definition and Levels A through F (in the ACJIS

Operating Manual), NLETS (no longer used in Article 2). Amend definitions for AZAFIS (all references to this need to be changed to ABIS), Classifiable Fingerprints, LSI and NIBRS (only used in Rule 301, unnecessary to be in Rule 101). Update the incorporated by reference date for the fingerprint card.

- **R13-1-102:** Amend Paragraph A methods for submitting arrest fingerprints to the Department through ABIS or a mailing address. Remove corrections process and medical examiner rules as it's redundant information to the Arizona Biometric Information System (ABIS) Operating Manual v. 1.0 dated June 1, 2022 and A.R.S. § 11-593. Amend Paragraph B record age for consistency with federal retention schedules (FBI CJIS Division's Next Generation Identification).
- **R13-1-103:** Typographical corrections to Paragraph B. Amend Paragraph C to clarify the steps prosecutors as needed to fulfill the intent of the rule. Amend Paragraph D to update disposition submission options to include email or ADRS.
- **R13-1-106:** Amend the terms in Paragraph A. specify as calendar days.
- **R13-1-107:** Amend Paragraph A, C and F reducing burden and restrictions on fingerprint venues and reduces record review processing steps. Will specify the type of days as calendar or business.
- **Exhibit A:** Clarification of Block #2. Update nomenclature in Block #5. Add new designation in Block #13 pursuant to recent legislation passed and amend Block #18 for user clarification.
- **Exhibit B:** Clarification of Block #2. Update nomenclature in Block #5. Clarification of Block #10. Add new designation in Block #13 pursuant to recent legislation passed. Clarification of Block #17. Add new code to Block #18 pursuant to recent legislation passed.
- **R13-1-201:** Amend Paragraph A to reflect latest incorporated by reference manual dates.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules 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 Department indicates the rules are not more stringent than 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?

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 it does require an individual Terminal Operator Certification (TOC) for Arizona criminal justice agency employees who access, use, interpret, create, amend

and delete Arizona Crime Information Center (ACIC) and National Crime Information Center (NCIC) records and criminal history record information in state and federal databases. The Department indicates the TOC is a requirement by the Federal Bureau of Investigation (FBI) and the Department is audited on compliance. Given numerous harms listed by the Department that could occur if employees are not individually responsible to maintain standards and the substantial impact to a person's life and livelihood and the public at large, the Department indicates a general permit cannot be issued to a criminal justice agency. As such, the TOC falls under exception A.R.S. § 41-1037(A)(3) in that the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.

Council staff believes the Department is in compliance with A.R.S. § 41-1037.

11. <u>Conclusion</u>

This 5YRR from the Department relates to fifteen (15) rules and two (2) exhibits in Title 13, Chapter 1, Articles 1-4 related to Criminal History Records, ACJIS Network, Arizona Crime Statistics, and Applicant Fingerprint Processing, respectively. The Department indicates the rules are clear, concise, understandable, and enforced as written. However, the Department indicates the rules could be more effective and made consistent with other rules and statutes. The Department proposes to submit a rulemaking to the Council addressing these issues, as outlined in more detail above, by November 2023.

Council staff recommends approval of this report.

May 3, 2023

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Public Safety 13 A.A.C. 1 *Criminal Identification Section*
Five-Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report by the Department of Public Safety for 13 A.A.C. 1, *Criminal Identification Section* which is due by May 31, 2023.

Pursuant to: 13 A.A.C 1, Section 301:

- The Department does not intend for any rules to expire under A.R.S. § 41-1056(J).
- There are no previously rescheduled rules by the Council under A.R.S §. 41-1056(H).
- The Department hereby certifies compliance with A.R.S. § 41-1091 as there are no substantive policy statements for these rules.

For questions about this report, please contact Mr. Paul Swietek, Research and Planning Unit at 602-223-2049 or pswietek@azdps.gov.

Sincerely,

Kenneth Hunter

Colonel Jeffrey Glover
Director

Arizona Department of Public Safety
Five-year Review Report
13 A.A.C. 1, Criminal Identification Section
May 10, 2023

A. List any rule you intend to expire on the date the five-year review is due under A.R.S. § 41-1056(J) and R1-6-301. An explanation of why the rule is intended to expire is required. Once a rule has expired, only a formal rulemaking process can reestablish it.

The Department is not requesting any rules to be expired.

B. Provide a certification the rules comply with A.R.S. § 41-1091 on substantive policy statements.

The Department has no substantive policy statements for these rules.

Complete the following for each rule, table and exhibit pursuant to A.R.S. § 41-1056(A) and R1-6-301:

1. Authorization of the rule by general and specific statutes:
A.R.S. § 41-1713(A)(4). General authority to make rules necessary for the operation of the Department.

A.R.S. § 41-1750(G,2,4,7,19,23),(H),(J),(K),(M),(N),(P,1),(V). Specific authority to process noncriminal justice fingerprint background checks, charge a fee, conduct administrative reviews and challenges to correct inaccurate information, process fingerprint background checks for nuclear facility employees and charge a fee, and conduct fingerprint background checks for nonprofits and charge a fee; specifies the Director shall adopt rules to administer this section; specifies the Director shall charge fees to cover the Department's costs of the federal noncriminal justice fingerprint processing and to cover costs associated with producing copies of departmental reports and photographs; specifies the conditions of the Records Processing Fund; specifies the Department shall adopt security-based and safeguarding-based rules for the storage, collection and dissemination of criminal justice information by any agency in the state that has access to and use of the information.

A.R.S. § 41-2206. Specific authority permitting the Department to remove any agency, company or individual that fails to conform with the rules from participation in the criminal justice information systems.

2. The objective of the rule including the purpose of the existence of the rule:

Rule	Objective
101	To clarify the rules for defining words that are used in a manner specific to the rules.
102	To specify the manner in which various criminal justice and law enforcement agencies are to submit criminal history record information to the Department.

103	To specify the manner in which law enforcement agencies and prosecutor's offices are to submit criminal history information to the Department.
104	To clarify the circumstances under which information is maintained in the central state repository regarding juveniles and the role of the Arizona Department of Corrections, Rehabilitation and Reentry in assisting the Department to maintain accurate information in the central state repository.
105	To clarify for criminal courts the manner in which they are to submit information to the central state repository.
106	To specify the manner in which a criminal justice agency is to submit arrest fingerprint records, the manner in which the fingerprint record is to be obtained and the information that is required on a complete arrest fingerprint card.
107	To specify the manner in which the subject of a criminal history record or the subject's attorney may request a review of the accuracy and completeness of the criminal history record regarding the subject and the manner in which the Department processes a request for a review.
108	To specify the manner in which the subject of a criminal history record or the subject's attorney may challenge the accuracy or completeness of the criminal history record and the manner in which the Department processes the challenge.
109	To specify the manner in which hearings are held or conducted by the Office of Administrative Hearings. The rules also provides specification on the Department's Director's authority to act on the administrative law judge's recommended decision.
110	To specify the manner in which a subject may file a motion with the Department for a rehearing or review of a decision issued under R13-1-109.
111	To provide guidance for obtaining criminal history record information for the purpose of research, evaluative or statistical activities, or prevention of crime, or to provide services for the administration of justice.
Exhibit A	To provide definitions and coding specifications of common words as data fields in this context that may have different meanings in other contexts.
Exhibit B	To provide definitions and coding specifications of common words as data fields in this context that may have different meanings in other contexts.
201	To specify the security measures with which a criminal justice agency shall comply with if the criminal justice agency collects, stores, disseminates or accesses criminal justice or criminal history record information.
301	To specify the manner of submission to the Department of uniform crime information.
401	To address the collection of fees by the Department for the processing of fingerprint-based noncriminal justice background checks and the manner in which payment is submitted.
402	To address the refusal of fees by the Department for the processing of fingerprint-based noncriminal justice background checks and the manner in which future payment is submitted.

3. Are the rules effective in achieving their objectives?
No. The rules require additional clarification and details to meet the requirements set forth in state and federal laws to guide criminal justice agencies in the submission of arrest and disposition information providing detailed information required for the Department to maintain complete and accurate criminal history record information. To avoid user confusion with outdated terms and definitions, these amendments include the elimination of terms no longer used and updating terms to reflect the latest upgraded system nomenclatures. The rule amendments also provide the public less restrictive methods for obtaining fingerprints to review and challenge their criminal history record. See also Item 10.

Rule	Explanation
101	Remove definitions for *Access Authorization List* (in the ACJIS Operating Manual), *ALETS* (No longer used), *Hot Files* (associated with the TOC levels in the ACJIS Operating Manual) and *TOC definition and Levels A through F* (in the ACJIS Operating Manual), *NLETS* (no longer used in Article 2)Amend definitions for *AZAFIS* (all references to this need to be changed to ABIS), *Classifiable Fingerprints, LSI* and *NIBRS* (only used in Rule 301, unnecessary to be in Rule 101). Update the incorporated by reference date for the fingerprint card.
102	Amend Paragraph A methods for submitting arrest fingerprints to the Department through ABIS or a mailing address. Remove corrections process and medical examiner rules as it's redundant information to the Arizona Biometric Information System (ABIS) Operating Manual v. 1.0 dated June 1, 2022 and A.R.S. § 11-593. Amend Paragraph B record age for consistency with federal retention schedules (FBI CJIS Division's Next Generation Identification).
103	Typographical corrections to Paragraph B. Amend Paragraph C to clarify the steps prosecutors as needed to fulfill the intent of the rule. Amend Paragraph D to update disposition submission options to include email or ADRS.
106	Amend the terms in Paragraph A. specify as calendar days.
107	Amend Paragraph A, C and F reducing burden and restrictions on fingerprint venues and reduces record review processing steps. Will specify the type of days as calendar or business.
Exhibit A	Clarification of Block #2. Update nomenclature in Block #5. Add new designation in Block #13 pursuant to recent legislation passed and amend Block #18 for user clarification.
Exhibit B	Clarification of Block #2. Update nomenclature in Block #5. Clarification of Block #10. Add new designation in Block #13 pursuant to recent legislation passed. Clarification of Block #17. Add new code to Block #18 pursuant to recent legislation passed.
201	Amend Paragraph A to reflect latest incorporated by reference manual dates.

4. Are the rules consistent with other rules and statutes?
No.

Rule	Statute	Explanation
Exhibit A Exhibit B	HB 2162, Fifty-Fifth Legislature, First Regular Session, A.R.S. §§ 13-604, 36-2862	Reference to Block #13 and Expungement. The result of the passing of Proposition 207, Marijuana Legalization Initiative enacting the new statute.

5. Are the rules enforced as written and are there any problems enforcing the rules?
The rules are enforced as written and there are no problems with enforcing the rules.

Rule	Explanation
N/A	

6. Are the rules clear, concise and understandable?
Yes. The Department has read the rules and found them to meet this standard. Additionally, the Department has not received any criticism from the public on this topic. In a previous rulemaking, the Department made the rules more concise by removing text duplicative to existing policy manuals and then added those manuals to the rules by incorporation by reference; refer to Item 10.

Rule	Explanation
N/A	

7. Has the agency received written criticisms of the rules within the last five years?
No.

Rule	Criticism	Action
N/A		

8. Economic, small business and consumer impact comparison:

Article 1
The impact to criminal justice agencies remains consistent from previous rules reviews. The technology used to submit arrest fingerprints and criminal history disposition information has remained relatively the same with the exception of the operating system updates and additional biometric modalities incorporated into the various systems. The operating system updates are mandatory to maintain system security and integrity of data; such as, updates to the Windows Operating System Version 10 and keeping with the direction the state has moved towards with cloud-driven services. The additional biometric modalities such as mug photo and iris cameras are not required and are at the discretion of the various agencies to purchase. The Department worked with the Arizona Department of Administration to provide a new State Biometric Products and Services Contract in the last five years. This new contract opened the doors for several biometric vendors to compete and be awarded a

contract with the state. This provides competitive pricing and technological solutions to the criminal justice agencies offering them a greater selection of equipment at varying costs the agencies can determine best fits their budgetary constraints.

The Department does not charge the public for record review and subsequent challenge processes and therefore has minimal economic impact. The requested rule amendment adding additional venues for the fingerprinting required for record reviews can impact the public should those venues impose a fee for that service; but offers the public a broader spectrum of venues to have their fingerprints captured for this process. The Department continues to offer the fingerprinting service at no charge to the public should the public elect to be fingerprinted at the Department's Public Service Center in Phoenix. The rule amendment can have a positive economic impact to businesses that elect to contract with the state or local law enforcement agencies to provide these services. The Department absorbs the costs associated with employee resources and consumables required for the record review and challenge process to ensure the needs of the public and the completeness and accuracy of their criminal history record information are met.

Article 2
The impact to criminal justice agencies remains consistent from previous rule reviews. The networking requirements can financially impact the agencies if their networking infrastructure is not in compliance with state and federal Criminal Justice Information System (CJIS) security policies. The impact to upgrade firewall and network specifications would be dependent on the severity of non-compliance. The necessity for CJIS-compliant network security outweighs the costs involved in establishing and maintaining those securities ensuring the public's criminal justice information is protected from unauthorized access and dissemination.

Article 3
The impact to criminal justice agencies remains consistent from previous rules reviews. The crime reporting statistics can financially impact the agencies with implementing a method to collect and report the mandatory crime statistics. The necessity for reporting the crime statistics outweighs the costs involved. The data collected provides a more complete and accurate picture of crime, additional information in understanding victimization and offending, standardizes data to compare crime across jurisdictions and can provide strategic analysis and enforcement/interdiction of crime at the local, state and national benefiting the public.

Article 4
The impact to noncriminal justice agencies and the public has had a lesser impact as compared to previous rule reviews. The $5 state processing fee for noncriminal justice applicants has remained the same for the last ten years. The overall Consumer Price Index (CPI) increased by 6% over the last twelve months. Commodities, less food and energy,

increased 5.5% and services, less energy services, increased by 7.3%[1] In Arizona, the Phoenix metropolitan area had a CPI increase, less food and energy, of 9.1% over the year.[2]

The state's fingerprint processing fees have stayed competitive nationwide. See Attachment A with the state processing fees, as reported by each state, and recorded by the National Crime Prevention and Privacy Compact.[3] These numbers take into account Federal Bureau of Investigation (FBI)-related processing fees for some states but does not account for the varying types of applicants other states process; for example, some reported numbers may not include FBI fees but do include other state mandated fees. The chart does not adjust for the state's CPI.

Furthermore, the budgetary needs of the business unit, the Department's Applicant Processing Team, responsible for processing the noncriminal justice applicants necessitates the need for the processing fees specified in the rule. The FBI mandates a fee for the processing of criminal history background checks for noncriminal justice purposes. The team's budget expends approximately 78% of its funding to pay for FBI processing fees. This is consistent with the breakdown of fees required from the applicant. The $5 state fee accounts for 22% of the overall fee an applicant pays in which a state and federal background check is needed. Volunteer applicants are charged $2 less in fees that matches the $2 decrease the FBI requires for this classification of applicant. The team uses the remaining monies for operational needs including employee salaries and other employee related expenses, supplies, computer equipment and other necessary commodities to perform their essential functions. See Attachment B. The team has managed to maintain and balance their annual budgets without the need for requesting an increase in fees despite increases in Arizona's CPI. This in part is handled by Lean Six processes the team has incorporated, reducing or eliminating nonvalue-added tasks, including the incorporation of their stakeholder agencies into the Electronic Applicant Fingerprint Service (EFAS); thereby saving on team resources normally needed for manual entry of applicant records.

9. Has the agency received any business competitiveness analysis of the rules?
   No.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?
    The Department has completed some, but not all of the recommended changes from the 2018 report. A rulemaking waiver for Articles 2 and 3 was obtained and a final rulemaking was conducted in 2022. A rulemaking waiver for Article 1 was obtained but not acted on due to

[1] Source data from *Consumer Price Index, Phoenix Area, February 2023*, U.S. Bureau of Labor Statistics,. Washington DC, Division of Consumer Prices and Price Indexes www.bls.gov/charts/consumer-price-index/consumer-price-index-by-category.htm (Accessed April 2023)
[2] Source data from *12-month Percentage Change, Consumer Price Index, selected categories*. U.S. Bureau of Labor Statistics. Washington D.C. Division of Consumer Prices and Price Indexes. www.bls.gov/regions/west/news-release/consumerpriceindex_phoenix.htm (Accessed April 2023)
[3] Source data from *State Fee Chart, Overview-National Crime Prevention and Privacy Compact.* Federal Bureau of Investigation JusticeConnect. justiceconnect.cjis.gov/communities/service/html/communitystart?communityUuid=2a8fd91f-62aa-40ab-b109-dc52b180999f (Accessed April 2023).

the following impacts on Article 1 during the development of a new electronic processing system.

The Arizona Automated Fingerprint Identification System (AZAFIS) was upgraded to a cloud-based system in June 2022. The system was originally slated for upgrade completion in June 2021. Delays from the state-contracted vendor in programming and resolution to issues identified during user acceptance testing delayed the overall implementation schedule. The system upgrade included additional biometric modalities calling for a name change to the system to more appropriately reflect the additional modalities. The new system is called the Arizona Biometric Information System (ABIS). Since some definitions within Article 1 revolved around the system identifier, the changes to the nomenclature within Article 1 was delayed to prevent confusion by the users. Temporary duty assignment changes in system management personnel delayed this five-year review and rulemaking into 2023.

Rule	Action Needed	Action Taken
101	Amendments to the definitions for AZAFIS Image Scanner, AZAFIS Livescan, Date of Arrest, Date of Birth and NLETS.	No action taken for definitions related to Article 1. Refer back to Item 3 above. Definitions related to Articles 2 and 3 were amended by final rulemaking, 28 A.A.R. 3245, dated October 28, 2022.
102	Amend to include the date of death and medical examiner county.	No action taken. Refer back to Item 3 above.
103	Remove the *amend* selection from Paragraph C in the prosecutor's instructions.	No action taken. Refer back to Item 3 above.
108	Review and adjust the number of days to complete the background for challenge entries. 15 days was insufficient due to staffing issues, the complexity of the challenge, and the wait time to receive supporting documentation from other criminal justice agencies that the Department has no control over.	No action taken. In the last five years the Department has been able to meet this timeframe through improvements and no longer intends to increase it.
Exhibit A	Modification of the date formats is required.	No action taken. Action pending. Refer back to Item 3 above.
Exhibit B	Modification of the date formats is required.	No action taken. Refer back to Item 3 above.
201	No action specified in the 2018 report. However, Article 2 was simplified and reduced down to only one rule.	Rules 201 through 302 amended or repealed by final rulemaking 28 A.A.R. 3245, dated October 28, 2022.
202	No action specified in the 2018 report. However, this section was repealed.	

203	No action specified in the 2018 report. However, this section was repealed.	
204	No action specified in the 2018 report. However, this section was repealed.	
301	No action specified in the 2018 report. However, Article 3 was simplified and reduced down to only one rule.	
302	No action specified in the 2018 report. However, this section was repealed.	
401	Amend to allow for the use of electronic payment (credit card).	Final rulemaking 25 A.A.R. 3558, dated December 13, 2019.
402	Amend to allow for the use of electronic payment (credit card).	
Article 5	The 2018 report had various recommendations for amendments. All of Article 5 was later repealed. The Department determined existing public records statutes were sufficient to operate this program and Article 5 was not required.	Final expedited rulemaking. 25 A.A.R. 1444, dated June 14, 2019.

11. A determination 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 rules including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

    The rules are established to assist criminal justice agencies with their daily duties associated with establishing and submitting criminal history record information to the Department as the Central State Repository. The rules elaborate specific information needed that is not specified in A.R.S. § 41-1750 so agencies can understand what is needed to submit complete and accurate information. Information omitted requires the agencies to submit a correction of arrest information to the Department. This increases time and resources for both the submitting agency and the Department in making corrections to the data stored in the Central State Repository. This can also be detrimental to public safety efforts, delaying accurate information from being released to law enforcement and noncriminal justice agencies in their suitability determination efforts.

    The rules for the record review and challenge process serve the same purpose, by elaborating to the public the information needed for the public to perform a review and challenge process. This reduces the time needed for processing the record review by reducing reject rates due to incomplete applications for record reviews. This helps to ensure the needs of the public and the completeness and accuracy of their criminal history record information are met.

    Detailing the requirements of system securities promotes public safety by ensuring criminal history record information is not wrongfully released, stolen or otherwise disseminated to unauthorized persons. The benefits of these rules outweigh the costs associated with the rules

by providing agencies the necessary electronic networking requirements consistent with CJIS security polices which can deter economic and system access hindrances inherent in unauthorized release of information; such as, civil or criminal lawsuits, termination of access to CJIS and state databases.

The necessity for reporting the crime statistics outweighs the costs involved in the rule itself. The rules provide the agencies the list of requirements for accurately reporting the crime statistics; including incorporation by reference of necessary policy manuals. The data collected provides a more complete and accurate picture of crime, additional information in understanding victimization and offending, standardizes data to compare crime across jurisdictions and can provide strategic analysis and enforcement/interdiction of crime at the local, state and national levels benefiting the public.

Processing noncriminal justice fingerprints outweighs the cost of the rules. These processes directly impact the various noncriminal justice agencies throughout the state in making their suitability determinations on an applicant's abilities to service in positions of trust. This has a direct impact on the public safety efforts of the Department. The FBI mandates a fee for the processing of criminal history background checks for noncriminal justice purposes and the rules elaborates on this for clarification to the public why at times the Department charges the applicant more than the $5 state processing fee. This is dependent on what type of background check the applicant is going through; state-only or state and federal. The Applicant Processing Team's budget is established from the applicant processing fees collected. The team uses monies for operational needs including employee salaries and other employee related expenses, supplies, computer equipment and other necessary commodities to perform their essential functions.

12. Are the rules more stringent than corresponding federal laws?
No.

13. For rules adopted or amended 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 and exception applies:

The Department does require an individual Terminal Operator Certification (TOC) for Arizona criminal justice agency employees who access, use, interpret, create, amend and delete Arizona Crime Information Center (ACIC) and National Crime Information Center (NCIC) records and criminal history record information in state and federal databases. TOC is a requirement by the Federal Bureau of Investigation (FBI) and the Department is audited on compliance.

The TOC ensures an employee is fully aware of their responsibilities to protect criminal justice information and a person's private criminal history information under Arizona law where it's use is strictly for a legitimate criminal justice purpose.

The TOC is also a mechanism to ensure the integrity of databases in several ways.

First, criminal history is fingerprint driven and any erroneous fingerprint identifications may cause file merges (taking two or more different people and merging them to as one person with aliases) or in the case of a latent crime scene print could cause the wrong person to be arrested impacting the lives of the persons involved. This could affect a person's ability to apply for a teacher clearance card, concealed weapons permit, or other license or permit issued by the state. Erroneous merging of records or other data entry errors could also affect arrest warrants and court sentencing decisions. This affects both the state and FBI databases and results in a substantial amount of time for the Department, FBI and other criminal justice agencies to research and correct.

Secondly, employees entering and updating arrest warrants, stolen/wanted items/articles, and criminal history dispositions among other criminal justice information have the ability to affect unconnected people. For example, an error entering a stolen license plate could result in an unknowing person being stopped and investigated by police increasing risk. Or allow a wanted person/object to be erroneously released if the information entered/updated/deleted is not accurate.

Third, database and cyber security needs to be maintained at a network level to prevent unauthorized computer hacking or other unauthorized access. Arizona criminal justice employees who maintain the network systems and architecture have access to the information contained in the database. Therefore, those employees should also be certified to protect criminal justice history information.

The listings above are snippet examples of the harm that could occur if employees are not individually responsible to maintain standards. Due to the substantial impact to a person's life and livelihood and the public at large, a general permit cannot be issued to a criminal justice agency. The Department needs a mechanism to enforce database and system integrity standards and remove employees who do not meet those standards.

14. Proposed course of action:

Pursuant to A.R.S. § 41-1039, the Department will file for a rulemaking waiver with the Governor's Office in May 2023 for the amendments listed above. The rulemaking timeline is dependent upon the receipt of an approved waiver.

The Department estimates it can provide final rules to the Council within five months of receiving an approved waiver. This timeline estimate is based on several factors:

- The Department has already created an internal-use-only draft of the intended rule changes in conjunction with completing this report but must still receive a rulemaking waiver and complete an Economic and Small Business Consumer Impact Statement.
- Internal Department approval processes.
- Recognized, normal rulemaking timelines such as: Secretary of State calendar filing deadlines; Secretary of State Administrative Register publishing dates; required waiting periods by rule and statute; scheduling of a public comment meeting; and the Council's filing deadlines.

State Fee Chart

State	Fingerprint-Based Applicant		Fingerprint-Based Volunteer		State Rap Back Service	Federal Rap Back Service	Fee Effective Date	Last Updated
	Live Scan	Card	Live Scan	Card	Fee	Fee		
American Samoa						n/a		2/1/2013
Alabama	25.00	25.00	25.00	25.00	no fee	n/a		2/1/2013
Alaska	35.00	35.00	35.00	35.00	n/a	n/a		2/1/2013
Arizona	n/a	22.00-67.00	n/a	20.00-65.00	n/a	n/a		2/1/2013
Arkansas	n/a	n/a	n/a	n/a	n/a	n/a		2/1/2013
California[1]	32.00	32.00	32.00	32.00	no fee	n/a		2/1/2013
Colorado[2]	16.50 - 52.50	16.50 - 52.50	16.50 - 38.50	16.50 - 38.50	1.00	n/a		2/1/2013
Connecticut[3]	0.00-50.00	0.00-50.00	0.00-50.00	0.00-50.00	n/a	n/a		2/1/2013
Delaware	52.50	52.50	30.00	30.00	no fee	n/a		2/1/2013
District of Columbia	35.00	5.00	35.00	5.00	n/a	n/a		1/23/2014
Florida	24.00	n/a	18.00	n/a	6.00, annual	n/a		1/10/2017
Georgia	27.75	n/a	25.75	n/a	n/a	n/a		1/14/2014
Guam	37.00	n/a	37.00	n/a	n/a	n/a		2/1/2013
Hawaii[4]	30.00	35.00	30.00	35.00	n/a	n/a		1/10/2017
Idaho[5]	25.00	25.00	25.00	25.00	n/a	n/a		1/10/2017
Illinois	29.75	34.75	28.50	n/a	n/a	n/a	2/1/2015	2/17/2016
Indiana	24.95	n/a	24.95	n/a	n/a	n/a		1/12/2017
Iowa	27.00	27.00	15.00	15.00	n/a	n/a		2/1/2013
Kansas	35.00	35.00	35.00	35.00	1 yr/no fee, $3/yr after	n/a		1/10/2017
Kentucky[6]	20.00	20.00	20.00	20.00	n/a	n/a		2/1/2013
Louisiana	26.00	26.00	26.00	26.00	No Fee	n/a		2/1/2013
Maine		31.00		10.00	n/a	n/a		2/1/2013
Maryland	18.00	18.00	18.00	18.00	no fee	n/a		2/1/2013
Massachussets	25.00-30.00	25.00-30.00	n/a	n/a	n/a	n/a		2/1/2013
Michigan	30.00	30.00	30.00	30.00	n/a	n/a		2/1/2013
Minnesota	n/a	15.00	n/a	n/a	n/a	n/a		2/1/2013
Mississippi	32.00	32.00	28.00	28.00	n/a	n/a		1/15/2014
Missouri[7]	20.00	20.00	20.00	20.00	n/a	n/a		2/1/2013
Montana	17.75	17.75	14.50	14.50	n/a	n/a	3/1/2016	1/12/2017
Nebraska	38.00	38.00	32.00	32.00	n/a	n/a		2/1/2013
Nevada	23.50	23.50	18.00	18.00	n/a	n/a		2/17/2016
New Hampshire	10.00	10.00	10.00	10.00	n/a	n/a		2/1/2013
New Jersey	41.00-51.00	n/a	29.00	n/a	10.00	n/a		2/1/2013
New Mexico	44.00	n/a	44.00	n/a	n/a	n/a		1/14/2014
New York	75.00	n/a	18.00	n/a	no fee	n/a		2/1/2013
North Carolina	14.00	14.00	14.00	14.00	n/a	n/a		1/10/2017
North Dakota	15.00	15.00	15.00	15.00	n/a	n/a		2/1/2013
No. Mariana Islands						n/a		2/1/2013
Ohio	22.00		22.00		5.00	n/a		2/1/2013
Oklahoma	24.50	24.50	18.00	18.00	no fee	n/a		10/11/2013
Oregon[8]	15.00-52.00	15.00-52.00	27.00-52.00	27.00-52.00	n/a	n/a		2/1/2013
Pennsylvania	2.00-5.00		2.00		n/a	n/a		2/1/2013
Puerto Rico						n/a		2/1/2013
Rhode Island	35.00	n/a	35.00	n/a	n/a	n/a		2/1/2013
South Carolina	25.00	25.00	15.00	15.00	n/a	n/a		2/1/2013
South Dakota	24.00	24.00	24.00	24.00	n/a	n/a		2/1/2013
Tennessee	25.00	30.00	20.00	15.00	n/a	n/a		2/1/2013
Texas[9]	15.00	15.00	15.00	15.00	1.00/per RapBack event			2/1/2013
Utah	15.00	15.00	15.00	15.00	5.00		7/1/2018	8/7/2018
Vermont[10]	12.00	12.00	10.75	10.75	no fee	n/a	10/1/2016	1/10/2017
Virgin Islands						n/a		2/1/2013
Virginia	13.00	13.00	8.00	8.00	7.00	n/a		2/1/2013
Washington[11]	20.00	38.00	20.00	38.00	n/a	n/a	7/1/2015	2/17/2016
West Virginia[12]	20.00	20.00	10.00	10.00	n/a	n/a		2/1/2013
Wisconsin	15.00	20.00	15.00	20.00	n/a	n/a		2/1/2013
Wyoming	15.00	15.00	10.00	10.00	n/a	n/a		2/1/2013

State Fee Chart

State	Fingerprint-Based Applicant		Fingerprint-Based Volunteer		State Rap Back Service	Federal Rap Back Service	Fee Effective Date	Last Updated
	Live Scan	Card	Live Scan	Card	Fee	Fee		
KEY:								
COMPACT STATE								
MOU SIGNATORY STATE								
NONPARTY STATE								

N/A indicates that a service is not offered by that state.

[1]State Rap Back is included in the $32 fee.

[2]Rapback fee is $1 when submitting an original fingerprint card.

[3]Fees vary according to the purpose for which the fingerprint-based background check is conducted.

[4]Nonprofit organizations are exempt from fees related to criminal history record checks for adult volunteers providing services to children, the elderly, or the disabled.

[5]If an agency submits all cards, including second time submissions on rejects, for at least 45 days they may qualify for a $5 per card discount going forward.

[6]RapBack is not currently offered. However, it is in the process to start. Future fee will be $2.00 annual fee with a $8.00 fee for return arrest data.

[7]State fingerprint checks for CCW and adoption are $14, mandated by statute.

[8]Fees vary according to the purpose for which the fingerprint-based background check is conducted.

[9]The cost of enrolling the applicant in Texas RapBack is covered in the initial $15 fingerprint fee. $1.00 is charged when there is a RapBack event.

[10]Rap Back service is conviction-based and only available to defined populations (vulnerable populations care providers, etc.)

[11]Nonprofit agencies are not charged for background checks in Washington State. These are primarily done as name and date of birth checks, but some agencies do submit fingerprint-based checks.

[12]Fee listed for volunteers applies only to those checks conducted under the NCPA/VCA.

Parameters and Prompts

Fiscal Year: 2023

Accounting Period(s): 1;2;3;4;5;6;7;8;9;10;11;12;13

Department(s): PSA

Fund: PS2278

BFY:

Appropriation:

Unit: 5424

Function:

Report Description

Summarized Revenue and Expenditure Activity by Department, Fund, Appropriation, Unit and Function.This report will also include Encumbrances.

Department: PSA - DEPT OF PUBLIC SAFETY

Fund: PS2278 - RECORDS PROCESSING FUND

BFY: 2023

Appropriation: PS71700 - Licensing And Regulatory Bureau

Unit	Function	RSRC Class	Revenue Source	Obj Class	Object	Billed Revenues	Collected Revenues	Encumbrance	Accrued Expenditures	Cash Expenditures
5424	772100	4400	4439			0.00	215.00	0.00	0.00	0.00
5424	772100	4400	4449			0.00	2,577,863.99	0.00	0.00	0.00
5424	772200			6000	6011	0.00	0.00	0.00	0.00	0.00
5424	772200			6000	6032	0.00	0.00	0.00	0.00	-0.00
5424	772200			6000	6041	0.00	0.00	0.00	0.00	0.00
5424	772200			6000	6042	0.00	0.00	0.00	0.00	0.00
5424	772200			6000	6043	0.00	0.00	0.00	0.00	0.00
5424	772200			6000	6048	0.00	0.00	0.00	0.00	-0.00
5424	772200			6000	6052	0.00	0.00	0.00	0.00	23,330.56
5424	772200			6100	6111	0.00	0.00	0.00	0.00	1,317.25
5424	772200			6100	6113	0.00	0.00	0.00	0.00	-0.00

5424	772200	6100	6114	0.00	0.00	0.00	0.00	-0.00
5424	772200	6100	6116	0.00	0.00	0.00	0.00	0.43
5424	772200	6100	6118	0.00	0.00	0.00	0.00	0.00
5424	772200	6100	6119	0.00	0.00	0.00	0.00	0.00
5424	772200	6100	6155	0.00	0.00	0.00	0.00	3,175.34
5424	772200	6100	6185	0.00	0.00	0.00	0.00	7.25
5424	772200	6100	6189	0.00	0.00	0.00	0.00	3.59
5424	772200	7000	7111	0.00	0.00	0.00	0.00	0.00
5424	772200	7000	7154	0.00	0.00	0.00	0.00	0.00
5424	772200	7000	7321	0.00	0.00	4,915.28	0.00	5,382.86
5424	772200	7000	7341	0.00	0.00	0.00	0.00	13.76
5424	772200	7000	7381	0.00	0.00	0.00	0.00	104.70
5424	772200	7000	7471	0.00	0.00	0.00	0.00	663.44
5424	772200	7000	7481	0.00	0.00	0.00	0.00	10,921.57
5424	772200	7000	7598	0.00	0.00	0.01	0.00	2,833,565.00
5424	772200	8500	8521	0.00	0.00	3,218.34	0.00	0.00
5424	772200	8500	8531	0.00	0.00	0.00	0.00	638.60
5424	772200	8500	8571	0.00	0.00	0.00	0.00	358.37
5424	772200	9100	9101	0.00	0.00	0.00	0.00	103,010.86
5424	772210	6000	6011	0.00	0.00	0.00	0.00	349,506.01
5424	772210	6000	6032	0.00	0.00	0.00	0.00	1,198.11
5424	772210	6000	6041	0.00	0.00	0.00	0.00	18,064.76
5424	772210	6000	6042	0.00	0.00	0.00	0.00	13,163.10
5424	772210	6000	6043	0.00	0.00	0.00	0.00	3,494.01
5424	772210	6000	6047	0.00	0.00	0.00	0.00	1,056.26
5424	772210	6000	6048	0.00	0.00	0.00	0.00	12,795.25
5424	772210	6000	6052	0.00	0.00	0.00	0.00	299.17
5424	772210	6100	6111	0.00	0.00	0.00	0.00	30,221.81
5424	772210	6100	6113	0.00	0.00	0.00	0.00	71,732.80

5424	772210			6100	6114	0.00	0.00	0.00	0.00	55.00
5424	772210			6100	6116	0.00	0.00	0.00	0.00	558.39
5424	772210			6100	6118	0.00	0.00	0.00	0.00	545.58
5424	772210			6100	6119	0.00	0.00	0.00	0.00	10,186.93
5424	772210			6100	6155	0.00	0.00	0.00	0.00	44,865.84
5424	772210			6100	6185	0.00	0.00	0.00	0.00	2,350.81
5424	772210			6100	6189	0.00	0.00	0.00	0.00	1,631.09
5424	772210			9100	9101	0.00	0.00	0.00	0.00	13,836.92
5424	772300	4400	4449			0.00	437,499.00	0.00	0.00	0.00
5424	772300	4600	4699			0.00	110.00	0.00	0.00	0.00
5424	772322			7000	7111	0.00	0.00	0.00	0.00	7,400.00
5424	772323			8500	8531	0.00	0.00	3,277.50	0.00	0.00
5424	772325			7000	7154	0.00	0.00	81,033.00	0.00	72,200.00
5424	772400	4400	4449			0.00	602,301.00	0.00	0.00	0.00
Total for Appropriation: PS71700						**0.00**	**3,617,988.99**	**92,444.13**	**0.00**	**3,637,655.42**
Total For BFY: 2023						**0.00**	**3,617,988.99**	**92,444.13**	**0.00**	**3,637,655.42**
Total For Fund: PS2278						**0.00**	**3,644,277.74**	**92,444.13**	**0.00**	**3,698,556.11**
Total for Department: PSA						**0.00**	**3,644,277.74**	**92,444.13**	**0.00**	**3,698,556.11**

Arizona Administrative CODE
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Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 13. PUBLIC SAFETY

CHAPTER 1. DEPARTMENT OF PUBLIC SAFETY - CRIMINAL IDENTIFICATION SECTION

The table of contents on page one contains 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*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2022 through December 31, 2022

Questions about these rules? Contact:

Department: Arizona Department of Public Safety
Criminal Justice Services Bureau
Address: POB 6638, MD 3230
Phoenix, AZ 85005-6638
Website: https://www.azdps.gov/
Name: Melanie Veilleux, Manager
Telephone: (602) 223-5097
Email: mveilleux@azdps.gov

The release of this Chapter in Supp. 22-4 replaces Supp. 19-4, 1-10 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), Administrative Rules Division, accepts state agency rule notice and other legal 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 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

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. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

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, www.azsos.gov 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.

PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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Administrative Rules Division
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TITLE 13. PUBLIC SAFETY

CHAPTER 1. DEPARTMENT OF PUBLIC SAFETY - CRIMINAL IDENTIFICATION SECTION

Authority: A.R.S. § 41-1750 et seq.

Supp. 22-4

Editor's Note: This Chapter was recodified under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4).

CHAPTER TABLE OF CONTENTS

ARTICLE 1. CRIMINAL HISTORY RECORDS

R13-1-101. Definitions

In addition to the definitions in A.R.S. §§ 41-1750 and 41-2201, the following definitions apply to this Chapter:

1. "Access authorization list" means a list that contains the names of agency personnel who are authorized to receive information directly or indirectly from the ACJIS network.
2. "ACJIS" means the Arizona Criminal Justice Information System, a statewide network housing various databases on persons and property in this state. The ACJIS network is maintained by the Department and is available to authorized local, state, and federal criminal justice agencies.
3. "ADRS" means the Arizona Disposition Reporting System, which is maintained by the Department and supports electronic submission of disposition information to the central state repository.
4. "ALETS" means the Arizona Law Enforcement Telecommunications System.
5. "Arizona Computerized Criminal History" means a criminal history record kept by the Department in a database of offenders arrested in this state.
6. "Arresting agency case number" means a unique combination of 15 numbers and letters used to identify a criminal justice agency's case number such as the Department case number, Department report number, or case report number. The first three characters are the AZAFIS-assigned alpha characters that identify the arresting agency.
7. "AZAFIS" means the Arizona Automated Fingerprint Identification System maintained by the Department that stores state-level arrest fingerprints and related information.
8. "AZAFIS Image Scanner" means the scanning system that scans and transmits ink and roll arrest fingerprint records.
9. "AZAFIS Livescan" means the electronic system that captures and transmits arrest information and fingerprints.
10. "CHRI" means Criminal History Record Information.
11. "Classifiable Fingerprints" means fingerprint impressions that meet the criteria of the FBI as contained in Form FD-258 (9-9-2013), U.S. Government Printing Office: 2004-304-373/80029, incorporated by reference, available from the Department and the FBI (Attn: Logistical Support Unit (LSU), CJIS Division, 1000 Custer Hollow Road, Clarksburg, WV 26306). This incorporation contains no future editions or amendments.
12. "Date of arrest" means the date a person is taken into custody using the MMDDCCYY format as indicated in Exhibit A.
13. "Date of birth" means the subject's date of birth using MMDDCCYY format as indicated in Exhibit A.
14. "Department" means the Arizona Department of Public Safety.
15. "Disposition date" is the date of final disposition of a charge.
16. "FBI" means the Federal Bureau of Investigation.
17. "Hot files" means records entered into ACJIS. These records include those regarding wanted persons and stolen vehicles.
18. "Juvenile fingerprinted" means identification signifying that an individual is a juvenile on an arrest fingerprint card if the juvenile is being remanded as an adult.
19. "Law Enforcement Agency" means a municipal, county, or state agency with powers of arrest.
20. "LSI" means local subject identifier, a unique combination of 15 numbers and letters used by local law enforcement agencies to identify an individual. It is the local equivalent of a State Identification (SID) number. The first three characters are the AZAFIS-assigned alpha characters that identify the agency.
21. "NCIC" means the National Crime Information Center maintained by the FBI, a national repository of files on persons and property relating to a crime.
22. "NLETS" means the National Law Enforcement Telecommunications System, a message switching system for the interstate exchange of criminal justice information.
23. "Offender-based Tracking System" means a computer system database that indexes information from selected Arizona Criminal Justice Information System data files.
24. "Offense" means an offense listed in the Arizona Revised Statutes or a city ordinance that is used to arrest an offender.
25. "Offense type" means a designation that indicates whether an offense is a felony or a misdemeanor.
26. "ORI" means a unique identifier assigned by the FBI to an agency.
27. "PCN" means Process Control Number.
28. "Personal identifiers" means a subject's sex, race, height, weight, hair color, and eye color.
29. "Place of birth" means the state or country in which a subject of record was born.
30. "State Identification Number (SID)" means an identification number that is assigned by the Department to an individual whose set of arrest fingerprints has been submitted to AZAFIS.

Historical Note

Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-01; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 28 A.A.R. 3425 (October 28, 2022, Issue 43), effective December 4, 2022 (Supp. 22-4).

R13-1-102. Submission and Retention of Criminal Justice Information

A. The chief officer of a criminal justice agency in this state shall ensure that CHRI is submitted to the Department's Central State Repository as follows.

1. A law enforcement agency shall submit arrest fingerprints to the Department through the AZAFIS or through the mail.
2. A law enforcement agency shall submit any corrections to previously submitted arrest fingerprints to the Department by fax or mail on the "Correction of Arrest Information" form available from the Department. The Department's Central State Repository shall correct the record as requested. Corrections to or deletion of arrest

records may only be requested by the arresting or booking agency. The Correction of Information form includes:
   a. Name of the person authorizing the correction or deletion;
   b. Agency name, ORI, and telephone and fax numbers;
   c. PCN;
   d. SID;
   e. Subject of record's name and date of birth;
   f. Arresting agency case number;
   g. Date of arrest; and
   h. Correction or deletion needed.
3. Law enforcement agencies, prosecutors' offices, and courts shall submit dispositions related to an arrest fingerprint to the Department's Central State Repository within 40 days from the disposition date.
4. A court shall submit court orders that affect criminal history records to the Department's Central State Repository. The Department shall update the criminal history record based on the information received in the court order.
5. A county medical examiner shall provide to the Department's Central State Repository a full set of 10 inked and rolled fingerprints of a deceased person whose death is required to be investigated by the county medical examiner's office. The Department shall search the fingerprints to determine whether any criminal record is maintained and, if so, update the record to indicate notification of the death. The county medical examiner shall ensure that the complete fingerprint record submitted to the Department includes:
   a. Deceased person's full name,
   b. Date of birth, and
   c. Personal identifiers.

B. The Department's Central State Repository shall retain a criminal history record until the subject of record reaches age 99 or one year after the Department receives notice of the subject of record's death.

Historical Note

Former rule 1. Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-02; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

R13-1-103. Procedures For Law Enforcement Agencies and Prosecutors' Offices to Forward Dispositions of Criminal Proceedings to the Central State Repository

A. A law enforcement agency and prosecutor office shall submit a completed Disposition Report form for crimes specified in A.R.S. § 41-1750(C) to the Department's Central State Repository as outlined in A.R.S. § 41-1750.

B. The law enforcement agency that prepares the Disposition Report form shall complete the information in blocks #1 through 16 on the Disposition Report form as shown in Exhibit A for the arrest charges filed by the agency.
1. The law enforcement agency that prepares the Disposition Report form shall forward the form to the appropriate prosecutor's office. If the arresting agency makes a decision not to pursue criminal charges, the arresting agency shall complete blocks #1 through #16 and blocks #18, 25, and 26, and submit the completed form to the Department's Central State Repository.
2. The Department's Central State Repository shall update the criminal history record with the disposition report information.

C. The prosecutor's office shall verify the arrest charges listed on the Disposition Report form by the law enforcement agency, and add or amend the arrest charges listed by completing blocks #10 and 17, if applicable. The prosecutor's office shall reflect a decision to terminate one or all of the arrest charges on the Disposition Report form by completing all of the applicable blocks on the form.
1. For criminal charges filed with a court by the prosecutor, the prosecutor shall verify or complete information in blocks #10 through 16 and block #17, if applicable, on the Disposition Report form and forward the form to the appropriate court as required by Arizona Rule of Criminal Procedure 37.2.
2. If the prosecutor decides not to file with the court one or more of the arrest charges listed on the Disposition Report form, the prosecutor shall complete blocks #18, 25, and 26. The prosecutor shall forward the completed Disposition Report form to the Central State Repository, and the prosecutor shall forward a photocopy of the form to the appropriate court, if one or more charges are being filed with the court. The Central State Repository shall update the criminal history record to indicate the disposition for arrest charges not filed by the prosecutor.

D. Agencies may submit disposition information electronically to the Department instead of in paper form if the agency enforces quality control measures and follows the electronic disposition format provided by the Department.

Historical Note

Former rule 2. Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-03; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-104. Procedures for Juveniles Remanded as Adults and Procedures for the Department of Corrections to Forward Information Regarding Inmates to the Central State Repository

A. The Department maintains criminal history records in the Central State Repository for juveniles as the subject of record only if the juvenile is remanded to an adult court. If a criminal justice agency is processing a juvenile who is remanded to an adult court, the agency shall use the procedures in this Article to submit criminal history records to the Department's Central State Repository.

B. The Arizona Department of Corrections shall forward each week to the Department a computer tape that includes for each inmate within the prison system the inmate's full name, date of birth, sex, race, inmate number assigned by the agency, arrest information for which the inmate is serving time in prison, and custody status. The Department shall update computerized files of the Offender-based Tracking System and the Arizona Computerized Criminal History, when applicable.

Historical Note

Former rule 3. Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-04; renumbered under A.R.S. § 41-1011(C) to comply with the numbering

system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-105. Procedures for a Criminal Court to Forward Dispositions of Criminal Charges to the Central State Repository

A. A criminal court shall submit the disposition of all charges to the Central State Repository under Rule 37 of the Arizona Rules of Criminal Procedure.

B. The court shall verify the arrest charges listed on the Disposition Report form and complete the applicable blocks for each charge addressed by the court.

C. If there is more than one arrest charge listed on the Disposition Report form and any of the charges are being adjudicated by another court, the court shall photocopy the Disposition Report form and forward it to the other court.

D. The court shall complete and forward the disposition form to the Department's Central State Repository. The Department shall update the criminal history record with the disposition report information.

E. A criminal court shall use a Disposition Report supplemental form provided by the Department to report additional arrest charges and dispositions of the charges. The Disposition Report form is used to record the first three charges of an arrest event and the disposition of these charges. The Disposition Report supplemental form is used to record additional charges and the dispositions of those additional charges.

F. Agencies may submit disposition information electronically to the Department's Central State Repository instead of a paper form if the agency enforces quality control measures and follows the electronic disposition formats provided by the Department.

Historical Note

Former rule 4. Formerly Section R13-1-05; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-106. Arrest Fingerprint Record Submission

A. The chief officer of a criminal justice agency shall ensure that a completed arrest fingerprint record prescribed by subsection (D) in a format prescribed by the Department is sent to the Department's Central State Repository within 10 days from the date of fingerprinting using one of the following methods:
1. AZAFIS Livescan,
2. AZAFIS Image Scanner, or
3. Ink-and-roll arrest fingerprint card.

B. The chief officer of a criminal justice agency shall ensure that only one arrest fingerprint record is sent to the Department's Central State Repository for each arrest.

C. A criminal justice agency using the ink-and-roll method of fingerprinting shall obtain blank arrest fingerprint cards from the FBI using the CJIS Supply Requisition Form (I-178).

D. A completed arrest fingerprint record contains the following information:
1. About the individual arrested:
   a. Name;
   b. Date of birth;
   c. Personal identifiers;
   d. Juvenile fingerprinted, if applicable; and
   e. Place of birth;
2. Date of arrest;
3. ORI, and arresting agency's name and address;
4. Date of offense;
5. Local identification/reference:
   a. LSI and arresting agency case number are required,
   b. Local file number and agency tracking number are optional;
6. Citation information/charge description. Citation to the state, county, or city code allegedly violated and description of charge, i.e., A.R.S. § 13-1802, theft.
7. Offense type:
   a. Designate a felony with an "F,"
   b. Designate a misdemeanor with an "M";
8. Court ORI;
9. PCN;
10. Name or identification number of official taking fingerprints; and
11. Arrest fingerprints.

Historical Note

Former rule 5. Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-06; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

R13-1-107. Procedures for Review of Accuracy and Completeness of Criminal History Records

A. The subject of record or the subject's attorney may request criminal history record information maintained by the Department for the sole purpose of reviewing the accuracy and completeness of the subject of record's criminal history record.

B. To obtain a copy of a criminal history record, the subject of record shall submit a completed Record Review Instruction Packet provided by the Department.

C. A completed Record Review Instruction Packet includes the following for the subject of record:
1. Full set of classifiable fingerprints taken by an official at a law enforcement agency,
2. Name,
3. Date of birth,
4. Personal identifiers,
5. Place of birth,
6. Social Security number,
7. Address of residence,
8. Date fingerprinted, and
9. Signature.

D. The completed Record Review Instruction Packet shall be returned to the Department in the envelope provided.

E. The subject of record's attorney may obtain the subject of record's criminal history record by providing a notarized letter of authorization from the subject of record with the completed Record Review Instruction Packet.

F. Within 15 days of receipt of the completed Record Review Instruction Packet, the Department shall provide a response to the subject of record or the subject's attorney. The Department shall include in the response arrest and disposition information maintained by the Department on the subject of record and a Review and Challenge of Arizona Criminal History Record Information form that requests:
1. Subject of record's full name;
2. Signature of subject of record or attorney representing the subject of record;

3. Date of submission of the challenge;
4. Summary of the exceptions and reasons for the exceptions, specifying each arrest, and including:
   a. Name of arresting agency,
   b. Date of arrest,
   c. Arrest number, and
   d. Charge;
5. Subject of record's mailing address; and
6. Signature of the subject of record, verifying the summary of exceptions and reasons.

Historical Note

Former rule 6. Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5477, effective October 31, 2003 (Supp. 03-4). Formerly Section R13-1-07; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2).

R13-1-108. Procedures for Challenging the Accuracy and Completeness of Criminal History Records

A. To challenge a criminal history record, the subject of record or the subject of record's attorney shall complete and return the Review and Challenge of Arizona Criminal History Record Information form referenced in R13-1-107(F) within 35 days of the date of the response referenced in R13-1-107(F).

B. The Department shall complete an audit of the challenged entries within 15 days of receipt of the form by:
1. Contacting the contributing agencies,
2. Verifying the information, and
3. Researching dispositions on any challenged entry.

C. If the Department determines that a correction to or deletion from the criminal history record is necessary, the Department shall modify the record and notify the Federal Bureau of Investigation.

D. Upon conclusion of the audit referenced in subsection (B), the Department shall send written notification of the audit result and a copy of any record modification to the subject of record or the subject of record's attorney.

E. The Department shall include in the notice of audit result referenced in subsection (D) a statement that the subject of record may request a hearing to determine the accuracy of the criminal history record. To request a hearing, the subject of record or the subject of record's attorney shall submit to the Department a written request within 35 days of the date of the notice of audit result referenced in subsection (D).

Historical Note

Former rule 7. Formerly Section R13-1-08; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

R13-1-109. Hearing Procedures

A. Under A.R.S. § 41-2204(6), a hearing shall be conducted after receipt of a request for a hearing to determine the accuracy of information in a criminal history record maintained by the Central State Repository.

B. The Office of Administrative Hearing shall conduct a hearing to determine the accuracy of information in a criminal history record maintained by the Central State Repository in accordance with the procedures in A.R.S. Title 41, Chapter 6, Article 10 and the rules issued by the Office of Administrative Hearings.

C. Under A.R.S. § 41-1092.08, within 30 days after the Office of Administrative Hearings sends the administrative law judge's recommended decision to the Director, the Director shall review the recommended decision and may accept, modify, or reject it.

Historical Note

Former rule 8. Formerly Section R13-1-09; renumbered under A.R.S. § 41-1011(C) to comply with the numbering system prescribed by the Office of the Secretary of State (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Former R13-1-109 renumbered to R13-1-111, new Section made by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

R13-1-110. Review or Rehearing of the Director's Decision

A. In accordance with A.R.S. § 41-1092.09, a party may file with the Department a motion for rehearing or review of a decision issued by the Director under R13-1-109.

B. A party may amend a motion for rehearing or review at any time before the Department rules on the motion.

C. The Department may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Director, Department staff, or an administrative law judge;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
6. The findings of fact are not justified by the evidence or the decision is contrary to law.

D. The Department may affirm or modify a decision or grant a rehearing or review on all or some of the issues for any of the reasons listed in subsection (C). The Department shall specify with particularity the grounds for an order modifying a decision or granting a rehearing or review. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

E. Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Department may, on its own initiative, order a rehearing or review of the decision for any reason listed in subsection (C). The Department may grant a motion for rehearing or review, timely served, for a reason not stated in a motion.

F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service of the motion, serve response affidavits. The Department may extend this period for a maximum of 20 days for good cause or by written stipulation of the parties. The Department may permit reply affidavits.

G. If, in a particular decision, the Director makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision

shall be issued as a final decision without an opportunity for a rehearing or review.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

R13-1-111. Information Deemed Useful for the Study and Prevention of Crime or the Administration of Criminal Justice

A. An individual or agency that wishes to obtain criminal history records from the Central State Repository for the purpose of research, evaluative or statistical activities, the prevention of crime, or to provide services for the administration of criminal justice shall:

1. Provide a written or electronic request to the Department that specifies the purpose of the study, or how the records will be used to prevent crime or administer criminal justice; and
2. If the request is approved, sign a non-disclosure agreement that meets the requirements of A.R.S. § 41-1750(G)(9) and is prepared and provided by the Department.

B. The Department shall review the signed non-disclosure agreement and authorize the exchange of information in accordance with the agreement.

Historical Note

New Section R13-1-111 renumbered from R13-1-109 and amended by final rulemaking at 15 A.A.R. 273, effective March 7, 2009 (Supp. 09-1).

Exhibit A. Disposition Report Form Block Completion Instructions for Law Enforcement and Prosecutors

Block #1: SID NUMBER/AZ: If subject was previously arrested, the State Identification number may be obtained from the Arizona Computerized Criminal History (ACCH) files via terminal inquiry.
Block #2: NAME: Subject's complete name as shown on the arrest fingerprint record that was completed for this arrest.
Block #3: DATE OF BIRTH (DOB): As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD = day, CCYY = full year. Example: 03/20/1954.
Block #4: DATE OF ARREST: As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD = day, CCYY = full year. Example: 04/20/2001.
Block #5: PCN: PCN assigned for specific arrest incident via AZAFIS.
Block #6: ARRESTING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).
Block #7: ARRESTING AGENCY CASE NUMBER: The arresting agency's case number.
Block #8: BOOKING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).
Block #9: BOOKING NUMBER: The number assigned by the detention facility.
Block #10: CHARGES: Each offense charged at the time of arrest MUST be listed on line "a". Line "b" is used only for amendments to the initial arrest charge(s).
Block #11: ARIZONA REVISED STATUTE (A.R.S.) or Ordinance: Enter the correct A.R.S. number or the County/City Ordinance number for each charge (as indicated on the arrest fingerprint record.)
Block #12: DATE OF OFFENSE/VIOLATION: Enter the date the offense/violation was committed (MMDDCCYY).
Block #13: OFFENSE TYPE: Circle "M" for misdemeanor. Circle "F" for felony.
Block #14: PREPARATORY OFFENSE CODE: Enter the appropriate code from the list on the front of this form. Indicate "A" for Attempted, "C" for Conspiracy to Commit, "F" for facilitate, or "S" for solicit.
Block #15: DOMESTIC VIOLENCE & VICTIM INFORMATION CODE: Enter the appropriate code from the list on the front of the form. Indicate "D" for a crime involving domestic violence, "M" when the victim is a minor, "A" when the victim is a vulnerable adult, "L" when the victim is a law enforcement officer, "C" for a dangerous crime against a child/children.
Block #16: DESIGNATED COURT NAME/IDENTIFIER: Enter the designated court name or NCIC-assigned originating identifier (ORI) for each charge. Block #17: AMENDED TO: Enter the letter "X" in block 17, line "a"; then write amended charge(s) and sentence information on the corresponding "b" line, beginning in block 10, completing all applicable blocks through block 27.
Block #18: DISPOSITION CODE: Enter the appropriate disposition code from the following: "NF" for no complaint filed, "NR" for not referred to prosecution, or "DP" for deferred prosecution.
Block #25: DISPOSITION DATE: Enter the official disposition date (MMDDCCYY).
Block #26: AGENCY ORI MAKING DISPOSITION DECISION: The NCIC-assigned originating agency identifier (ORI) of the agency making the disposition decision.
Block #27: FURTHER EXPLANATIONS OR MODIFICATIONS: Further explanation regarding a particular charge/disposition (list the charge number) may be entered in this section.
Block #28: RIGHT INDEX FINGERPRINT: (lower right corner of the form) At the time of arrest/fingerprinting, the subject's right index fingerprint may be placed in this box. (This fingerprint is optional and not required to process the Disposition Report form.)

Historical Note

Article 1, Exhibit A recodified from Article 5, Exhibit A, effective February 7, 2019 (Supp. 19-1).

Exhibit B. Disposition Report Form Block Completion Instructions for Criminal Courts

Block #1: SID NUMBER/AZ: If subject was previously arrested, the State Identification number may be obtained from the Arizona Computerized Criminal History (ACCH) files via terminal inquiry.
Block #2: NAME: Subject's complete name as shown on the arrest fingerprint record that was completed for this arrest.
Block #3: DATE OF BIRTH (DOB): As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD = day, CCYY = full year. Example: 03/20/1954.
Block #4: DATE OF ARREST: As shown on the arrest fingerprint record (MMDDCCYY) MM = month, DD = day, CCYY = full year. Example: 04/20/2001.
Block #5: PCN: PCN assigned for specific arrest incident via AZAFIS.
Block #6: ARRESTING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).
Block #7: ARRESTING AGENCY CASE NUMBER: The arresting agency's case number.
Block #8: BOOKING AGENCY ORI: The NCIC-assigned originating agency identifier (ORI).
Block #9: BOOKING NUMBER: The number assigned by the detention facility.
Block #10: CHARGES: Each offense charged at the time of arrest MUST be listed on line "a". Line "b" is used only for amendments to the initial arrest charge(s).
Block #11: ARIZONA REVISED STATUTE (A.R.S.) or Ordinance: Enter the correct A.R.S. number or the County/City Ordinance number for each charge (as indicated on the arrest fingerprint record).
Block #12: DATE OF OFFENSE/VIOLATION: Enter the date the offense/violation was committed (MMDDCCYY).
Block #13: OFFENSE TYPE: Circle "M" for misdemeanor. Circle "F" for felony.
Block #14: PREPARATORY OFFENSE CODE: Enter the appropriate code from the list on the front of this form. Indicate "A" for attempted, "C" for Conspiracy to Commit, "F" for facilitate, or "S" for solicit.
Block #15: DOMESTIC VIOLENCE & VICTIM INFORMATION CODE: Enter the appropriate code from the list on the front of the form. Indicate "D" for a crime involving domestic violence, "M" when the victim is a minor, "A" when the victim is a vulnerable adult, "L" when the victim is a law enforcement officer, "C" for a dangerous crime against a child/children.

Block #16: DESIGNATED COURT NAME/IDENTIFIER: Enter the designated court name or NCIC-assigned originating identifier (ORI) for each charge.
Block #17: AMENDED TO: Enter the letter "X" in block 17, line "a"; then write amended charge(s) and sentence information on the corresponding "b" line, beginning in block 10, completing all applicable blocks through block 27.
Block #18: DISPOSITION CODE: Enter the appropriate disposition or appellate code from the list on the front of the form.
AC — Acquitted/ Not guilty
CD — Court Dismissed
DP — Deferred Prosecution
DS — Deferred Sentencing
GG — Guilty
GI — Guilty but Insane
NF — No complaint filed
NP — Nolo contendere plea
NR — Not referred for prosecution
PD — Pardoned
PM — Pending due to mental incompetency
PO — Plea to other charges
RI — Not responsible by reason of insanity

APPELLATE CODES:
AF — Affirmed
AR — Affirmed, Remanded for Re-sentencing
RR — Reversed and Remanded
RV — Reversed and Conviction Overturned
SM — Sentence Modified
Block #19: PRISON/JAIL: If the defendant was sentenced to confinement, circle "P" for prison or "J" for Jail.
Block #20: LENGTH OF CONFINEMENT: Indicate the length of confinement (in days, months, years, etc.) to which the defendant is sentenced. Example: 1 yr. 2 mo.
Block #21: SENTENCE CODE: Enter the appropriate sentence code from the list on the front of the form.
CC — Concurrent
CS — Consecutive
PS — Public or Community Service
SS — Court Suspended Sentence
Block #22: PROBATION LENGTH: Indicate the length of probation in days, months, years, etc. to which the subject is sentenced. Example: 3 yrs.
Block #23: FINE: Circle "Y" for Yes, to indicate that a fine was imposed. Circle "N" for No, to indicate that a fine was not imposed.
Block #24: COURT CASE COMPLAINT NUMBER: The case number assigned by the Justice/Municipal/Superior Court.
Block #25: DISPOSITION DATE: Enter the official disposition date (MMDDCCYY).
Block #26: AGENCY ORI MAKING DISPOSITION DECISION: The NCIC-assigned originating agency identifier (ORI) of the agency making the disposition decision.
Block #27: FURTHER EXPLANATIONS OR MODIFICATIONS: Further explanation regarding a particular charge/disposition (list the charge number) may be entered in this block.
Block #28: RIGHT INDEX FINGERPRINT: (lower right corner of the form) At the time of arrest/fingerprinting, the subject's right index fingerprint may be placed in this box. (This fingerprint is optional and not required to process the Disposition Report form.)

Historical Note
Article 1, Exhibit B recodified from Article 5, Exhibit B, effective February 7, 2019 (Supp. 19-1).

ARTICLE 2. ACJIS NETWORK

R13-1-201. ACJIS Security Measures

A. All criminal justice agencies that collect, store, disseminate, or access criminal justice information or criminal history record information from the ACJIS or NCIC shall comply with the policies, rules and regulations as outlined in the following publications that are incorporated by reference, available from the Department's Access Integrity Unit at 2222 W. Encanto Blvd., Phoenix, AZ 85009, the Federal Bureau of Investigation at 1000 Custer Hollow Road, Clarksburg, WV 26306 and the U.S. Government Publishing Office www.govinfo.gov and include no future editions or amendments:
1. ACJIS Operating Manual, dated September 2021;
2. FBI Criminal Justice Information System Security Policy, dated June 2020;
3. FBI NCIC Operating Manual, dated August 2021;
4. FBI Interstate Identification Index/National Fingerprint File Manual, dated March 2017; and,
5. 28 Code of Federal Regulations Part 20, dated July 1, 2020.

B. A criminal justice agency accessing the ACJIS network shall meet the following security guidelines:
1. Access and dissemination of information from the ACJIS network is limited to criminal justice agencies for the administration of criminal justice or for criminal justice employment.

2. An agency that enters records into the ACJIS network is responsible for the accuracy, timeliness, and completeness of the record entries.
3. An agency shall have an ACJIS misuse policy that outlines the sanctions imposed on agency personnel who misuse ACJIS.
4. An agency shall ensure that agency equipment connected to the ACJIS network is fully compatible with existing ACJIS computer equipment and upgraded as necessary to remain compatible with ACJIS configurations and architecture.
5. An agency shall ensure that agency personnel maintain appropriate operator certification levels as specified in the ACJIS Operating Manual.

C. A criminal justice agency that interfaces its record management system with the ACJIS network shall meet the following interface standards and security requirements as set by the Department:
1. Provide to the Department a complete and accurate schematic depicting the agency network and hardware configuration;
2. Ensure there are security controls to prevent unauthorized access to ACJIS information;
3. Follow user identification and password configurations specified by the Department;
4. Establish a process to review system logs and store the logs for one year; and
5. Support policy compliance and ensure the Department Information Security Officer is promptly informed of security incidents.

D. The Department shall provide criminal justice agencies with information received from the FBI that the Department determines is necessary to comply with this Section.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 28 A.A.R. 3425 (October 28, 2022, Issue 43), effective December 4, 2022 (Supp. 22-4).

R13-1-202. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Repealed by final rulemaking at 28 A.A.R. 3425 (October 28, 2022, Issue 43), effective December 4, 2022 (Supp. 22-4).

R13-1-203. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Repealed by final rulemaking at 28 A.A.R. 3425 (October 28, 2022, Issue 43), effective December 4, 2022 (Supp. 22-4).

R13-1-204. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Repealed by final rulemaking at 28 A.A.R. 3425 (October 28, 2022, Issue 43), effective December 4, 2022 (Supp. 22-4).

ARTICLE 3. ARIZONA CRIME STATISTICS

R13-1-301. Submittal of Uniform Crime Statistics

A. A law enforcement agency shall submit uniform crime information to include crimes that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability and as outlined in the following publications that are incorporated by reference, available from the Department's Access Integrity Unit at 2222 W. Encanto Blvd., Phoenix, AZ 85009 and the FBI at 1000 Custer Hollow Road, Clarksburg, WV 26306, and include no future editions or amendments:
1. Arizona National Incident-Based Reporting System Technical Specifications, dated March 2020.
2. FBI 2021.1 National Incident-Based Reporting System User Manual, dated April 2021.
3. FBI 2019.2.1 National Incident-Based Reporting System Technical Specifications, dated June 2020.

B. The Department shall provide law enforcement agencies with information contained in the FBI's Uniform Crime Reporting State Program Bulletins and any other directives the Department determines is necessary to comply with this Section.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 28 A.A.R. 3425 (October 28, 2022, Issue 43), effective December 4, 2022 (Supp. 22-4).

R13-1-302. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Repealed by final rulemaking at 28 A.A.R. 3425 (October 28, 2022, Issue 43), effective December 4, 2022 (Supp. 22-4).

ARTICLE 4. APPLICANT FINGERPRINT PROCESSING

R13-1-401. Non-criminal Justice Fingerprint Processing Charges

A. For an applicant for non-criminal justice employment, fingerprint processing charges are:
1. For a state criminal records check, $5; and
2. If a federal criminal record check by the FBI is requested by the applicant, the Department shall collect an additional charge to cover the cost billed to the Department by the FBI for the federal criminal records check.

B. For a state criminal records check, an individual or government agency shall submit payment by:
1. Credit card;
2. Cashier's check;
3. Money order;
4. For government agencies a transfer of funds through the State's accounting system; or
5. Check drawn on a government agency account.

C. All charges are non-refundable.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 3558, effective January 18, 2020 (Supp. 19-4).

R13-1-402. Refusal of Service

A. If any form of payment is not accepted by the Department's banking facility, the Department shall send the state agency, company, or individual that submitted the payment a notice of nonpayment.

B. The notice of nonpayment informs the state agency, company, or individual that the Department will not accept non-criminal justice fingerprint submissions from the agency, company, or individual until past due payment is made.

C. At the Department's discretion, the Department may require the delinquent party to submit all future payments in the form of a cashier's check, credit card or money order.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 3558, effective January 18, 2020 (Supp. 19-4).

ARTICLE 5. REPEALED

R13-1-501. Repealed

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Section R13-1-501 repealed by final expedited rulemaking at 25 A.A.R. 1444, effective immediately May 21, 2019 (Supp. 19-2).

R13-1-502. Repealed

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Section amended by final rulemaking at 23 A.A.R. 3546, effective February 10, 2018 (Supp. 17-4). Section R13-1-502 repealed by final expedited rulemaking at 25 A.A.R. 1444, effective immediately May 21, 2019 (Supp. 19-2).

R13-1-503. Repealed

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Section R13-1-503 repealed by final expedited rulemaking at 25 A.A.R. 1444, effective immediately May 21, 2019 (Supp. 19-2).

R13-1-504. Repealed

Historical Note
New Section made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Section amended by final rulemaking at 23 A.A.R. 3546, effective February 10, 2018 (Supp. 17-4). Section R13-1-504 repealed by final expedited rulemaking at 25 A.A.R. 1444, effective immediately May 21, 2019 (Supp. 19-2).

Exhibit A. Recodified

Historical Note
Article 5, Exhibit A made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Article 5, Exhibit A recodified to Article 1, Exhibit B, effective February 7, 2019 (Supp. 19-1).

Exhibit B. Recodified

Historical Note
Article 5, Exhibit B made by final rulemaking at 11 A.A.R. 1550, effective June 4, 2005 (Supp. 05-2). Article 5, Exhibit B recodified to Article 1, Exhibit B, effective February 7, 2019 (Supp. 19-1).

41-1713. Powers and duties of director; authentication of records

A. The director of the department shall:

1. Be the administrative head of the department.

2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department on the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by section 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.

3. Except as provided in sections 12-119, 41-1304 and 41-1304.05, employ officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall described in section 41-1362, state office buildings in Tucson and persons who are on any of those properties. Department officers may make arrests and issue citations for crimes or traffic offenses and for any violation of a rule adopted under section 41-796. For the purposes of this paragraph, security does not mean security services related to building operation and maintenance functions provided by the department of administration.

4. Make rules necessary for the operation of the department.

5. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.

6. Appoint a deputy director with the approval of the governor.

7. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.

8. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.

9. 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.

10. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.

11. Develop procedures to exchange information with the department of transportation for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.

12. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by section 37-1302, subsection B.

B. The director may:

1. Issue commissions to officers of the department.

2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.

3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.

4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.

5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title unless otherwise provided by law.

6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.

7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.

8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.

9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.

10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4. Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.

11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.

12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to section 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.

13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department on the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to sections 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 7 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.

41-1750. Central state repository; department of public safety; duties; funds; accounts; definitions

A. The department is responsible for the effective operation of the central state repository in order to collect, store and disseminate complete and accurate Arizona criminal history records and related criminal justice information. The department may procure criminal history records and related criminal justice information for violations that are not listed in this section. The department shall:

1. Procure from all criminal justice agencies in this state accurate and complete personal identification data, fingerprints, charges, process control numbers and dispositions and such other information as may be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as a criminal defendant for any of the following:

(a) A felony offense or an offense involving domestic violence as defined in section 13-3601.

(b) A violation of title 13, chapter 14 or title 28, chapter 4.

(c) An offense listed in:

(i) Section 32-2422, subsection A, paragraph 4.

(ii) Section 32-2441, subsection A, paragraph 4.

(iii) Section 32-2612, subsection A, paragraph 4.

(iv) Section 32-2622, subsection A, paragraph 4.

(v) Section 41-1758.03, subsections B and C.

(vi) Section 41-1758.07, subsections B and C.

2. Collect information concerning the number and nature of offenses known to have been committed in this state and of the legal steps taken in connection with these offenses, such other information that is useful in the study of crime and in the administration of criminal justice and all other information deemed necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

3. Collect information concerning criminal offenses that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender, antisemitism or disability.

4. Cooperate with the central state repositories in other states and with the appropriate agency of the federal government in the exchange of information pertinent to violators of the law.

5. Ensure the rapid exchange of information concerning the commission of crime and the detection of violators of the law among the criminal justice agencies of other states and of the federal government.

6. Furnish assistance to peace officers throughout this state in crime scene investigation for the detection of latent fingerprints and in the comparison of latent fingerprints.

7. Conduct periodic operational audits of the central state repository and of a representative sample of other agencies that contribute records to or receive criminal justice information from the central state repository or through the Arizona criminal justice information system.

8. Establish and enforce the necessary physical and system safeguards to ensure that the criminal justice information maintained and disseminated by the central state repository or through the Arizona criminal justice information system is appropriately protected from unauthorized inquiry, modification, destruction or dissemination as required by this section.

9. Aid and encourage coordination and cooperation among criminal justice agencies through the statewide and interstate exchange of criminal justice information.

10. Provide training and proficiency testing on the use of criminal justice information to agencies receiving information from the central state repository or through the Arizona criminal justice information system.

11. Operate and maintain the Arizona automated fingerprint identification system established by section 41-2411.

12. Provide criminal history record information to the fingerprinting division for the purpose of screening applicants for fingerprint clearance cards.

B. The director may establish guidelines for the submission and retention of criminal justice information as deemed useful for the study or prevention of crime and for the administration of criminal justice.

C. Criminal justice agencies may provide criminal history records and related criminal justice information for violations that are not listed in this section. The chief officers of criminal justice agencies of this state or its political subdivisions shall provide to the central state repository fingerprints and information concerning personal identification data, descriptions, crimes for which persons are arrested, process control numbers and dispositions and such other information as may be pertinent to all persons who have been charged with, arrested for, convicted of or summoned to court as criminal defendants for any of the following:

1. Felony offenses or offenses involving domestic violence as defined in section 13-3601.

2. Violations of title 13, chapter 14 or title 28, chapter 4 that have occurred in this state.

3. An offense listed in:

(a) Section 32-2422, subsection A, paragraph 4.

(b) Section 32-2441, subsection A, paragraph 4.

(c) Section 32-2612, subsection A, paragraph 4.

(d) Section 32-2622, subsection A, paragraph 4.

(e) Section 41-1758.03, subsections B and C.

(f) Section 41-1758.07, subsections B and C.

D. The chief officers of law enforcement agencies of this state or its political subdivisions shall provide to the department such information as necessary to operate the statewide uniform crime reporting program and to cooperate with the federal government uniform crime reporting program.

E. The chief officers of criminal justice agencies of this state or its political subdivisions shall comply with the training and proficiency testing guidelines as required by the department to comply with the federal national crime information center mandates.

F. The chief officers of criminal justice agencies of this state or its political subdivisions also shall provide to the department information concerning crimes that manifest evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender, antisemitism or disability.

G. The director shall authorize the exchange of criminal justice information between the central state repository, or through the Arizona criminal justice information system, whether directly or through any intermediary, only as follows:

1. With criminal justice agencies of the federal government, Indian tribes, this state or its political subdivisions and other states, on request by the chief officers of such agencies or their designated representatives, specifically for the purposes of the administration of criminal justice and for evaluating the fitness of current and prospective criminal justice employees. The department may conduct periodic state and federal criminal history records checks for the purpose of updating the status of current criminal justice employees or volunteers and may notify the criminal justice agency of the results of the records check. The department is authorized to submit fingerprints to the federal bureau of investigation to be retained for the purpose of being searched by future submissions to the federal bureau of investigation including latent fingerprint searches.

2. With any noncriminal justice agency pursuant to a statute, ordinance or executive order that specifically authorizes the noncriminal justice agency to receive criminal history record information for the purpose of evaluating the fitness of current or prospective licensees, employees, contract employees or volunteers, on submission of the subject's fingerprints and the prescribed fee. Each statute, ordinance, or executive order that authorizes noncriminal justice agencies to receive criminal history record information for these purposes shall identify the specific categories of licensees, employees, contract employees or volunteers, and shall require that fingerprints of the specified individuals be submitted in conjunction with such requests for criminal history record information. The department may conduct periodic state and federal criminal history records checks for the purpose of updating the status of current licensees, employees, contract employees or volunteers and may notify the noncriminal justice agency of the results of the records check. The department is authorized to submit fingerprints to the federal bureau of investigation to be retained for the purpose of being searched by future submissions to the federal bureau of investigation including latent fingerprint searches.

3. With the board of fingerprinting for the purpose of conducting good cause exceptions pursuant to section 41-619.55 and central registry exceptions pursuant to section 41-619.57.

4. With any individual for any lawful purpose on submission of the subject of record's fingerprints and the prescribed fee.

5. With the governor, if the governor elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with the governor's constitutional duty to ensure that the laws are faithfully executed or as needed to carry out the other responsibilities of the governor's office.

6. With regional computer centers that maintain authorized computer-to-computer interfaces with the department, that are criminal justice agencies or under the management control of a criminal justice agency and that are established by a statute, ordinance or executive order to provide automated data processing services to criminal justice agencies specifically for the purposes of the administration of criminal justice or evaluating the fitness of regional computer center employees who have access to the Arizona criminal justice information system and the national crime information center system.

7. With an individual who asserts a belief that criminal history record information relating to the individual is maintained by an agency or in an information system in this state that is subject to this section. On submission of fingerprints, the individual may review this information for the purpose of determining its accuracy and completeness by making application to the agency operating the system. Rules adopted under this section shall include provisions for administrative review and necessary correction of any inaccurate or incomplete information. The review and challenge process authorized by this paragraph is limited to criminal history record information.

8. With individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement if the agreement specifically authorizes access to data, limits the use of data to purposes for which given and ensures the security and confidentiality of the data consistent with this section.

9. With individuals and agencies for the express purpose of research, evaluative or statistical activities pursuant to an agreement with a criminal justice agency if the agreement specifically authorizes access to data, limits the

use of data to research, evaluative or statistical purposes and ensures the confidentiality and security of the data consistent with this section.

10. With the auditor general for audit purposes.

11. With central state repositories of other states for noncriminal justice purposes for dissemination in accordance with the laws of those states.

12. On submission of the fingerprint card, with the department of child safety and a tribal social services agency to provide criminal history record information on prospective adoptive parents for the purpose of conducting the preadoption certification investigation under title 8, chapter 1, article 1 if the department of economic security is conducting the investigation, or with an agency or a person appointed by the court, if the agency or person is conducting the investigation. Information received under this paragraph shall only be used for the purposes of the preadoption certification investigation.

13. With the department of child safety, a tribal social services agency and the superior court for the purpose of evaluating the fitness of custodians or prospective custodians of juveniles, including parents, relatives and prospective guardians. Information received under this paragraph shall only be used for the purposes of that evaluation. The information shall be provided on submission of either:

(a) The fingerprint card.

(b) The name, date of birth and social security number of the person.

14. On submission of a fingerprint card, provide criminal history record information to the superior court for the purpose of evaluating the fitness of investigators appointed under section 14-5303 or 14-5407, guardians appointed under section 14-5206 or 14-5304 or conservators appointed under section 14-5401.

15. With the supreme court to provide criminal history record information on prospective fiduciaries pursuant to section 14-5651.

16. With the department of juvenile corrections to provide criminal history record information pursuant to section 41-2814.

17. On submission of the fingerprint card, provide criminal history record information to the Arizona peace officer standards and training board or a board certified law enforcement academy to evaluate the fitness of prospective cadets.

18. With the internet sex offender website database established pursuant to section 13-3827.

19. With licensees of the United States nuclear regulatory commission for the purpose of determining whether an individual should be granted unescorted access to the protected area of a commercial nuclear generating station on submission of the subject of record's fingerprints and the prescribed fee.

20. With the state board of education for the purpose of evaluating the fitness of a certificated educator, an applicant for a teaching or administrative certificate or a noncertificated person as defined in section 15-505 if the state board of education or its employees or agents have reasonable suspicion that the educator or person engaged in conduct that would be a criminal violation of the laws of this state or was involved in immoral or unprofessional conduct or that the applicant engaged in conduct that would warrant disciplinary action if the applicant were certificated at the time of the alleged conduct. The information shall be provided on the submission of either:

(a) The fingerprint card.

(b) The name, date of birth and social security number of the person.

21. With each school district and charter school in this state. The department of education and the state board for charter schools shall provide the department of public safety with a current list of email addresses for each school district and charter school in this state and shall periodically provide the department of public safety with updated email addresses. If the department of public safety is notified that a person who is required to have a fingerprint clearance card to be employed by or to engage in volunteer activities at a school district or charter school has been arrested for or convicted of an offense listed in section 41-1758.03, subsection B or has been arrested for or convicted of an offense that amounts to unprofessional conduct under section 15-550, the department of public safety shall notify each school district and charter school in this state that the person's fingerprint clearance card has been suspended or revoked.

22. With a tribal social services agency and the department of child safety as provided by law, which currently is the Adam Walsh child protection and safety act of 2006 (42 United States Code section 16961), for the purposes of investigating or responding to reports of child abuse, neglect or exploitation. Information received pursuant to this paragraph from the national crime information center, the interstate identification index and the Arizona criminal justice information system network shall only be used for the purposes of investigating or responding as prescribed in this paragraph. The information shall be provided on submission to the department of public safety of either:

(a) The fingerprints of the person being investigated.

(b) The name, date of birth and social security number of the person.

23. With a nonprofit organization that interacts with children or vulnerable adults for the lawful purpose of evaluating the fitness of all current and prospective employees, contractors and volunteers of the organization. The criminal history record information shall be provided on submission of the applicant fingerprint card and the prescribed fee.

24. With the superior court for the purpose of determining an individual's eligibility for substance abuse and treatment courts in a family or juvenile case.

25. With the governor to provide criminal history record information on prospective gubernatorial nominees, appointees and employees as provided by law.

H. The director shall adopt rules necessary to execute this section.

I. The director, in the manner prescribed by law, shall remove and destroy records that the director determines are no longer of value in the detection or prevention of crime.

J. The director shall establish a fee in an amount necessary to cover the cost of federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes. An additional fee may be charged by the department for state noncriminal justice fingerprint processing. Fees submitted to the department for state noncriminal justice fingerprint processing are not refundable.

K. The director shall establish a fee in an amount necessary to cover the cost of processing copies of department reports, eight by ten inch black and white photographs or eight by ten inch color photographs of traffic accident scenes.

L. Except as provided in subsection O of this section, each agency authorized by this section may charge a fee, in addition to any other fees prescribed by law, in an amount necessary to cover the cost of state and federal noncriminal justice fingerprint processing for criminal history record information checks that are authorized by law for noncriminal justice employment, licensing or other lawful purposes.

M. A fingerprint account within the records processing fund is established for the purpose of separately accounting for the collection and payment of fees for noncriminal justice fingerprint processing by the

department. Monies collected for this purpose shall be credited to the account, and payments by the department to the United States for federal noncriminal justice fingerprint processing shall be charged against the account. Monies in the account not required for payment to the United States shall be used by the department in support of the department's noncriminal justice fingerprint processing duties. At the end of each fiscal year, any balance in the account not required for payment to the United States or to support the department's noncriminal justice fingerprint processing duties reverts to the state general fund.

N. A records processing fund is established for the purpose of separately accounting for the collection and payment of fees for department reports and photographs of traffic accident scenes processed by the department. Monies collected for this purpose shall be credited to the fund and shall be used by the department in support of functions related to providing copies of department reports and photographs. At the end of each fiscal year, any balance in the fund not required for support of the functions related to providing copies of department reports and photographs reverts to the state general fund.

O. The department of child safety may pay from appropriated monies the cost of federal fingerprint processing or federal criminal history record information checks that are authorized by law for employees and volunteers of the department, guardians pursuant to section 8-453, subsection A, paragraph 6, the licensing of foster parents or the certification of adoptive parents.

P. The director shall adopt rules that provide for:

1. The collection and disposition of fees pursuant to this section.

2. The refusal of service to those agencies that are delinquent in paying these fees.

Q. The director shall ensure that the following limitations are observed regarding dissemination of criminal justice information obtained from the central state repository or through the Arizona criminal justice information system:

1. Any criminal justice agency that obtains criminal justice information from the central state repository or through the Arizona criminal justice information system assumes responsibility for the security of the information and shall not secondarily disseminate this information to any individual or agency not authorized to receive this information directly from the central state repository or originating agency.

2. Dissemination to an authorized agency or individual may be accomplished by a criminal justice agency only if the dissemination is for criminal justice purposes in connection with the prescribed duties of the agency and not in violation of this section.

3. Criminal history record information disseminated to noncriminal justice agencies or to individuals shall be used only for the purposes for which it was given. Secondary dissemination is prohibited unless otherwise authorized by law.

4. The existence or nonexistence of criminal history record information shall not be confirmed to any individual or agency not authorized to receive the information itself.

5. Criminal history record information to be released for noncriminal justice purposes to agencies of other states shall only be released to the central state repositories of those states for dissemination in accordance with the laws of those states.

6. Criminal history record information shall be released to noncriminal justice agencies of the federal government pursuant to the terms of the federal security clearance information act (P.L. 99-169).

R. This section and the rules adopted under this section apply to all agencies and individuals collecting, storing or disseminating criminal justice information processed by manual or automated operations if the collection, storage or dissemination is funded in whole or in part with monies made available by the law enforcement

assistance administration after July 1, 1973, pursuant to title I of the crime control act of 1973, and to all agencies that interact with or receive criminal justice information from or through the central state repository and through the Arizona criminal justice information system.

S. This section does not apply to criminal history record information contained in:

1. Posters, arrest warrants, announcements or lists for identifying or apprehending fugitives or wanted persons.

2. Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public if these records are organized on a chronological basis.

3. Transcripts or records of judicial proceedings if released by a court or legislative or administrative proceedings.

4. Announcements of executive clemency or pardon.

5. Computer databases, other than the Arizona criminal justice information system, that are specifically designed for community notification of an offender's presence in the community pursuant to section 13-3825 or for public informational purposes authorized by section 13-3827.

T. Nothing in this section prevents a criminal justice agency from disclosing to the public criminal history record information that is reasonably contemporaneous to the event for which an individual is currently within the criminal justice system, including information noted on traffic accident reports concerning citations, blood alcohol tests or arrests made in connection with the traffic accident being investigated.

U. In order to ensure that complete and accurate criminal history record information is maintained and disseminated by the central state repository:

1. The booking agency shall take legible ten-print fingerprints of all persons who are arrested for offenses listed in subsection C of this section. The booking agency shall obtain a process control number and provide to the person fingerprinted a document that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court.

2. Except as provided in paragraph 3 of this subsection, if a person is summoned to court as a result of an indictment or complaint for an offense listed in subsection C of this section, the court shall order the person to appear before the county sheriff and provide legible ten-print fingerprints. The county sheriff shall obtain a process control number and provide a document to the person fingerprinted that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court. For the purposes of this paragraph, "summoned" includes a written promise to appear by the defendant on a uniform traffic ticket and complaint.

3. If a person is arrested for a misdemeanor offense listed in subsection C of this section by a city or town law enforcement agency, the person shall appear before the law enforcement agency that arrested the defendant and provide legible ten-print fingerprints. The law enforcement agency shall obtain a process control number and provide a document to the person fingerprinted that indicates proof of the fingerprinting and that informs the person that the document must be presented to the court.

4. The mandatory fingerprint compliance form shall contain the following information:

(a) Whether ten-print fingerprints have been obtained from the person.

(b) Whether a process control number was obtained.

(c) The offense or offenses for which the process control number was obtained.

(d) Any report number of the arresting authority.

(e) Instructions on reporting for ten-print fingerprinting, including available times and locations for reporting for ten-print fingerprinting.

(f) Instructions that direct the person to provide the form to the court at the person's next court appearance.

5. Within ten days after a person is fingerprinted, the arresting authority or agency that took the fingerprints shall forward the fingerprints to the department in the manner or form required by the department.

6. On the issuance of a summons for a defendant who is charged with an offense listed in subsection C of this section, the summons shall direct the defendant to provide ten-print fingerprints to the appropriate law enforcement agency.

7. At the initial appearance or on the arraignment of a summoned defendant who is charged with an offense listed in subsection C of this section, if the person does not present a completed mandatory fingerprint compliance form to the court or if the court has not received the process control number, the court shall order that within twenty calendar days the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency.

8. If the defendant fails to present a completed mandatory fingerprint compliance form or if the court has not received the process control number, the court, on its own motion, may remand the defendant into custody for ten-print fingerprinting. If otherwise eligible for release, the defendant shall be released from custody after being ten-print fingerprinted.

9. In every criminal case in which the defendant is incarcerated or fingerprinted as a result of the charge, an originating law enforcement agency or prosecutor, within forty days of the disposition, shall advise the central state repository of all dispositions concerning the termination of criminal proceedings against an individual arrested for an offense specified in subsection C of this section. This information shall be submitted on a form or in a manner required by the department.

10. Dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who is arrested for an offense specified in subsection C of this section or section 8-341, subsection V, paragraph 3 shall be reported to the central state repository within forty days of the date of the disposition. This information shall be submitted on a form or in a manner specified by rules approved by the supreme court.

11. The state department of corrections or the department of juvenile corrections, within forty days, shall advise the central state repository that it has assumed supervision of a person convicted of an offense specified in subsection C of this section or section 8-341, subsection V, paragraph 3. The state department of corrections or the department of juvenile corrections shall also report dispositions that occur thereafter to the central state repository within forty days of the date of the dispositions. This information shall be submitted on a form or in a manner required by the department of public safety.

12. Each criminal justice agency shall query the central state repository before dissemination of any criminal history record information to ensure the completeness of the information. Inquiries shall be made before any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be provided as soon as possible.

V. The director shall adopt rules specifying that any agency that collects, stores or disseminates criminal justice information that is subject to this section shall establish effective security measures to protect the information from unauthorized access, disclosure, modification or dissemination. The rules shall include reasonable safeguards to protect the affected information systems from fire, flood, wind, theft, sabotage or other natural or man-made hazards or disasters.

W. The department shall make available to agencies that contribute to, or receive criminal justice information from, the central state repository or through the Arizona criminal justice information system a continuing training program in the proper methods for collecting, storing and disseminating information in compliance with this section.

X. Nothing in this section creates a cause of action or a right to bring an action including an action based on discrimination due to sexual orientation.

Y. The definition prescribed in subsection Z, paragraph 3 of this section does not diminish or infringe on any rights protected under the first amendment to the United States constitution or the Arizona constitution.

Z. For the purposes of this section:

1. "Administration of criminal justice" means performance of the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision or rehabilitation of criminal offenders. Administration of criminal justice includes enforcement of criminal traffic offenses and civil traffic violations, including parking violations, when performed by a criminal justice agency. Administration of criminal justice also includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. "Administrative records" means records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency and that are designed to furnish information to protect the rights of this state and of persons directly affected by the agency's activities.

3. "Antisemitism" includes the definition of antisemitism that was adopted by the international holocaust remembrance alliance on May 26, 2016 and that has been adopted by the United States department of state, including the contemporary examples of antisemitism identified in the adopted definition.

4. "Arizona criminal justice information system" or "system" means the statewide information system managed by the director for the collection, processing, preservation, dissemination and exchange of criminal justice information and includes the electronic equipment, facilities, procedures and agreements necessary to exchange this information.

5. "Booking agency" means the county sheriff or, if a person is booked into a municipal jail, the municipal law enforcement agency.

6. "Central state repository" means the central location within the department for the collection, storage and dissemination of Arizona criminal history records and related criminal justice information.

7. "Criminal history record information" and "criminal history record" means information that is collected by criminal justice agencies on individuals and that consists of identifiable descriptions and notations of arrests, detentions, indictments and other formal criminal charges, and any disposition arising from those actions, sentencing, formal correctional supervisory action and release. Criminal history record information and criminal history record do not include identification information to the extent that the information does not indicate involvement of the individual in the criminal justice system or information relating to juveniles unless they have been adjudicated as adults.

8. "Criminal justice agency" means either:

(a) A court at any governmental level with criminal or equivalent jurisdiction, including courts of any foreign sovereignty duly recognized by the federal government.

(b) A government agency or subunit of a government agency that is specifically authorized to perform as its principal function the administration of criminal justice pursuant to a statute, ordinance or executive order and

that allocates more than fifty percent of its annual budget to the administration of criminal justice. This subdivision includes agencies of any foreign sovereignty duly recognized by the federal government.

9. "Criminal justice information" means information that is collected by criminal justice agencies and that is needed for the performance of their legally authorized and required functions, such as criminal history record information, citation information, stolen property information, traffic accident reports, wanted persons information and system network log searches. Criminal justice information does not include the administrative records of a criminal justice agency.

10. "Disposition" means information disclosing that a decision has been made not to bring criminal charges or that criminal proceedings have been concluded or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of an appellate review of criminal proceedings or executive clemency.

11. "Dissemination" means the written, oral or electronic communication or transfer of criminal justice information to individuals and agencies other than the criminal justice agency that maintains the information. Dissemination includes the act of confirming the existence or nonexistence of criminal justice information.

12. "Management control":

(a) Means the authority to set and enforce:

(i) Priorities regarding development and operation of criminal justice information systems and programs.

(ii) Standards for the selection, supervision and termination of personnel involved in the development of criminal justice information systems and programs and in the collection, maintenance, analysis and dissemination of criminal justice information.

(iii) Policies governing the operation of computers, circuits and telecommunications terminals used to process criminal justice information to the extent that the equipment is used to process, store or transmit criminal justice information.

(b) Includes the supervision of equipment, systems design, programming and operating procedures necessary for the development and implementation of automated criminal justice information systems.

13. "Process control number" means the Arizona automated fingerprint identification system number that attaches to each arrest event at the time of fingerprinting and that is assigned to the arrest fingerprint card, disposition form and other pertinent documents.

14. "Secondary dissemination" means the dissemination of criminal justice information from an individual or agency that originally obtained the information from the central state repository or through the Arizona criminal justice information system to another individual or agency.

15. "Sexual orientation" means consensual homosexuality or heterosexuality.

16. "Subject of record" means the person who is the primary subject of a criminal justice record.

41-2206. Disciplinary action; system participants

The department may remove any agency, company or individual that fails to conform to the rules adopted pursuant to this article from participation in the system.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 8

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 6, 2023; October 3, 2023

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

FROM: Council Staff

DATE: September 18, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10, Article 8

Staff Update

This Five-Year Review Report (5YRR) was previously considered at the August 29, 2023 Study Session and September 6, 2023 Council Meeting. At the August 29, 2023 Study Session numerous questions/concerns were raised by Council Member Thorwald regarding the Department of Health Services' (Department) rules in this Article. Council Member Thorwald subsequently provided the Department with a list of these questions and concerns. At the September 6, 2023 Council Meeting, the Council voted to table consideration of this 5YRR to the current meeting cycle to allow the Department sufficient time to adequately respond to the questions and concerns. On September 18, 2023, the Department provided its responses to the questions and concerns. A copy of the responses has been included in the final materials for the Council's reference.

Summary

This 5YRR from the Department of Health Services (Department) relates to twenty (20) rules in Title 9, Chapter 10, Article 8 regarding Assisted Living Facilities. Specifically, the rules establish the minimum requirements for contracts to provide assisted living facility services, personnel and personnel records, residency and residency agreements, residence service plans, transport and transfer of a resident, resident rights, resident's medical records, behavioral care,

behavioral health services, personal care services, directed care services, medication services, food services, safety standards, environmental standards, and physical plant standards.

In the prior 5YRR for these rules, which was approved by the Council in October 2018, the Department proposed to amend several rules to make them more clear, concise, understandable, consistent and effective. The Department indicates it completed the prior proposed course of action by final rulemaking which became effective on October 1, 2019.

Proposed Action

In the current report, the Department is proposing to amend eight (8) rules to improve their effectiveness, consistency, clarity, conciseness, and understandability. The Department indicates it plans to submit a Notice of Final Rulemaking to the Council by February 2024.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department has reviewed the rules and believes that the changes made to the rules may have created a minimal increase in costs but believes that the benefit of having more understandable rules outweighs any costs incurred. The Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules. Stakeholders include the Department, health care institutions, personnel members, patients/residents of a health care institution and their families 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 has determined that these rules 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?**

The Department indicates it received eight (8) recommendations from Arizona LeadingAge which are summarized in Section 7 of the Department's report. The Department has also provided copies of the written comments, which have been included in the final materials for the Council's reference. The Department indicates it plans to amend the rules in response to most, but not all, of the suggestions.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates the rules are generally clear, concise, and understandable except for the following rules:

- **R9-10-803**: The rule could be improved by simplifying the language in subsection (C)(1)(j) and correcting an "and" to an "or" since either a manager at an assisted living facility or a resident/resident's representative can initiate termination of residency. In addition, grammatical errors should be corrected in subsection (C)(1)(w) by changing "report" to the plural form, "reports," and adding a comma in subsection (J).
- **R9-10-806**: The rule could be improved by removing the duplicative language, "documentation of compliance," in subsection (C)(1)(c)(ix).
- **R9-10-807**: The rule could be improved by correcting grammatical errors in subsections (F)(2), (G), and (H).
- **R9-10-811**: The rule could be improved by correcting grammatical errors in subsection (C), which include adding necessary articles of speech, "the" and "an."
- **R9-10-816**: The rule could be improved by correcting a grammatical error in subsection (B) by adding the word "the" where necessary.
- **R9-10-820**: The rule is clear, concise, and understandable, but could be improved by correcting a grammatical error in subsection (F), changing "that" to "than."

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department indicates the rules are generally consistent with other rules and statutes except for the following:

- **R9-10-803**: Subsection (C)(1)(i) can be improved to align more with Title 9, Chapter 10, Article 7, Behavioral Health Residential Facilities by including policies and procedures that cover resident's rights including assisting a resident who does not speak English or who has a physical or other disability to become aware of the resident rights.
- **R9-10-803 & R9-10-810**: The rule is inconsistent with A.R.S. § 36-407.02, as added by Laws 2022, Ch. 179. Rules in these Sections will need to be developed to require an assisted living facility to implement administrative policies and procedures which allow a patient to have religious visitation from a clergy member of their choice.
- **R9-10-811**: The rule is consistent with other rules and statutes; however, the rule can be improved to align more with Title 9, Chapter 10, Article 7, Behavioral Health Residential Facilities by including that a manager shall ensure that an order is dated and authenticated by a medical practitioner or behavioral health professional.
- **R9-10-816**: The rule could be improved by incorporating in R9-10-816(F) the requirements in A.R.S. § 32-1909, regarding the policies and procedures of accepting medications from donors to assisted living facilities as an authorized recipient.
- **R9-10-820**: The rule is inconsistent with Laws 2022, Ch. 34 regarding architectural plans. The Department is no longer approving architectural plans for construction or modification of health care institutions, instead, Health Care Institutions will have to submit a notarized attestation of architectural plans to the Department.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department indicates the rules are currently effective in achieving their objectives except for the following:

- **R9-10-806**: The rule could be improved by expanding the workforce to allow for a CNA who receives medication training to work as a caregiver.
- **R9-10-817**: The rule could be improved in subsection (B)(5) by referencing the most up-to-date dietary guidelines set forth by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department indicates the rules 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?**

Not applicable. The Department indicates that federal laws do not apply to the rules in Title 9, Chapter 10, Article 8.

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?**

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 that a general permit is not applicable pursuant to the exception found in A.R.S. § 41-1037(A)(2), specifically, that the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute. The Department indicates the rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405.

11. **Conclusion**

This 5YRR from the Department relates to twenty (20) rules in Title 9, Chapter 10, Article 8 regarding minimum requirements for Assisted Living Facilities. The Department has identified eight (8) rules it intends to amend to improve their effectiveness, consistency, clarity, conciseness, and understandability. The Department indicates it plans to submit a Notice of Final Rulemaking to the Council by February 2024.

Council staff recommends approval of this report.

At our Chairs request related to DEPARTMENT OF HEALTH SERVICES Title 9, Chapter 10, Article 1; DEPARTMENT OF HEALTH SERVICES Title 9, Chapter 10, Article 8 I have listed below what I believe are rules that are not clear, concise, or have been NOT been addressed in their five-year review.
By council member Frank Thorwald

DHS has stated that that there is a known problem in these areas which stated they do not have authority to correct them. After my review I find that some legislation may be required but most of these be taken care of through rule modifications. This is not a complete list.

1. Controlled substance storage and handling. There are policy and procedure in place by entities but policy and procedure are not always followed. Substance use is still a major concern. Someone should be inspecting to see if storage and handling is performed and diversion is not taking place.

2. Compounding: Who is authorized to compound per state or federal law and can this be delegated? Are USP guidelines followed and how is this verified unless there is a complaint?

3. Standardized training to set a baseline for MAs and MTs. There is also a concern that these individuals are not registered with any Board.

4. Prescription medications purchased from authorized entities. Authorized entity would be an entity permitted by the Board of Pharmacy.

5. Harmonization of rules between overlapping boards example medical board, pharmacy board, board of nursing

6. Prepared guidelines and minimum standards for facilities use as a basis to work from.

7. Clear guidelines that show residents rights and how to report problems.

8. Minimum training for all caregivers besides MA's and Mts. So that they understand for instance signs of a stroke or heart attack, can wrap a person's leg, give eye drops And other basic functions.

9. Ongoing training and evaluation to ensure that knowledge and skill levels or to level that are needed to maintain appropriate quality of life.

10. Clear guidelines for management on what caregivers are required to do so that if there is a dispute between caregivers requirements and what management wants there is a mechanism resolution for both management and caregivers.

11. Below reference ARS 36-420, 420.01. It is common that necessary emergency care such as CPR and first aid is withheld by caregivers at assisted living (AL) and long-term care (LTC) facilities due to unwritten "no touch" policies. It is common that uninjured patients are left on the ground by caregivers in a potentially injurious and undignified manner due to unwritten "no lift policies". Fire/EMS is commonly utilized as taxpayer funded labor for non-emergent patient lift assistance. ARS/AAC require facilities to "staff to meet patient need" which is frequently not the case. I respectfully ask for particular attention be given to the following:

- Accountability/enforcement in AL/LTC regarding withheld CPR prior to EMS arrival
- Accountability/enforcement in AL/LTC regarding patient DNR status immediately available upon EMS arrival
- Accountability/enforcement in AL/LTC to recover (lift) uninjured patients.

ARIZONA DEPARTMENT OF HEALTH SERVICES

Dear Council Members,

The information below is intended to answer the questions provided by Council Member Thorwald regarding the rules and regulations in Title 9, Chapter 10, Article 8 on Assisted Living Facilities. The Arizona Department of Health Services (ADHS) believes that the information provided demonstrates sufficient justification to approve the five-year-review report. In addition, ADHS program staff intends to provide our legislative liaison legislative proposals for the next legislative session of amending statutes that affect health care institutions to more effectively regulate facilities and provide better care to patients and residents. Specifically related to Article 8, ADHS intends to propose changes of eliminating the exemption for deficiency-free inspections and accreditation reports, and provide more annual oversight to assisted living facilities.

1. Controlled substance storage and handling. There are policy and procedures in place by entities but policy and procedure are not always followed. Substance use is still a major concern. Someone should be inspecting to see if storage and handling is performed and diversion is not taking place.
   ADHS conducts annual compliance inspections and complaint investigations. All compliance inspections require an environmental review. Any complaint related to medications will also require an environmental review. Medication storage is always inspected. In the last year, ADHS has cited Arizona Administrative Code (A.A.C.) R9-10-816.F.1. 182 times in assisted living homes, which is the second most cited deficiency for assisted living homes. In addition, ADHS reviews a sample of medication orders and medication administration records, including controlled substance logs, at every compliance inspection. Medication Services have been cited multiple times at assisted living facilities. In the last year, ADHS has cited A.A.C. R9-10-816.B.3.b. 169 times, and A.A.C. R9-10-816.B.3.c. 114 times in assisted living homes, which are the fourth and eighth most cited deficiencies, respectively for assisted living homes. A.A.C. R9-10-816.B.3.b. has been cited 31 times in assisted living centers, which is the tenth most cited deficiency for assisted living centers.

2. Compounding: Who is authorized to compound per state or federal law and can this be delegated? Are USP guidelines followed and how is this verified unless there is a complaint?
   Compounding is not permitted in an assisted living facility. This is performed in higher acuity health care institutions, such as hospitals.

3. Standardized training to set a baseline for MAs and MTs. There is also a concern that these individuals are not registered with any Board.
   Medical Assistants are not considered caregivers in assisted living and are not permitted to work in an assisted living facility without direct supervision. Medical Assistants would be considered an assistant caregiver. Medication Technicians/Med Techs is an industry term that is synonymous with certified caregivers. "Med Techs" do not have any additional or specialized training from that of a certified caregiver. Medical Assistants are under the jurisdiction of the Arizona Medical Board. Certified caregiver training falls under the jurisdiction of the Board of Nursing Care Institution Administrators and Assisted Living Facility Managers (NCIA) pursuant to A.R.S. Title 36, Chapter 4, Article 6. ADHS does not have the statutory authority to require certified caregivers to be registered with any board.

4. Prescription medications purchased from authorized entities. Authorized entity would be an entity permitted by the Board of Pharmacy.
   ADHS does not have the statutory authority to outline the procurement of medications at an assisted living facility. It is the responsibility of the assisted living facility to work with an authorized entity to ensure medications are administered in compliance with a medication order.

5. Harmonization of rules between overlapping boards example medical board, pharmacy board, board of nursing.
   There are no known rules that overlap with the Arizona Medical Board, Board of Pharmacy or the Board of Nursing in regards to assisted living facilities. Assisted living facilities provide the lowest level of care and do not require physicians/medical practitioners, pharmacists or nurses to be staffed or on-site.

6. Prepared guidelines and minimum standards for facilities use as a basis to work from.
   Article 8 outlines the minimum standards under which assisted living facilities are required to operate. Creating more prescriptive rules will require regular rulemaking and will likely increase the regulatory burden on the provider.

7. Clear guidelines that show residents rights and how to report problems.
   The following rules provide clear guidelines regarding resident rights and how to report problems in Chapter 10, Article 8:

A.A.C. R9-10-803(C)(1)(i) and A.A.C. R9-10-803(C)(1)(p)

C. A manager shall ensure that policies and procedures are:

1. Established, documented, and implemented to protect the health and safety of a resident that:

i. Cover resident acceptance and resident rights;

p. Cover specific steps for:

i. A resident to file a complaint, and

ii. The assisted living facility to respond to a resident's complaint

A.A.C. R9-10-803(D)(1-3)

D. A manager shall ensure that the following are conspicuously posted:

1. A list of resident rights;

2. The assisted living facility's license;

3. Current phone numbers of: a. The unit in the Department responsible for licensing and monitoring the assisted living facility, b. Adult Protective Services in the Department of Economic Security, c. The State Long-Term Care Ombudsman, and d. The Arizona Center for Disability Law;

A.A.C. R9-10-803(J)

J. If a manager has a reasonable basis, according to [Arizona Revised Statutes (A.R.S.)] § 46- 454, to believe abuse, neglect or exploitation has occurred on the premises or while a resident is receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall:

1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;

2. Report the suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454;

3. Document: a. The suspected abuse, neglect, or exploitation; b. Any action taken according to subsection (J)(1); and c. The report in subsection (J)(2);

4. Maintain the documentation in subsection (J)(3) for at least 12 months after the date of the report in subsection(J)(2);

5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report

required in subsection (J)(2): a. The dates, times, and description of the suspected abuse, neglect, or exploitation; b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition; c. The names of witnesses to the suspected abuse, neglect, or exploitation; and d. The actions taken by the manager to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and 6. Maintain a copy of the documented information required in subsection (J)(5) for at least 12 months after the date the investigation was initiated.

A.A.C. R9-10-807(F)
F. A manager shall:

1. Before or at the time of an individual's acceptance by an assisted living facility, provide to the resident or resident's representative a copy of: a. The residency agreement in subsection (D), b. Resident's rights, and c. The policy and procedure on health care directives; and
2. Maintain the original of the residency agreement in subsection (D) in the resident's medical record.

A.A.C. R9-10-810(A)
A. A manager shall ensure that, at the time of acceptance, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C).

A.A.C. R9-10-810(B)(3)(a)
B. A manager shall ensure that:

3. A resident or the resident's representative:
    a. Is informed of the following: i. The policy on health care directives, and ii. The resident complaint process;

A.A.C. R9-10-810(C)(10)
C. A resident has the following rights:

10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

8. Minimum training for all caregivers besides MA's and Mts. So that they understand for instance signs of a stroke or heart attack, can wrap a person's leg, give eye drops And other basic functions.
   ADHS does not have the statutory authority to establish minimum training standards for certified caregivers. The statutory authority is given to the NCIA Board. *See* A.R.S. § 36-446.15 and 446.16. Additionally, activities such as understanding the signs of a stroke or heart attack (assessments) and wrapping a person's leg (wound care) are outside the scope of a certified caregiver and assisted living facilities. These functions are considered skilled nursing services and can only be performed in an assisted living facility if there is a home health agency nurse or hospice agency nurse performing these functions. Eye drops are considered medication services, and certified caregivers are trained on this.

9. Ongoing training and evaluation to ensure that knowledge and skill levels or to level that are needed to maintain appropriate quality of life.
   ADHS does not have the statutory authority to require ongoing training and evaluation of certified caregivers. The statutory authority is given to the NCIA Board. ADHS is not permitted to create rules that are more stringent than an existing statute.

10. Clear guidelines for management on what caregivers are required to do so that if there is a dispute between caregivers requirements and what management wants there is a mechanism resolution for both management and caregivers.
    ADHS does not have the statutory authority to require/allow caregivers to perform services they are not trained to perform. ADHS does not have the statutory authority to provide regulatory oversight for certified caregivers. Assisted Living Facility Managers are under the jurisdiction of the NCIA Board.

11. Below reference A.R.S. 36-420, 420.01. It is common that necessary emergency care such as CPR and first aid is withheld by caregivers at assisted living (AL) and long-term care (LTC) facilities due to unwritten "no touch" policies. It is common that uninjured patients are left on the ground by caregivers in a potentially injurious and undignified manner due to unwritten "no lift policies." Fire/EMS is commonly utilized as taxpayer funded labor for non-emergent patient lift assistance. A.R.S./A.A.C. require facilities to "staff to meet patient need" which is frequently not the case. I respectfully ask for particular attention be given to the following:
    - Accountability/enforcement in AL/LTC regarding withheld CPR prior to EMS

arrival
- Accountability/enforcement in AL/LTC regarding patient DNR status immediately available upon EMS arrival
- Accountability/enforcement in AL/LTC to recover (lift) uninjured patients.

A.R.S. § 36-420 and -420.01 were implemented immediately by ADHS. All applicable facilities were notified immediately of the statutory change. It is the **most cited** deficiency in all subclasses in the Bureau of Residential Facilities Licensing (the Bureau). Since October 1, 2021, the Bureau has cited A.R.S. § 36-420.01 1,124 times total (assisted living homes 527 and assisted living centers 174). In the last year, assisted living homes were cited 245 times and assisted living centers 95 times. Recently, the Bureau has been taking increased enforcement action due to repeated deficiencies and negative outcomes. Enforcement action includes civil money penalties up to revocation of the license. The Office of Administrative Counsel and Rules is on track to double the number of licensing enforcements issued this year, as compared to 2022, due in large part to the Bureau's increased enforcement actions.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

June 8, 2023

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. 10, Article 8, Five-Year-Review Report for Health Care Institutions: Licensing – Assisted Living Facilities

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. 10, Article 8, Assisted Living Facilities, which is due on July 31, 2023.

The Department reviewed the rules in 9 A.A.C. 10, Article 8, 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 Digitally signed by Stacie Gravito
Date: 2023.06.08 09:11:16 -07'00'

Stacie Gravito
Director's Designee

SG:lf

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Amended[1] Five-Year-Review Report

Title 9. Health Services

Chapter 10. Department of Health Services -

Health Care Institutions: Licensing

Article 8. Assisted Living Facilities

June 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1), 36-132(A)(17), and 36-136(G)

Specific Statutory Authority: A.R.S. § 36-405 and 36-406

2. The objective of each rule:

Rule	Objective
R9-10-801	The objective of the rule is to define terms used in the Article to enable readers to better understand the requirements and to allow for consistent interpretation of the terms.
R9-10-802	The objective of the rule is to provide additional application requirements specific to an assisted living facility.
R9-10-803	The objective of the rule is to establish minimum requirements for an assisted living facility's governing authority and administrator, including specific administrative policies and procedures to protect the health and safety of a resident.
R9-10-804	The objective of the rule is to establish minimum requirements for an assisted living facility's quality management program.
R9-10-805	The objective of the rule is to establish minimum requirements for a person who contracts with the licensee to provide assisted living facility services.
R9-10-806	The objective of the rule is to establish minimum requirements for an assisted living facility personnel and personnel records.
R9-10-807	The objective of the rule is to establish minimum requirements for residency and residency agreements.
R9-10-808	The objective of the rule is to establish requirements for residence service plans.
R9-10-809	The objective of the rule is to establish minimum requirements for the transport and transfer of a resident to ensure that the resident's health and safety are not compromised as a result of the resident's transport or transfer.
R9-10-810	The objective of the rule is to establish minimum requirements for resident rights.
R9-10-811	The objective of the rule is to establish minimum requirements for resident's medical records.
R9-10-812	The objective of the rule is to establish minimum requirements for behavioral care provided in an assisted living facility.
R9-10-813	The objective of the rule is to establish minimum requirements for behavioral health services provided in an assisted living facility.

[1] The amended language is underlined and located in section 4 of this Five-Year-Review Report.

R9-10-814	The objective of the rule is to establish minimum requirements for personal care services provided in an assisted living facility.
R9-10-815	The objective of the rule is to establish minimum requirements for directed care services provided in an assisted living facility.
R9-10-816	The objective of the rule is to establish minimum requirements for medication services provided in an assisted living facility.
R9-10-817	The objective of the rule is to establish minimum standards for food services.
R9-10-818	The objective of the rule is to establish minimum emergency and safety standards to ensure that an assisted living facility is prepared for an emergency, including how to respond to a resident who has an accident, emergency, or injury that requires the resident receive medical services.
R9-10-819	The objective of the rule is to establish minimum environmental standards.
R9-10-820	The objective of the rule is to establish minimum physical plant standards.

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
R9-10-806	The rule is effective but could be improved by expanding the workforce to allow for a CNA who receives medication training to work as a caregiver.
R9-10-817	The rule is effective but could be improved in subsection (B)(5) by referencing the most up-to-date dietary guidelines set forth by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.

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
R9-10-803	The rule is consistent with other rules and statutes, however, subsection (C)(1)(i) can be improved to align more with Title 9, Chapter 10, Article 7, Behavioral Health Residential Facilities by including policies and procedures that cover resident's rights including assisting a resident who does not speak English or who has a physical or other disability to become aware of the resident rights.
R9-10-803 & R9-10-810	The rule is inconsistent with A.R.S. § 36-407.02, as added by Laws 2022, Ch. 179. Rules in these Sections will need to be developed to require an assisted living facility to implement admirative policies and procedures which allow a patient to have religious visitation from a clergy member of their choice.
R9-10-811	The rule is consistent with other rules and statutes; however, the rule can be improved to align more with Title 9, Chapter 10, Article 7, Behavioral Health Residential Facilities by including that a manager shall ensure that an order is dated and authenticated by a medical practitioner or behavioral health professional.

R9-10-816	The rule could be improved by incorporating in R9-10-816(F) the requirements in A.R.S. § 32-1909, regarding the policies and procedures of accepting medications from donors to assisted living facilities as an authorized recipient.
R9-10-820	The rule is inconsistent with Laws 2022, Ch. 34 regarding architectural plans. The Department is no longer approving architectural plans for construction or modification of health care institutions, instead, Health Care Institutions will have to submit a notarized attestation of architectural plans to the Department.

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
R9-10-803	The rule is clear, concise, and understandable, but could be improved by simplifying the language in subsection (C)(1)(j) and correcting an "and" to an "or" since either a manager at an assisted living facility or a resident/resident's representative can initiate termination of residency. In addition, grammatical errors should be corrected in subsection (C)(1)(w) by changing "report" to the plural form, "reports," and adding a comma in subsection (J).
R9-10-806	The rule is clear, concise, and understandable, but could be improved by removing the duplicative language, "documentation of compliance," in subsection (C)(1)(c)(ix).
R9-10-807	The rule is clear, concise, and understandable, but could be improved by correcting grammatical errors in subsections (F)(2), (G), and (H).
R9-10-811	The rule is clear, concise, and understandable, but could be improved by correcting grammatical errors in subsection (C), which include adding necessary articles of speech, "the" and "an."
R9-10-816	The rule is clear, concise, and understandable, but could be improved by correcting a grammatical error in subsection (B) by adding the word "the" where necessary.
R9-10-820	The rule is clear, concise, and understandable, but could be improved by correcting a grammatical error in subsection (F), changing "that" to "than."

7. Has the agency received written criticisms of the rules within the last five years? **Yes _X_ No ___**

If yes, please fill out the table below:

Rule	Explanation
R9-10-803	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (M) to include "In addition to the requirements in R9-10-803(C)." Since there have been instances where it is not clear if first aid training is required for caregivers, this change would prompt reference to R9-10-803(C) to clarify caregiver

	requirements for the reader. The Department plans to make this change in the rules to provide better clarity.
R9-10-807	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (G)(1) following to include "the resident's family members, resident's representative, or other individual associated with the resident." In some instances, a resident's family member, resident's representative, or other individual associated with the resident may pose an immediate risk to the health and safety of other residents or staff. Termination of residency in these instances may be necessary to protect the health and safety of residents and staff as well as ensure resident rights are maintained in R9-10-810(B)(2). The Department does not plan to amend the rules as suggested because a resident should not be held responsible for their family members or friends. Facilities have discretion on who is allowed to enter the facility.
R9-10-808	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (E)(4) by replacing all of the existing text with "Residents have access to current news and events" to clarify that residents have access to current news and events but not narrow media sources. The Department does not plan to make the suggested changes at this time since the current rules require assisted-living facilities to provide media sources to residents in a wide variety of ways. A change in the rules as suggested may limit and narrow the way residents receive information regarding current news, social events, and other information.
R9-10-809	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (B) by striking subsection (3) and amending subsection (2) following to include "or arranged by" to simplify and consolidate the rules. In addition, Arizona LeadingAge recommended that the Department amend subsection (C)(2)(c) to include "associated with the transfer process" to clarify what is required to be explained to the resident or resident's representative during an applicable transfer. The Department plans to make the suggested changes to the rules to provide better clarity.
R9-10-810	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (B)(3)(d) to allow for resident relocation under certain circumstances necessary to the continued safe operation of the facility and/or to protect the health, safety, and well-being of residents. The Department believes that the terms and language suggested would be better suited in a residency agreement rather than memorializing it in the resident rights. A change as suggested may provide facilities more leeway to displace residents for multiple reasons without consent which could be a violation of their rights. Therefore, the Department does not plan to amend the rule.
R9-10-815	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (F) to include "for resident's who may wander" as well as amending "the facility" to "the area" throughout section (F). This change would apply the subsequent subsections to only facilities that provide services for residents who may wander. Not all facilities licensed for directed care services provide for resident's who are at risk of wandering. In addition, this change would accommodate facilities that operate among several areas where not all areas house residents who may wander. The Department does not plan to amend the rules as suggested due to the risks of health and safety.
R9-10-816	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (B)(2)(b) following "in A.R.S. § 32-1901" to include "or as described in A.R.S. § 36-446.15." Caregivers receive medication administration training per A.R.S. § 36-446.15 and R4-33-703(C)(1) and therefore should not be included in this documentation requirement. To provide better clarity to the rules, the Department plans to add the cross-reference, A.R.S. § 36-446.15 to the rule.
R9-10-818	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (D)(2)(f) by replacing "Any action" with "The actions" to

	clarify the wording and makes the language consistent with the rest of this section. The Department plans to make the suggested change to the rule in order to provide better clarity.

8. Economic, small business, and consumer impact comparison:

The rules in 9 A.A.C. 10, Article 8 were promulgated in 2013 as part of an exempt rulemaking of 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96 that required the Department to adopt rules for health care institutions to reduce monetary or regulatory costs on a person or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." A.R.S. § 36-401(8) defines an "assisted living facility" as a residential care institution, including an adult foster care home, that provides or contracts to provide supervisory care services, personal care services, or directed care services on a continuous basis. The Department currently licenses and regulates adult foster care homes according to the assisted living facility rules. The rules were recently revised by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019; final rulemaking at 25 A.A.R. 1583, effective October 1, 2019; final expedited rulemaking, at 25 A.A.R. 3481 effective November 5, 2019; and final expedited rulemaking at 28 A.A.R. 869, effective April 8, 2022. The 2019 regular rulemaking designated annual costs and revenues as minimal when $2,000 or less, moderate when between $2,000 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 Department believes persons are directly affected by, bear the costs of, or directly benefit from the rules include the Department, assisted living facilities, residents and their families, and the general public.

As of June 6, 2023, the Department reported 1,975 licensed assisted living facilities operating in the state. In the 2022 calendar year, 345 assisted living facilities elected to close, 348 initial applications were approved, 14 initial applications were denied, and 99 licenses were amended. The Department completed 1,870 compliance surveys and 933 complaint investigations surveys. The Department also completed 651 enforcement actions, as a result of the enforcement actions, the Department assessed $720,115 for civil money penalties and revoked seven licenses.

In the expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019, R9-10-819 was amended to add a cross-reference to a pest control program that complies with A.A.C. R3-8-201(C)(4). The Department believes this change in the rules has provided a significant benefit to assisted living homes by clarifying that pest control services shall only be provided by an individual who is a certified applicator. Later in 2019, the Department conducted a second expedited rulemaking, at 25 A.A.R. 3481, effective November 5, 2019. This rulemaking amended three Sections to update cross-references as well as update the name of the International Building Code incorporated by reference, previously named Uniform Building Code. The Department believes these changes provided a significant benefit to assisted living facilities by having updated rules with clearer and more consistent requirements.

In the 2019 regular rulemaking, twelve Sections were amended to implement Laws 2017, Ch. 122, and address issues identified in the 2018 five-year review report to increase clarity and consistency of the rules. Laws

2017, Ch. 122 eliminates renewal licensure for health care institutions and states that a health care institution license remains valid unless subsequently suspended or revoked by the Department or the health care institution fails to pay a licensing fee by a specified due date. The language was amended in R9-10-801 to be consistent throughout the Article, such as removing "behavioral health services" and replacing it with "behavioral care." In R9-10-802 and R9-10-818 language relating to an "initial license" was removed to only reference a general "license." In R9-10-803, clarification was added to the requirement ensuring that policies and procedures are implemented to protect the health and safety of a resident regarding the termination of residency, initiated by the manager of an assisted living facility and a resident or the resident's representative. Other requirements in R9-10-803 were added to require pneumonia vaccinations to be available to residents and ensure the assisted living facility is aware of the whereabouts of a resident. Changes to R9-10-806 included adding requirements to maintain documentation for the caregivers and assistant caregivers working day and to ensure that the manager or a caregiver is available as back-up to provide assisted living services to a resident if the manager or a caregiver assigned to work is not available. Language in R9-10-807 was revised to ensure that a home health agency or hospice service agency is not involved in the care of the individual. R9-10-808 was amended to update the language to reference internet sources and clarify that materials are available to maintain the resident's continued awareness of current news, social events, and other noteworthy information. Terms in R9-10-810 were changed from "admitted" to "accepted" for consistency throughout the Article. R9-10-814 and R9-10-815 were amended to update cross-references, and R9-10-817 was amended to update the dietary guidelines webpage from 2010 to 2015. Lastly, language in R9-10-820 was changed to clarify that an assisted living center complies with standards applicable to services being provided. Additional changes in these Sections were made to add, update, or correct references and citations, correct typographical errors, remove antiquated terms, as well as clarify and consolidate requirements to increase the effectiveness of the rules. As estimated, the Department believes that these changes in the rules for assisted living facilities may have imposed minimal costs but a significant benefit by eliminating renewal licensure, increasing the care for residents, and having clearer more concise rules.

The rules in Article 8 were last revised in 2022 by expedited rulemaking at 28 A.A.R. 869, effective April 8, 2022. In this rulemaking, the Department amended R9-10-802 to implement Laws 2019, Ch. 190. The new legislation required the rules to allow an exemption that removes architectural plans and specifications requirements and physical plant standards for the Arizona Pioneers' Home. The Department believes these changes have provided a significant benefit to the Arizona Pioneers' Home by ensuring residents' health and safety while controlling regulated costs.

Overall, the Department believes that the changes made to the rules may have created a minimal increase in costs, but believes that the benefit of having more effective and understandable rules outweighs any costs incurred. On the basis of the information described above, the Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing 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.

The Department completed the action specified in the previous 5YRR by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019.

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. 10, Article 8 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. 10, Article 8.

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:

A general permit is not applicable. The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department plans to amend some of the rules in 9 A.A.C. 10, Article 8 to address non-substantive matters identified in this five-year review report (report) in a regular rulemaking and plans to submit a Notice of Final Rulemaking to the Council by February 2024.

March 31, 2023

Mr. Thomas Salow, Assistant Director of Licensing
Arizona Department of Health Services
150 North 18th Avenue
Phoenix, Arizona 85007

Subject: Rule Comments – Arizona Administrative Code Title 9, Chapter 10, Article 8,

To Thomas Salow, Assistant Director of Licensing:

Arizona LeadingAge, with the input of licensed Assisted Living Facilities, has reviewed Arizona Administrative Code Title 9, Chapter 10, Article 8. We would like to submit the below comments to the Arizona Department of Health Services (Department) for the record.

We would like to request the Department to consider amending R9-10-803(M) to include "In addition to the requirements in R9-10-803(C)". There have been instances where it is not clear if first aid training is required for caregivers. This proposed amendment prompts reference to R9-10-803(C) to clarify caregiver requirements for the reader.

We would also like to request the Department to consider amending R9-10-807(G)(1) following "Without notice, if the resident" to include "the resident's family members, resident's representative, or other individual associated with the resident". In some instances, a resident's family member, resident's representative, or other individual associated with the resident may pose an immediate risk to the health and safety of other residents or staff. Termination of residency in these instances may be necessary to protect the health and safety of resident's and staff as well as ensuring resident rights are maintained in R9-10-810(B)(2).

We would also like to request the Department to consider amending R9-10-808(E)(4) by replacing all of the existing text with "Residents have access to current news and events". This amendment clarifies that residents have access to current news and events but does not narrow media sources.

We would also like to request the Department to consider amending R9-10-809(B) by striking subsection (3) and amending subsection (2) following "Transportation provided for" to include "or arranged by". This proposed amendment will consolidate steps in the rules.

We would also like to request the Department to consider amending R9-10-809(C)(2)(c) following "A caregiver explains risks and benefits" to include "associated with the transfer process". This proposed amendment will clarify what is required to be explained to the resident or resident's representative during an applicable transfer.

We would also like to request the Department to consider amending R9-10-810(B)(3)(d) by striking subsection (ii) and replace with "Refuse relocation within the assisted living facility, except for the following reasons: (1) There is a change in the residents ability to pay for private or upgraded accommodations; or (2) There is a need to relocate a resident for renovations, repairs, or construction activity; or (3) There is a need to move a resident to protect the health and safety of a resident; or (4) When there are roommate disagreements and two or more attempts to resolve the conflict have been documented". This proposed amendment will allow for resident relocation under certain circumstances necessary to the continued safe operation of the facility and/or to protect the health, safety, and wellbeing of residents.

We would also like to request the Department to consider amending R9-10-815(F) following "shall ensure" to include "for resident's who may wander" as well as amending "the facility" to "the area" throughout section (F). The first proposed amendment will apply the subsequent subsections to only apply to facilities which provide services for residents who may wander. Not all facilities licensed for directed care services provide for resident's who are at risk of wandering. The second proposed amendment will accommodate facilities which operate among several areas where not all areas house residents who may wander.

We would also like to request the Department to consider amending R9-10-816(B)(2)(b) following "in A.R.S. § 32-1901" to include "or as described in A.R.S. § 36-466.15". Caregiver's receive medication administration training per A.R.S. § 36-446.15 and R4-33-703(C)(1) and therefore should not be included in this documentation requirement.

We would also like to request the Department to consider amending R9-10-818(D)(2)(f) by replacing "Any action" with "The actions". This proposed amendment clarifies the wording and makes the wording consistent with the rest of this section.

Please reference the attached rules document outlining all of the above proposed amendments in redline format.

Respectfully,

Pam A. Koester

Pam Koester, Chief Executive Officer
Arizona LeadingAge

TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES – HEALTH CARE INSTITUTIONS: LICENSING

Authority: A.R.S. §§ 36-132(A)(1), 36-136(G)

ARTICLE 8. ASSISTED LIVING FACILITIES

Article 8 (Sections R9-10-801 through R9-10-812) adopted as permanent rules effective October 30, 1989.

Article 8, consisting of Sections R9-10-801 through R9-10-812, readopted as an emergency effective July 31, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.

Article 8, consisting of Sections R9-10-801 through R9-10-812, readopted as an emergency effective April 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.

Article 8, consisting of Sections R9-10-801 through R9-10-812, readopted as an emergency effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.

New Article 8, consisting of Sections R9-10-801 through R9-10-812, adopted as an emergency effective October 26, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

Former Article 8, consisting of Sections R9-10-801 through R9-10-867, repealed effective October 20, 1982.

Section

ARTICLE 8. ASSISTED LIVING FACILITIES

R9-10-801. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article, unless the context otherwise requires:

1. "Accept" or "acceptance" means:
   a. An individual begins living in and receiving assisted living services from an assisted living facility; or
   b. An individual begins receiving adult day health care services or respite care services from an assisted living facility.
2. "Assistant caregiver" means an employee or volunteer who helps a manager or caregiver provide supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
3. "Assisted living services" means supervisory care services, personal care services, directed care services, behavioral care, or ancillary services provided to a resident by or on behalf of an assisted living facility.
4. "Caregiver" means an individual who provides supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
5. "Manager" means an individual designated by a governing authority to act on behalf of the governing authority in the onsite management of the assisted living facility.

6. "Medication organizer" means a container that is designed to hold doses of medication and is divided according to date or time increments.
7. "Primary care provider" means a physician, a physician's assistant, or registered nurse practitioner who directs a resident's medical services.
8. "Residency agreement" means a document signed by a resident or the resident's representative and a manager, detailing the terms of residency.
9. "Service plan" means a written description of a resident's need for supervisory care services, personal care services, directed care services, ancillary services, or behavioral health services and the specific assisted living services to be provided to the resident.
10. "Termination of residency" or "terminate residency" means a resident is no longer living in and receiving assisted living services from an assisted living facility.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-802. Supplemental Application Requirements; Exemption

A. In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as an assisted living facility shall include in a Department-provided format:
1. Which of the following levels of assisted living services the applicant is requesting authorization to provide:
   a. Supervisory care services,
   b. Personal care services, or
   c. Directed care services; and
2. Whether the applicant is requesting authorization to provide:
   a. Adult day health care services, or
   b. Behavioral health services other than behavioral care.

B. The Arizona Pioneers' Home is exempt from:
1. Architectural plans and specifications for a health care institution specified in R9-10-104; and
2. Physical plant codes and standards for a health care institution specified in R9-10-105(A)(5)(a).

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking at 28 A.A.R. 869 (April 29, 2022), with an immediate effective date of April 8, 2022 (Supp. 22-2).

R9-10-803. Administration

A. A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of an assisted living facility;
2. Establish, in writing, an assisted living facility's scope of services;
3. Designate, in writing, a manager who:
   a. Is 21 years of age or older; and
   b. Except for the manager of an adult foster care home, has either a:
      i. Certificate as an assisted living facility manager issued under A.R.S. § 36-446.04(C), or
      ii. A temporary certificate as an assisted living facility manager issued under A.R.S. § 36-446.06;
4. Adopt a quality management program that complies with R9-10-804;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting manager who has the qualifications established in subsection (A)(3), if the manager is:
   a. Expected not to be present on the assisted living facility's premises for more than 30 calendar days, or
   b. Not present on the assisted living facility's premises for more than 30 calendar days;

7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the manager and identify the name and qualifications of the new manager;
8. Ensure that a manager or caregiver who is able to read, write, understand, and communicate in English is on an assisted living facility's premises; and
9. Ensure compliance with A.R.S. § 36-411.

B. A manager:
1. Is directly accountable to the governing authority of an assisted living facility for the daily operation of the assisted living facility and all services provided by or at the assisted living facility;
2. Has the authority and responsibility to manage the assisted living facility; and
3. Except as provided in subsection (A)(6), designates, in writing, a caregiver who is:
   a. At least 21 years of age, and
   b. Present on the assisted living facility's premises and accountable for the assisted living facility when the manager is not present on the assisted living facility premises.

C. A manager shall ensure that policies and procedures are:
1. Established, documented, and implemented to protect the health and safety of a resident that:
   a. Cover job descriptions, duties, and qualifications, including required skills and knowledge, education, and experience for employees and volunteers;
   b. Cover orientation and in-service education for employees and volunteers;
   c. Include how an employee may submit a complaint related to resident care;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Except as provided in subsection (M), cover cardiopulmonary resuscitation training for applicable employees and volunteers, including:
      i. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the employee's or volunteer's ability to perform cardiopulmonary resuscitation;
      ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
      iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
      iv. The documentation that verifies that the employee or volunteer has received cardiopulmonary resuscitation training;
   f. Cover first aid training;
   g. Cover how a caregiver will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
   h. Cover staffing and recordkeeping;
   i. Cover resident acceptance and resident rights;
   j. Cover termination of residency, including:
      i. Termination initiated by the manager of an assisted living facility, and
      ii. Termination initiated by a resident or the resident's representative;
   k. Cover the provision of assisted living services, including:
      i. Coordinating the provision of assisted living services,
      ii. Making vaccination for influenza and pneumonia available to residents according to A.R.S. § 36-406(1)(d), and
      iii. Obtaining resident preferences for food and the provision of assisted living services;
   l. Cover the provision of respite services or adult day health services, if applicable;
   m. Cover methods by which the assisted living facility is aware of the general or specific whereabouts of a resident, based on the level of assisted living services provided to the resident and the assisted living services the assisted living facility is authorized to provide;
   n. Cover resident medical records, including electronic medical records;
   o. Cover personal funds accounts, if applicable;
   p. Cover specific steps for:
      i. A resident to file a complaint, and
      ii. The assisted living facility to respond to a resident's complaint;
   q. Cover health care directives;
   r. Cover assistance in the self-administration of medication, and medication administration;
   s. Cover food services;
   t. Cover contracted services;
   u. Cover equipment inspection and maintenance, if applicable;
   v. Cover infection control; and
   w. Cover a quality management program, including incident report and supporting documentation;
2. Available to employees and volunteers of the assisted living facility; and
3. Reviewed at least once every three years and updated as needed.

D. A manager shall ensure that the following are conspicuously posted:
1. A list of resident rights;
2. The assisted living facility's license;
3. Current phone numbers of:
   a. The unit in the Department responsible for licensing and monitoring the assisted living facility,

b. Adult Protective Services in the Department of Economic Security,
c. The State Long-Term Care Ombudsman, and
d. The Arizona Center for Disability Law; and

4. The location at which a copy of the most recent Department inspection report and any plan of correction resulting from the Department inspection may be viewed.

E. A manager shall ensure that, unless otherwise stated:

1. Documentation required by this Article is provided to the Department within two hours after a Department request; and
2. When documentation or information is required by this Chapter to be submitted on behalf of an assisted living facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the assisted living facility.

F. If a requirement in this Article states that a manager shall ensure an action or condition or sign a document:

1. A governing authority or licensee may ensure the action or condition or sign the document and retain the responsibility to ensure compliance with the requirement in this Article;
2. The manager may delegate ensuring the action or condition or signing the document to another individual, but the manager retains the responsibility to ensure compliance with the requirement in the Article; and
3. If the manager delegates ensuring an action or condition or signing a document, the delegation is documented and the documentation includes the name of the individual to whom the action, condition, or signing is delegated and the effective date of the delegation.

G. A manager shall:

1. Not act as a resident's representative and not allow an employee or a family member of an employee to act as a resident's representative for a resident who is not a family member of the employee;
2. If the assisted living facility administers personal funds accounts for residents and is authorized in writing by a resident or the resident's representative to administer a personal funds account for the resident:
   a. Ensure that the resident's personal funds account does not exceed $2,000;
   b. Maintain a separate record for each resident's personal funds account, including receipts and expenditures;
   c. Maintain the resident's personal funds account separate from any account of the assisted living facility; and
   d. Provide a copy of the record of the resident's personal funds account to the resident or the resident's representative at least once every three months;
3. Notify the resident's representative, family member, public fiduciary, or trust officer if the manager determines that a resident is incapable of handling financial affairs; and
4. Except when a resident's need for assisted living services changes, as documented in the resident's service plan, ensure that a resident receives at least 30 calendar days written notice before any increase in a fee or charge.

H. A manager shall permit the Department to interview an employee, a volunteer, or a resident as part of a compliance survey or a complaint investigation.

I. If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was accepted or while the resident is not on the premises and not receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall report the alleged or suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454.

J. If a manager has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect or exploitation has occurred on the premises or while a resident is receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall:

1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
2. Report the suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454;
3. Document:
   a. The suspected abuse, neglect, or exploitation;
   b. Any action taken according to subsection (J)(1); and
   c. The report in subsection (J)(2);
4. Maintain the documentation in subsection (J)(3) for at least 12 months after the date of the report in subsection(J)(2);
5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (J)(2):
   a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
   b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
   c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
   d. The actions taken by the manager to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (J)(5) for at least 12 months after the date the investigation was initiated.

K. A manager shall provide written notification to the Department of a resident's:

1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency services provider.

L. If a resident is receiving services from a home health agency or hospice service agency, a manager shall ensure that:

1. The resident's medical record contains:

a. The name, address, and contact individual, including contact information, of the home health agency or hospice service agency;
b. Any information provided by the home health agency or hospice service agency; and
c. A copy of resident follow-up instructions provided to the resident by the home health agency or hospice service agency; and

2. Any care instructions for a resident provided to the assisted living facility by the home health agency or hospice service agency are:
a. Within the assisted living facility's scope of services,
b. Communicated to a caregiver, and
c. Documented in the resident's service plan.

M. A manager of an assisted living home may establish, in policies and procedures, requirements that a caregiver obtains and provides documentation of cardiopulmonary resuscitation training specific to adults, which includes a demonstration of the caregiver's ability to perform cardiopulmonary resuscitation, from one of the following organizations:
1. American Red Cross,
2. American Heart Association, or
3. National Safety Council.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Former Section R9-10-803 renumbered to R9-10-804; new Section R9-10-803 made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-804. Quality Management

A manager shall ensure that:
1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
a. A method to identify, document, and evaluate incidents;
b. A method to collect data to evaluate services provided to residents;
c. A method to evaluate the data collected to identify a concern about the delivery of services related to resident care;
d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to resident care; and
e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
a. An identification of each concern about the delivery of services related to resident care, and
b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to resident care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed; new Section R9-10-804 renumbered from R9-10-803 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-805. Contracted Services

A manager shall ensure that:
1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted as an emergency and (A)(1)(a)(i)(1) amended effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid

for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-806. Personnel

A. A manager shall ensure that:

1. A caregiver:
   a. Is 18 years of age or older; and
   b. Provides documentation of:
      i. Completion of a caregiver training program approved by the Department or the Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers;
      ii. For supervisory care services, employment as a manager or caregiver of a supervisory care home before November 1, 1998;
      iii. For supervisory care services or personal care services, employment as a manager or caregiver of a supportive residential living center before November 1, 1998; or
      iv. For supervisory care services, personal care services, or directed services, one of the following:
         (1) A nursing care institution administrator's license issued by the Board of Examiners;
         (2) A nurse's license issued to the individual under A.R.S. Title 32, Chapter 15;
         (3) Documentation of employment as a manager or caregiver of an unclassified residential care institution before November 1, 1998; or
         (4) Documentation of sponsorship of or employment as a caregiver in an adult foster care home before November 1, 1998;
2. An assistant caregiver:
   a. Is 16 years of age or older, and
   b. Interacts with residents under the supervision of a manager or caregiver;
3. The qualifications, skills, and knowledge required for a caregiver or assistant caregiver:
   a. Are based on:
      i. The type of assisted living services, behavioral health services, or behavioral care expected to be provided by the caregiver or assistant caregiver according to the established job description; and
      ii. The acuity of the residents receiving assisted living services, behavioral health services, or behavioral care from the caregiver or assistant caregiver according to the established job description; and
   b. Include:
      i. The specific skills and knowledge necessary for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services, or behavioral care listed in the established job description;
      ii. The type and duration of education that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services, or behavioral care listed in the established job description; and
      iii. The type and duration of experience that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services or behavioral care listed in the established job description;
4. A caregiver's or assistant caregiver's skills and knowledge are verified and documented:
   a. Before the caregiver or assistant caregiver provides physical health services or behavioral health services, and
   b. According to policies and procedures;
5. An assisted living facility has a manager, caregivers, and assistant caregivers with the qualifications, experience, skills, and knowledge necessary to:
   a. Provide the assisted living services, behavioral health services, behavioral care, and ancillary services in the assisted living facility's scope of services;
   b. Meet the needs of a resident; and
   c. Ensure the health and safety of a resident;
6. At least one manager or caregiver is present and awake at an assisted living center when a resident is on the premises;
7. Documentation is maintained for at least 12 months after the last date on the documentation of the caregivers and assistant caregivers working each day, including the hours worked by each;
8. A manager, a caregiver, and an assistant caregiver, or an employee or a volunteer who has or is expected to have more than eight hours per week of direct interaction with residents, provides evidence of freedom from infectious tuberculosis:
   a. On or before the date the individual begins providing services at or on behalf of the assisted living facility, and
   b. As specified in R9-10-113;
9. Before providing assisted living services to a resident, a caregiver or an assistant caregiver receives orientation that is specific to the duties to be performed by the caregiver or assistant caregiver; and

10. Before providing assisted living services to a resident, a manager or caregiver provides current documentation of first aid training and cardiopulmonary resuscitation training certification specific to adults.

B. A manager of an assisted living home shall ensure that:

1. An individual residing in an assisted living home, who is not a resident, a manager, a caregiver, or an assistant caregiver:
   a. Either:
      i. Complies with the fingerprinting requirements in A.R.S. § 36-411, or
      ii. Interacts with residents only under the supervision of an individual who has a valid fingerprint clearance card; and
   b. If the individual is 12 years of age or older, provides evidence of freedom from infectious tuberculosis as specified in R9-10-113;
2. Documentation of compliance with the requirements in subsection (B)(1)(a) and evidence of freedom from infectious tuberculosis, if required under subsection (B)(1)(b), is maintained for an individual residing in the assisted living home who is not a resident, a manager, a caregiver, or an assistant caregiver;
3. As part of the policies and procedures required in R9-10-803(C)(1)(h), a plan is established, documented, and implemented to ensure that the manager or a caregiver is available as back-up to provide assisted living services to a resident if the manager or a caregiver assigned to work is not available or not able to provide the required assisted living services; and
4. At least the manager or a caregiver is present at an assisted living home when a resident is present in the assisted living home and:
   a. Except for nighttime hours, the manager or caregiver is awake; and
   b. If the manager or caregiver is not awake during nighttime hours:
      i. The manager or caregiver can hear and respond to a resident needing assistance; and
      ii. If the assisted living home is authorized to provide directed care services, policies and procedures are developed, documented, and implemented to establish a process for checking on a resident receiving directed care services during nighttime hours to ensure the resident's health and safety.

C. A manager shall ensure that a personnel record for each employee or volunteer:

1. Includes:
   a. The individual's name, date of birth, and contact telephone number;
   b. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
   c. Documentation of:
      i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
      ii. The individual's education and experience applicable to the individual's job duties;
      iii. The individual's completed orientation and in-service education required by policies and procedures;
      iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or in policies and procedures;
      v. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
      vi. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (A)(8);
      vii. Cardiopulmonary resuscitation training, if required for the individual in this Article or policies and procedures;
      viii First aid training, if required for the individual in this Article or policies and procedures; and
      ix. Documentation of compliance with the requirements in A.R.S. § 36-411(A) and (C);
2. Is maintained:
   a. Throughout the individual's period of providing services in or for the assisted living facility, and
   b. For at least 24 months after the last date the individual provided services in or for the assisted living facility; and
3. For a manager, a caregiver, or an assistant caregiver who has not provided physical health services or behavioral health services at or for the assisted living facility during the previous 12 months, is provided to the Department within 72 hours after the Department's request.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-807. Residency and Residency Agreements

A. Except as provided in R9-10-808(B)(2), a manager shall ensure that a resident provides evidence of freedom from infectious tuberculosis:

1. Before or within seven calendar days after the resident's date of occupancy, and
2. As specified in R9-10-113.

B. A manager shall ensure that before or at the time of acceptance of an individual, the individual submits documentation that is dated within 90 calendar days before the individual is accepted by an assisted living facility and:

1. If an individual is requesting or is expected to receive supervisory care services, personal care services, or directed care services:
   a. Includes whether the individual requires:
      i. Continuous medical services,
      ii. Continuous or intermittent nursing services, or
      iii. Restraints; and
   b. Is dated and signed by a:
      i. Physician,
      ii. Registered nurse practitioner,
      iii. Registered nurse, or
      iv. Physician assistant; and
2. If an individual is requesting or is expected to receive behavioral health services, other than behavioral care, in addition to supervisory care services, personal care services, or directed care services from an assisted living facility:
   a. Includes whether the individual requires continuous behavioral health services, and
   b. Is signed and dated by a behavioral health professional.

C. A manager shall not accept or retain an individual if:
1. The individual requires continuous:
   a. Medical services;
   b. Nursing services, unless the assisted living facility complies with A.R.S. § 36-401(C); or
   c. Behavioral health services;
2. The primary condition for which the individual needs assisted living services is a behavioral health issue;
3. The services needed by the individual are not within the assisted living facility's scope of services and a home health agency or hospice service agency is not involved in the care of the individual;
4. The assisted living facility does not have the ability to provide the assisted living services needed by the individual; or
5. The individual requires restraints, including the use of bedrails.

D. Before or at the time of an individual's acceptance by an assisted living facility, a manager shall ensure that there is a documented residency agreement with the assisted living facility that includes:
1. The individual's name;
2. Terms of occupancy, including:
   a. Date of occupancy or expected date of occupancy,
   b. Resident responsibilities, and
   c. Responsibilities of the assisted living facility;
3. A list of the services to be provided by the assisted living facility to the resident;
4. A list of the services available from the assisted living facility at an additional fee or charge;
5. For an assisted living home, whether the manager or a caregiver is awake during nighttime hours;
6. The policy for refunding fees, charges, or deposits;
7. The policy and procedure for a resident to terminate residency, including terminating residency because services were not provided to the resident according to the resident's service plan;
8. The policy and procedure for an assisted living facility to terminate residency;
9. The complaint process; and
10. The manager's signature and date signed.

E. Before or within five working days after a resident's acceptance by an assisted living facility, a manager shall obtain on the documented agreement, required in subsection (D), the signature of one of the following individuals:
1. The resident,
2. The resident's representative,
3. The resident's legal guardian, or
4. Another individual who has been designated by the individual under A.R.S. § 36-3221 to make health care decisions on the individual's behalf.

F. A manager shall:
1. Before or at the time of an individual's acceptance by an assisted living facility, provide to the resident or resident's representative a copy of:
   a. The residency agreement in subsection (D),
   b. Resident's rights, and
   c. The policy and procedure on health care directives; and
2. Maintain the original of the residency agreement in subsection (D) in the resident's medical record.

G. A manager may terminate residency of a resident as follows:
1. Without notice, if the resident exhibits behavior that is an immediate threat to the health and safety of the resident or other individuals in an assisted living facility;
2. With a 14-calendar-day written notice of termination of residency:
   a. For nonpayment of fees, charges, or deposit; or
   b. Under any of the conditions in subsection (C); or
3. With a 30-calendar-day written notice of termination of residency, for any other reason.

H. A manager shall ensure that the written notice of termination of residency in subsection (G) includes:

1. The date of notice;
2. The reason for termination;
3. The policy for refunding fees, charges, or deposits;
4. The deposition of a resident's fees, charges, and deposits; and
5. Contact information for the State Long-Term Care Ombudsman.

I. A manager shall provide the following to a resident when the manager provides the written notice of termination of residency in subsection (G):
1. A copy of the resident's current service plan, and
2. Documentation of the resident's freedom from infectious tuberculosis.

J. If an assisted living facility issues a written notice of termination of residency as provided in subsection (G) to a resident or the resident's representative because the resident needs services the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide, a manager shall ensure that the written notice of termination of residency includes a description of the specific services that the resident needs that the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide.

Historical Note

Adopted as an emergency effective October 26, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-808. Service Plans

A. Except as required in subsection (B), a manager shall ensure that a resident has a written service plan that:
1. Is completed no later than 14 calendar days after the resident's date of acceptance;
2. Is developed with assistance and review from:
   a. The resident or resident's representative,
   b. The manager, and
   c. Any individual requested by the resident or the resident's representative;
3. Includes the following:
   a. A description of the resident's medical or health problems, including physical, behavioral, cognitive, or functional conditions or impairments;
   b. The level of service the resident is expected to receive;
   c. The amount, type, and frequency of assisted living services being provided to the resident, including medication administration or assistance in the self-administration of medication;
   d. For a resident who requires intermittent nursing services or medication administration, review by a nurse or medical practitioner;
   e. For a resident who requires behavioral care:
      i. Any of the following that is necessary to provide assistance with the resident's psychosocial interactions to manage the resident's behavior:
         (1) The psychosocial interactions or behaviors for which the resident requires assistance,
         (2) Psychotropic medications ordered for the resident,
         (3) Planned strategies and actions for changing the resident's psychosocial interactions or behaviors, and
         (4) Goals for changes in the resident's psychosocial interactions or behaviors; and
      ii. Review by a medical practitioner or behavioral health professional; and
   f. For a resident who will be storing medication in the resident's bedroom or residential unit, how the medication will be stored and controlled;
4. Is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f):
   a. No later than 14 calendar days after a significant change in the resident's physical, cognitive, or functional condition; and
   b. As follows:
      i. At least once every 12 months for a resident receiving supervisory care services,
      ii. At least once every six months for a resident receiving personal care services, and
      iii. At least once every three months for a resident receiving directed care services; and
5. When initially developed and when updated, is signed and dated by:
   a. The resident or resident's representative;
   b. The manager;
   c. If a review is required in subsection (A)(3)(d), the nurse or medical practitioner who reviewed the service plan; and

d. If a review is required in subsection (A)(3)(e)(ii), the medical practitioner or behavioral health professional who reviewed the service plan.

B. For a resident receiving respite care services, a manager shall ensure that:
1. A written service plan is:
   a. Based on a determination of the resident's current needs and:
      i. Is completed no later than three working days after the resident's date of acceptance; or
      ii. If the resident has a service plan in the resident's medical record that was developed within the previous 12 months, is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f) within three working days after the resident's date of acceptance; and
   b. If a significant change in the resident's physical, cognitive, or functional condition occurs while the resident is receiving respite care services, updated based on changes in the requirements in subsections (A)(3)(a) through (f) within three working days after the significant change occurs; and
2. If the resident is not expected to be present in the assisted living facility for more than seven calendar days, the resident is not required to comply with the requirements in R9-10-807(A).

C. A manager shall ensure that:
1. A caregiver or an assistant caregiver:
   a. Provides a resident with the assisted living services in the resident's service plan;
   b. Is only assigned to provide the assisted living services the caregiver or assistant caregiver has the documented skills and knowledge to perform;
   c. Provides assistance with activities of daily living according to the resident's service plan;
   d. If applicable, suggests techniques a resident may use to maintain or improve the resident's independence in performing activities of daily living;
   e. Provides assistance with, supervises, or directs a resident's personal hygiene according to the resident's service plan;
   f. Encourages a resident to participate in activities planned according to subsection (E); and
   g. Documents the services provided in the resident's medical record; and
2. A volunteer or an assistant caregiver who is 16 or 17 years of age does not provide:
   a. Assistance to a resident for:
      i. Bathing,
      ii. Toileting, or
      iii. Moving the resident's body from one surface to another surface;
   b. Assistance in the self-administration of medication;
   c. Medication administration; or
   d. Nursing services.

D. A manager of an assisted living facility that is authorized to provide adult day health services shall ensure that the adult day health care services are provided as specified in R9-10-1113.

E. A manager shall ensure that:
1. Daily social, recreational, or rehabilitative activities are planned according to residents' preferences, needs, and abilities;
2. A calendar of planned activities is:
   a. Prepared at least one week in advance of the date the activity is provided,
   b. Posted in a location that is easily seen by residents,
   c. Updated as necessary to reflect substitutions in the activities provided, and
   d. Maintained for at least 12 months after the last scheduled activity;
3. Equipment and supplies are available and accessible to accommodate a resident who chooses to participate in a planned activity; and
4. Multiple media sources, such as daily newspapers, current magazines, internet sources, and a variety of reading materials, are available and accessible to a resident to maintain the resident's continued awareness of current news, social events, and other noteworthy information.

F. If a resident is not receiving assistance with the resident's psychosocial interactions under the direction of a behavioral health professional or any other behavioral health services at an assisted living facility, the resident is not considered to be receiving behavioral care or behavioral health services from the assisted living facility if the resident:
1. Is prescribed a psychotropic medication, or
2. Is receiving directed care services and has a primary diagnosis of:
   a. Dementia,
   b. Alzheimer's disease-related dementia, or
   c. Traumatic brain injury.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective

October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-809. Transport; Transfer

A. Except as provided in subsection (B), a manager shall ensure that:
1. A caregiver or employee coordinates the transport and the services provided to the resident;
2. According to policies and procedures:
   a. An evaluation of the resident is conducted before and after the transport, and
   b. Information from the resident's medical record is provided to a receiving health care institution; and
3. Documentation includes:
   a. If applicable, any communication with an individual at a receiving health care institution;
   b. The date and time of the transport; and
   c. If applicable, the name of the caregiver accompanying the resident during a transport.

B. Subsection (A) does not apply to:
1. Transportation to a location other than a licensed health care institution,
2. Transportation provided for a resident by the resident or the resident's representative,
3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative, or
4. A transport to another licensed health care institution in an emergency.

C. Except for a transfer of a resident due to an emergency, a manager shall ensure that:
1. A caregiver coordinates the transfer and the services provided to the resident;
2. According to policies and procedures:
   a. An evaluation of the resident is conducted before the transfer;
   b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
   c. A caregiver explains risks and benefits of the transfer to the resident or the resident's representative; and
3. Documentation in the resident's medical record includes:
   a. Communication with an individual at a receiving health care institution;
   b. The date and time of the transfer;
   c. The mode of transportation; and
   d. If applicable, the name of the caregiver accompanying the resident during a transfer.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Former Section R9-10-809 renumbered to R9-10-812; new Section R9-10-809 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). R9-10-809(E) reflects a corrected reference to Article 14 from Article 4 (05-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-810. Resident Rights

A. A manager shall ensure that, at the time of acceptance, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C).

B. A manager shall ensure that:
1. A resident is treated with dignity, respect, and consideration;
2. A resident is not subjected to:
   a. Abuse;
   b. Neglect;
   c. Exploitation;
   d. Coercion;
   e. Manipulation;
   f. Sexual abuse;
   g. Sexual assault;
   h. Seclusion;
   i. Restraint;
   j. Retaliation for submitting a complaint to the Department or another entity; or
   k. Misappropriation of personal and private property by the assisted living facility's manager, caregivers, assistant caregivers, employees, or volunteers; and

3. A resident or the resident's representative:
   a. Is informed of the following:
      i. The policy on health care directives, and
      ii. The resident complaint process;
   b. Consents to photographs of the resident before the resident is photographed, except that a resident may be photographed when accepted as a resident by an assisted living facility for identification and administrative purposes;
   c. Except as otherwise permitted by law, provides written consent before the release of information in the resident's:
      i. Medical record, or
      ii. Financial records;
   d. May:
      i. Request or consent to relocation within the assisted living facility; and
      ii. Except when relocation is necessary based on a change in the resident's condition as documented in the resident's service plan, refuse relocation within the assisted living facility;
   e. Has access to the resident's records during normal business hours or at a time agreed upon by the resident or resident's representative and the manager; and
   f. Is informed of:
      i. The rates and charges for services before the services are initiated;
      ii. A change in rates or charges at least 30 calendar days before the change is implemented, unless the change in rates or charges results from a change in services; and
      iii. A change in services at least 30 calendar days before the change is implemented, unless the resident's service plan changes.

C. A resident has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive assisted living services that support and respect the resident's individuality, choices, strengths, and abilities;
3. To receive privacy in:
   a. Care for personal needs;
   b. Correspondence, communications, and visitation; and
   c. Financial and personal affairs;
4. To maintain, use, and display personal items unless the personal items constitute a hazard;
5. To choose to participate or refuse to participate in social, recreational, rehabilitative, religious, political, or community activities;
6. To review, upon written request, the resident's own medical record;
7. To receive a referral to another health care institution if the assisted living facility is not authorized or not able to provide physical health services or behavioral health services needed by the patient;
8. To choose to access services from a health care provider, health care institution, or pharmacy other than the assisted living facility where the resident is residing and receiving services or a health care provider, health care institution, or pharmacy recommended by the assisted living facility;
9. To participate or have the resident's representative participate in the development of, or decisions concerning, the resident's service plan; and
10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Former Section R9-10-810 renumbered to R9-10-813; new Section R9-10-810 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-811. Medical Records

A. A manager shall ensure that:
1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a resident's medical record is:
   a. Only recorded by an individual authorized by policies and procedures to make the entry;
   b. Dated, legible, and authenticated; and
   c. Not changed to make the initial entry illegible;

3. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
4. A resident's medical record is available to an individual:
   a. Authorized according to policies and procedures to access the resident's medical record;
   b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or
   c. As permitted by law; and
5. A resident's medical record is protected from loss, damage, or unauthorized use.

B. If an assisted living facility maintains residents' medical records electronically, a manager shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.

C. A manager shall ensure that a resident's medical record contains:
1. Resident information that includes:
   a. The resident's name, and
   b. The resident's date of birth;
2. The names, addresses, and telephone numbers of:
   a. The resident's primary care provider;
   b. Other persons, such as a home health agency or hospice service agency, involved in the care of the resident; and
   c. An individual to be contacted in the event of emergency, significant change in the resident's condition, or termination of residency;
3. If applicable, the name and contact information of the resident's representative and:
   a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
   b. If the resident's representative:
      i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      ii. Is a legal guardian, a copy of the court order establishing guardianship;
4. The date of acceptance and, if applicable, date of termination of residency;
5. Documentation of the resident's needs required in R9-10-807(B);
6. Documentation of general consent and informed consent, if applicable;
7. Except as allowed in R9-10-808(B)(2), documentation of freedom from infectious tuberculosis as required in R9-10-807(A);
8. A copy of resident's health care directive, if applicable;
9. The resident's signed residency agreement and any amendments;
10. Resident's service plan and updates;
11. Documentation of assisted living services provided to the resident;
12. A medication order from a medical practitioner for each medication that is administered to the resident or for which the resident receives assistance in the self-administration of the medication;
13. Documentation of medication administered to the resident or for which the resident received assistance in the self-administration of medication that includes:
   a. The date and time of administration or assistance;
   b. The name, strength, dosage, and route of administration;
   c. The name and signature of the individual administering or providing assistance in the self-administration of medication; and
   d. An unexpected reaction the resident has to the medication;
14. Documentation of the resident's refusal of a medication, if applicable;
15. If applicable, documentation of any actions taken to control the resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
16. If applicable, documentation of a determination by a medical practitioner that evacuation from the assisted living facility during an evacuation drill would cause harm to the resident;
17. Documentation of notification of the resident of the availability of vaccination for influenza and pneumonia, according to A.R.S. § 36-406(1)(d);
18. Documentation of the resident's orientation to exits from the assisted living facility required in R9-10-818(B);
19. If a resident is receiving behavioral health services other than behavioral care, documentation of the determination in R9-10-813(3);
20. If a resident is receiving behavioral care, documentation of the determination in R9-10-812(3);
21. If applicable, for a resident who is unable to direct self-care, the information required in R9-10-815(F);
22. Documentation of any significant change in a resident's behavior, physical, cognitive, or functional condition and the action taken by a manager or caregiver to address the resident's changing needs;
23. Documentation of the notification required in R9-10-803(G) if the resident is incapable of handling financial affairs; and
24. If the resident no longer resides and receives assisted living services from the assisted living facility:
   a. A written notice of termination of residency; or
   b. If the resident terminated residency, the date the resident terminated residency.

Historical Note

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R9-10-812. Behavioral Care

A manager shall ensure that for a resident who requests or receives behavioral care from the assisted living facility, a behavioral health professional or medical practitioner:

1. Evaluates the resident:
   a. Within 30 calendar days before acceptance of the resident or before the resident begins receiving behavioral care, and
   b. At least once every six months throughout the duration of the resident's need for behavioral care;
2. Reviews the assisted living facility's scope of services; and
3. Signs and dates a determination stating that the resident's need for behavioral care can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989 (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989 (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed; new Section R9-10-812 renumbered from R9-10-809 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-813. Behavioral Health Services

If an assisted living facility is authorized to provide behavioral health services other than behavioral care, a manager shall ensure that:

1. Policies and procedures are established, documented, and implemented that cover when general consent and informed consent are required and by whom general consent and informed consent may be given;
2. The behavioral health services:
   a. Are provided under the direction of a behavioral health professional; and
   b. Comply with the requirements:
      i. For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115; and
      ii. For an assessment, in R9-10-1011(B); and
3. For a resident who requests or receives behavioral health services from the assisted living facility, a behavioral health professional:
   a. Evaluates the resident within 30 calendar days before acceptance of the resident and at least once every six months throughout the duration of the resident's need for behavioral health services;
   b. Reviews the assisted living facility's scope of services; and
   c. Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility.

Historical Note

New Section renumbered from R9-10-810 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-814. Personal Care Services

A. A manager of an assisted living facility authorized to provide personal care services shall not accept or retain a resident who:

1. Is unable to direct self-care;
2. Except as specified in subsection (B), is confined to a bed or chair because of an inability to ambulate even with assistance; or
3. Except as specified in subsection (C), has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.

B. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who is confined to a bed or chair because of an inability to ambulate even with assistance if:

1. The condition is a result of a short-term illness or injury; or
2. The following requirements are met at the onset of the condition or when the resident is accepted by the assisted living facility:
   a. The resident or resident's representative requests that the resident be accepted by or remain in the assisted living facility;
   b. The resident's primary care provider or other medical practitioner:

i. Examines the resident at the onset of the condition, or within 30 calendar days before acceptance, and at least once every six months throughout the duration of the resident's condition;
ii. Reviews the assisted living facility's scope of services; and
iii. Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility; and

c. The resident's service plan includes the resident's increased need for personal care services.

C. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner, if the requirements in subsection (B)(2) are met.

D. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who:
1. Is receiving nursing services from a home health agency or a hospice service agency; or
2. Requires intermittent nursing services if:
   a. The resident's condition for which nursing services are required is a result of a short-term illness or injury, and
   b. The requirements of subsection (B)(2) are met.

E. A manager shall ensure that a bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available and accessible in a bedroom or residential unit being used by a resident receiving personal care services.

F. In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving personal care services includes:
1. Skin maintenance to prevent and treat bruises, injuries, pressure sores, and infections;
2. Offering sufficient fluids to maintain hydration;
3. Incontinence care that ensures that a resident maintains the highest practicable level of independence when toileting; and
4. If applicable, the determination in subsection (B)(2)(b)(iii).

G. A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving personal care services unless the resident has an order from the resident's primary care provider or another medical practitioner for the non-prescription medication.

Historical Note

New Section renumbered from R9-10-811 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-815. Directed Care Services

A. A manager shall ensure that a resident's representative is designated for a resident who is unable to direct self-care.

B. A manager of an assisted living facility authorized to provide directed care services shall not accept or retain a resident who, except as provided in R9-10-814(B)(2):
1. Is confined to a bed or chair because of an inability to ambulate even with assistance; or
2. Has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.

C. In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving directed care services includes:
1. The requirements in R9-10-814(F)(1) through (3);
2. If applicable, the determination in R9-10-814(B)(2)(b)(iii);
3. Cognitive stimulation and activities to maximize functioning;
4. Strategies to ensure a resident's personal safety;
5. Encouragement to eat meals and snacks;
6. Documentation:
   a. Of the resident's weight, or
   b. From a medical practitioner stating that weighing the resident is contraindicated; and
7. Coordination of communications with the resident's representative, family members, and, if applicable, other individuals identified in the resident's service plan.

D. A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving directed care services unless the resident has an order from a medical practitioner for the non-prescription medication.

E. A manager shall ensure that:
1. A bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available in a bedroom being used by a resident receiving directed care services; or
2. An assisted living facility has implemented another means to alert a caregiver or assistant caregiver to a resident's needs or emergencies.

F. A manager of an assisted living facility authorized to provide directed care services shall ensure that:
1. Policies and procedures are established, documented, and implemented that ensure the safety of a resident who may wander;
2. There is a means of exiting the facility for a resident who does not have a key, special knowledge for egress, or the ability to expend increased physical effort that meets one of the following:
   a. Provides access to an outside area that:

i. Allows the resident to be at least 30 feet away from the facility, and
ii. Controls or alerts employees of the egress of a resident from the facility;
b. Provides access to an outside area:
i. From which a resident may exit to a location at least 30 feet away from the facility, and
ii. Controls or alerts employees of the egress of a resident from the facility; or
c. Uses a mechanism that meets the Special Egress-Control Devices provisions in the International Building Code incorporated by reference in R9-10-104.01; and
3. A caregiver or an assistant caregiver complies with the requirements for incidents in R9-10-804 when a resident who is unable to direct self-care wanders into an area not designated by the governing authority for use by the resident.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-816. Medication Services

A. A manager shall ensure that:
1. Policies and procedures for medication services include:
a. Procedures for preventing, responding to, and reporting a medication error;
b. Procedures for responding to and reporting an unexpected reaction to a medication;
c. Procedures to ensure that a resident's medication regimen and method of administration is reviewed by a medical practitioner to ensure the medication regimen meets the resident's needs;
d. Procedures for:
i. Documenting, as applicable, medication administration and assistance in the self-administration of medication; and
ii. Monitoring a resident who self-administers medication;
e. Procedures for assisting a resident in procuring medication; and
f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
2. If a verbal order for a resident's medication is received from a medical practitioner by the assisted living facility:
a. The manager or a caregiver takes the verbal order from the medical practitioner,
b. The verbal order is documented in the resident's medical record, and
c. A written order verifying the verbal order is obtained from the medical practitioner within 14 calendar days after receiving the verbal order.

B. If an assisted living facility provides medication administration, a manager shall ensure that:
1. Medication is stored by the assisted living facility;
2. Policies and procedures for medication administration:
a. Are reviewed and approved by a medical practitioner, registered nurse, or pharmacist;
b. Include a process for documenting an individual, authorized, according to the definition of "administer" in A.R.S. § 32-1901, by a medical practitioner to administer medication under the direction of the medical practitioner;
c. Ensure that medication is administered to a resident only as prescribed; and
d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record; and
3. A medication administered to a resident:
a. Is administered by an individual under direction of a medical practitioner,
b. Is administered in compliance with a medication order, and
c. Is documented in the resident's medical record.

C. If an assisted living facility provides assistance in the self-administration of medication, a manager shall ensure that:
1. A resident's medication is stored by the assisted living facility;
2. The following assistance is provided to a resident:
a. A reminder when it is time to take the medication;
b. Opening the medication container or medication organizer for the resident;
c. Observing the resident while the resident removes the medication from the container or medication organizer;
d. Except when a resident uses a medication organizer, verifying that the medication is taken as ordered by the resident's medical practitioner by confirming that:
i. The resident taking the medication is the individual stated on the medication container label,
ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
iii. The resident is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label;
e. For a resident using a medication organizer, verifying that the resident is taking the medication in the medication organizer according to the schedule specified on the medical practitioner's order; or

f. Observing the resident while the resident takes the medication;

3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or nurse; and
4. Assistance in the self-administration of medication provided to a resident:
   a. Is in compliance with an order, and
   b. Is documented in the resident's medical record.

D. A manager shall ensure that:
1. A current drug reference guide is available for use by personnel members, and
2. A current toxicology reference guide is available for use by personnel members.

E. A manager shall ensure that a resident's medication organizer is only filled by:
1. The resident;
2. The resident's representative;
3. A family member of the resident;
4. A personnel member of a home health agency or hospice service agency; or
5. The manager or a caregiver who has been designated and is under the direction of a medical practitioner, according to subsection (B)(2)(b).

F. When medication is stored by an assisted living facility, a manager shall ensure that:
1. Medication is stored in a separate locked room, closet, cabinet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented for:
   a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
   b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
   c. A medication recall and notification of residents who received recalled medication; and
   d. Storing, inventorying, and dispensing controlled substances.

G. A manager shall ensure that a caregiver immediately reports a medication error or a resident's unexpected reaction to a medication to the medical practitioner who ordered the medication or, if the medical practitioner who ordered the medication is not available, another medical practitioner.

H. If medication is stored by a resident in the resident's bedroom or residential unit, a manager shall ensure that:
1. The medication is stored according to the resident's service plan; or
2. If the medication is not being stored according to the resident's service plan, the resident's service plan is updated to include how the medication is being stored by the resident.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-817. Food Services

A. A manager shall ensure that:
1. A food menu:
   a. Is prepared at least one week in advance,
   b. Includes the foods to be served each day,
   c. Is conspicuously posted at least one calendar day before the first meal on the food menu is served,
   d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
   e. Is maintained for at least 60 calendar days after the last day included in the food menu;
2. Meals and snacks provided by the assisted living facility are served according to posted menus;
3. If the assisted living facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the assisted living facility, a copy of the food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the assisted living facility;
4. The assisted living facility is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
5. Meals and snacks for each day are planned using the applicable guidelines in http://www.health.gov/dietaryguidelines/2015;
6. A resident is provided a diet that meets the resident's nutritional needs as specified in the resident's service plan;
7. Water is available and accessible to residents at all times, unless otherwise stated in a medical practitioner's order; and
8. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the provision of adaptive eating equipment or utensils, such as a plate guard, rocking fork, or assistive hand device, if not provided by the resident.

B. If the assisted living facility offers therapeutic diets, a manager shall ensure that:
1. A current therapeutic diet manual is available for use by employees, and
2. The therapeutic diet is provided to a resident according to a written order from the resident's primary care provider or another medical practitioner.

C. A manager shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
2. Food is protected from potential contamination;
3. Food is prepared:
   a. Using methods that conserve nutritional value, flavor, and appearance; and
   b. In a form to meet the needs of a resident, such as cut, chopped, ground, pureed, or thickened;
4. Potentially hazardous food is maintained as follows:
   a. Foods requiring refrigeration are maintained at 41° F or below; and
   b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
      ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155 °F;
      v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
      vi. Leftovers are reheated to a temperature of at least 165° F;
5. A refrigerator used by an assisted living facility to store food or medication contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
6. Frozen foods are stored at a temperature of 0° F or below; and
7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

D. A manager of an assisted living center shall ensure that:
1. The assisted living center has a license or permit as a food establishment under 9 A.A.C. 8, Article 1; and
2. A copy of the assisted living center's food establishment license or permit is maintained.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-818. Emergency and Safety Standards

A. A manager shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to caregivers and assistant caregivers, and, if necessary, implemented that includes:
   a. When, how, and where residents will be relocated;
   b. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
   c. A plan to ensure each resident's medication will be available to administer to the resident during a disaster; and
   d. A plan for obtaining food and water for individuals present in the assisted living facility or the assisted living facility's relocation site during a disaster;
2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
3. Documentation of the disaster plan review required in subsection (A)(2) includes:
   a. The date and time of the disaster plan review;
   b. The name of each employee or volunteer participating in the disaster plan review;
   c. A critique of the disaster plan review; and
   d. If applicable, recommendations for improvement;
4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
5. An evacuation drill for employees and residents:
   a. Is conducted at least once every six months; and
   b. Includes all individuals on the premises except for:
      i. A resident whose medical record contains documentation that evacuation from the assisted living facility would cause harm to the resident, and
      ii. Sufficient caregivers to ensure the health and safety of residents not evacuated according to subsection (A)(5)(b)(i);
6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
   a. The date and time of the evacuation drill;
   b. The amount of time taken for employees and residents to evacuate the assisted living facility;
   c. If applicable:
      i. An identification of residents needing assistance for evacuation, and
      ii. An identification of residents who were not evacuated;
   d. Any problems encountered in conducting the evacuation drill; and
   e. Recommendations for improvement, if applicable; and

7. An evacuation path is conspicuously posted in each hallway of each floor of the assisted living facility.

B. A manager shall ensure that:
1. A resident receives orientation to the exits from the assisted living facility and the route to be used when evacuating the assisted living facility within 24 hours after the resident's acceptance by the assisted living facility, and
2. The resident's orientation is documented.

C. A manager shall ensure that a first-aid kit is maintained in the assisted living facility in a location accessible to caregivers and assistant caregivers.

D. When a resident has an accident, emergency, or injury that results in the resident needing medical services, a manager shall ensure that a caregiver or an assistant caregiver:
1. Immediately notifies the resident's emergency contact and primary care provider; and
2. Documents the following:
   a. The date and time of the accident, emergency, or injury;
   b. A description of the accident, emergency, or injury;
   c. The names of individuals who observed the accident, emergency, or injury;
   d. The actions taken by the caregiver or assistant caregiver;
   e. The individuals notified by the caregiver or assistant caregiver; and
   f. Any action taken to prevent the accident, emergency, or injury from occurring in the future.

E. A manager of an assisted living center shall ensure that:
1. Unless the assisted living center has documentation of having received an exception from the Department before October 1, 2013, in the areas of the assisted living center providing personal care services or directed care services:
   a. A fire alarm system is installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, and is in working order; and
   b. A sprinkler system is installed according to the National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, and is in working order;
2. For the areas of the assisted living center providing only supervisory care services:
   a. A fire alarm system and a sprinkler system meeting the requirements in subsection (E)(1) are installed and in working order, or
   b. The assisted living center complies with the requirements in subsection (F);
3. A fire inspection is conducted by a local fire department or the State Fire Marshal before licensing and according to the time-frame established by the local fire department or the State Fire Marshal;
4. Any repairs or corrections stated on the fire inspection report are made; and
5. Documentation of a current fire inspection is maintained.

F. A manager of an assisted living home shall ensure that:
1. A fire extinguisher that is labeled as rated at least 2A-10-BC by the Underwriters Laboratories is mounted and maintained in the assisted living home;
2. A disposable fire extinguisher is replaced when its indicator reaches the red zone;
3. A rechargeable fire extinguisher:
   a. Is serviced at least once every 12 months, and
   b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher;
4. Except as provided in subsection (G):
   a. A smoke detector is:
      i. Installed in each bedroom, hallway that adjoins a bedroom, storage room, laundry room, attached garage, and room or hallway adjacent to the kitchen, and other places recommended by the manufacturer;
      ii. Either battery operated or, if hard-wired into the electrical system of the assisted living home, has a back-up battery;
      iii. In working order; and
      iv. Tested at least once a month; and
   b. Documentation of the test required in subsection (F)(4)(a)(iv) is maintained for at least 12 months after the date of the test;
5. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the assisted living home; and
6. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the assisted living home.

G. A manager of an assisted living home may use a fire alarm system and a sprinkler system to ensure the safety of residents if the fire alarm system and sprinkler system:
1. Are installed and in working order, and
2. Meet the requirements in subsection (E)(1).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-819. Environmental Standards

A. A manager shall ensure that:
1. The premises and equipment used at the assisted living facility are:
   a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
   b. Free from a condition or situation that may cause a resident or other individual to suffer physical injury;
2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
3. Garbage and refuse are:
   a. Stored in covered containers lined with plastic bags, and
   b. Removed from the premises at least once a week;
4. Heating and cooling systems maintain the assisted living facility at a temperature between 70° F and 84° F at all times, unless individually controlled by a resident;
5. Common areas:
   a. Are lighted to ensure the safety of residents, and
   b. Have lighting sufficient to allow caregivers and assistant caregivers to monitor resident activity;
6. Hot water temperatures are maintained between 95º F and 120º F in areas of an assisted living facility used by residents;
7. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
8. A resident has access to a laundry service or a washing machine and dryer in the assisted living facility;
9. Soiled linen and soiled clothing stored by the assisted living facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
10. Oxygen containers are secured in an upright position;
11. Poisonous or toxic materials stored by the assisted living facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
12. Combustible or flammable liquids and hazardous materials stored by the assisted living facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
13. Equipment used at the assisted living facility is:
   a. Maintained in working order;
   b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
   c. Used according to the manufacturer's recommendations;
14. If pets or animals are allowed in the assisted living facility, pets or animals are:
   a. Controlled to prevent endangering the residents and to maintain sanitation;
   b. Licensed consistent with local ordinances; and
   c. For a dog or cat, vaccinated against rabies;
15. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
   a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
   b. If necessary, corrective action is taken to ensure the water is safe to drink; and
   c. Documentation of testing is retained for at least 12 months after the date of the test; and
16. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.

B. If a swimming pool is located on the premises, a manager shall ensure that:
1. On a day that a resident uses the swimming pool, an employee:
   a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
      i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
      ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
      iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
   b. Records the results of the water quality tests in a log that includes the date tested and test result;
2. Documentation of the water quality test is maintained for at least 12 months after the date of the test; and
3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019 (Supp. 19-1).

R9-10-820. Physical Plant Standards

A. A manager shall ensure that an assisted living center complies with the applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01, that:

1. Are applicable to the level of services planned to be provided or being provided; and
2. Were in effect on the date the assisted living facility submitted architectural plans and specifications to the Department for approval, according to R9-10-104.

B. A manager shall ensure that:
1. The premises and equipment are sufficient to accommodate:
   a. The services stated in the assisted living facility's scope of services, and
   b. An individual accepted as a resident by the assisted living facility;
2. A common area for use by residents is provided that has sufficient space and furniture to accommodate the recreational and socialization needs of residents;
3. A dining area has sufficient space and tables and chairs to accommodate the needs of the residents;
4. At least one bathroom is accessible from a common area and:
   a. May be used by residents and visitors;
   b. Provides privacy when in use; and
   c. Contains the following:
      i. At least one working sink with running water,
      ii. At least one working toilet that flushes and has a seat,
      iii. Toilet tissue for each toilet,
      iv. Soap in a dispenser accessible from each sink,
      v. Paper towels in a dispenser or a mechanical air hand dryer,
      vi. Lighting, and
      vii. A window that opens or another means of ventilation;
5. An outside activity space is provided and available that:
   a. Is on the premises,
   b. Has a hard-surfaced section for wheelchairs, and
   c. Has an available shaded area;
6. Exterior doors are equipped with ramps or other devices to allow use by a resident using a wheelchair or other assistive device; and
7. The key to the door of a lockable bathroom, bedroom, or residential unit is available to a manager, caregiver, and assistant caregiver.

C. A manager shall ensure that:
1. For every eight residents there is at least one working toilet that flushes and has a seat and one sink with running water;
2. For every eight residents there is at least one working bathtub or shower; and
3. A resident bathroom provides privacy when in use and contains:
   a. A mirror;
   b. Toilet tissue for each toilet;
   c. Soap accessible from each sink;
   d. Paper towels in a dispenser or a mechanical air hand dryer for a bathroom that is not in a residential unit and used by more than one resident;
   e. A window that opens or another means of ventilation;
   f. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
   g. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers.

D. A manager shall ensure that:
1. Each resident is provided with a sleeping area in a residential unit or a bedroom;
2. For an assisted living home, a resident's sleeping area is on the ground floor of the assisted living home unless:
   a. The resident is able to direct self-care;
   b. The resident is ambulatory without assistance; and
   c. There are at least two unobstructed, usable exits to the outside from the sleeping area that the resident is capable of using;
3. Except as provided in subsection (E), no more than two individuals reside in a residential unit or bedroom;
4. A resident's sleeping area:
   a. Is not used as a common area;
   b. Is not used as a passageway to a common area, another sleeping area, or common bathroom unless the resident's sleeping area:
      i. Was used as a passageway to a common area, another sleeping area, or common bathroom before October 1, 2013; and
      ii. Written consent is obtained from the resident or the resident's representative;
   c. Is constructed and furnished to provide unimpeded access to the door;
   d. Has floor-to-ceiling walls with at least one door;
   e. Has access to natural light through a window or a glass door to the outside; and
   f. Has a window or door that can be used for direct egress to outside the building;
5. If a resident's sleeping area is in a bedroom, the bedroom has:
   a. For a private bedroom, at least 80 square feet of floor space, not including a closet or bathroom;
   b. For a shared bedroom, at least 60 square feet of floor space for each individual occupying the shared bedroom, not including a closet or bathroom; and
   c. A door that opens into a hallway, common area, or outdoors;

6. If a resident's sleeping area is in a residential unit, the residential unit has:
   a. Except as provided in subsection (E)(2), at least 220 square feet of floor space, not including a closet or bathroom, for one individual residing in the residential unit and an additional 100 square feet of floor space, not including a closet or bathroom, for each additional individual residing in the residential unit;
   b. An individually keyed entry door;
   c. A bathroom that provides privacy when in use and contains:
      i. A working toilet that flushes and has a seat;
      ii. A working sink with running water;
      iii. A working bathtub or shower;
      iv. Lighting;
      v. A mirror;
      vi. A window that opens or another means of ventilation;
      vii. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
      viii. Nonporous surfaces for shower enclosures and slip-resistant surfaces in bathtubs and showers;
   d. A resident-controlled thermostat for heating and cooling;
   e. A kitchen area equipped with:
      i. A working sink and refrigerator,
      ii. A cooking appliance that can be removed or disconnected,
      iii. Space for food preparation, and
      iv. Storage for utensils and supplies; and
   f. If not furnished by a resident:
      i. An armchair, and
      ii. A table where a resident may eat a meal; and
7. If not furnished by a resident, each sleeping area has:
   a. A bed, at least 36 inches in width and 72 inches in length, consisting of at least a frame and mattress that is clean and in good repair;
   b. Clean linen, including a mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, a bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for the resident;
   c. Sufficient light for reading;
   d. Storage space for clothing;
   e. Individual storage space for personal effects; and
   f. Adjustable window covers that provide resident privacy.

E. A manager may allow more than two individuals to reside in a residential unit or bedroom if:
1. There is at least 60 square feet for each individual living in the bedroom;
2. There is at least 100 square feet for each individual living in the residential unit; and
3. The manager has documentation that the assisted living facility has been operating since before November 1, 1998, with more than two individuals living in the residential unit or bedroom.

F. If there is a swimming pool on the premises of the assisted living facility, a manager shall ensure that:
1. Unless the assisted living facility has documentation of having received an exception from the Department before October 1, 2013, the swimming pool is enclosed by a wall or fence that:
   a. Is at least five feet in height as measured on the exterior of the wall or fence;
   b. Has no vertical openings greater that four inches across;
   c. Has no horizontal openings, except as described in subsection (F)(1)(e);
   d. Is not chain-link;
   e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
   f. Has a self-closing, self-latching gate that:
      i. Opens away from the swimming pool,
      ii. Has a latch located at least 54 inches from the ground, and
      iii. Is locked when the swimming pool is not in use;
2. A life preserver or shepherd's crook is available and accessible in the swimming pool area; and
3. Pool safety requirements are conspicuously posted in the swimming pool area.

G. A manager shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (F)(1) is covered and locked when not in use.

Historical Note

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

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.

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.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room.

Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

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

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for selecting health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

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

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

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

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 10

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: September 13, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10, Article 10

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to twenty-four (24) rules in Title 9, Chapter 10, Article 10 regarding Outpatient Treatment Facilities. Specifically, these rules regulate and set the minimum requirements for outpatient treatment facilities in the state of Arizona.

In the prior 5YRR for these rules, which was approved by the Council in October 2018, the Department proposed to amend several rules to make them more clear, concise, understandable, and consistent with other rules and statutes. The Department indicates it completed the prior proposed course of action by final expedited rulemaking, which became effective on October 1, 2019.

Proposed Action

In the current report, the Department proposes to amend seven (7) rules to comply with statutory changes and improve the effectiveness of the rules, as outlined in more detail below. The Department indicates it intends to submit a rulemaking to the Council to address these issues by February 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department believes that the rule changes made in the review period made them more easily understood, complied with, and enforced and may have provided a significant benefit to the affected persons, including the Department, outpatient treatment facilities, and patients. The Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing 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 rule imposes the least burden and cost 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 it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are generally consistent with other rules and statutes except for the following:

- **R9-10-1003:** The rule is consistent with other rules and statutes, however subsection (D)(2)(g) could be amended to replace the term "telemedicine" with "telehealth" to adhere to the statutory changes pursuant to Laws 2021, Ch. 320, that amended the definitions in A.R.S. § 36-3601 regarding telehealth in the state of Arizona.
- **R9-10-1018:** The rule could be improved to align more with Laws 2022, Ch. 34, by removing sections related to the approval of architectural plans and specifications that an applicant must submit if the health care institution is constructing or modifying due to the legislation requiring a notarized attestation from an architect registered pursuant to A.R.S. Title 32, Chapter 1. The submission of the architectural plans and specifications

for this type of change will no longer be required, therefore the rules should be amended to include the requirement of a notarized attestation from an architect.

- **R9-10-1027:** The rule is consistent with other rules and statutes, however needs to be updated to implement A.R.S. 36-420.02 as added by Laws 2022, Ch. 190, which require urgent care facilities to implement and maintain a workplace violence prevention plan for health care workers. R9-10-1031 The rule is consistent with other rules and statutes, however the exceptions for outpatient treatment centers in regards to colocator's pursuant to A.R.S. § 36-402 should be included.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are generally effective in achieving their objectives except for the following:

- **R9-10-1001:** The rule is effective in achieving its objective, however could be amended to include a definition for integrated clinic to help make the rules clearer and more understandable, as an integrated clinic is a designation the Department provides to facilities that provide physical health services and behavioral health services. This added definition will help the rules be clearer for the public.
- **R9-10-1011:** The rule is effective in achieving its objective, however the rules could be amended to potentially clarify the difference between an outpatient treatment center and a counseling facility by adding in a medication component to this section. This would better serve the licensee's and clarify the rules.
- **R9-10-1017:** The rule is effective in achieving its objective, however subsection (2)(b) could be amended to remove the term "certificate" as the Department does not require a certificate from the administrator of the outpatient treatment center, rather only documentation that diagnostic imaging services are in compliance with A.R.S. Title 30, Chapter 4 and 9 A.A.C. 7.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules 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?

Not applicable. The Department indicates there is no 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?

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 rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, so a general permit is not applicable pursuant to A.R.S. § 41-1037(A)(2). Council staff believes the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to twenty-four (24) rules in Title 9, Chapter 10, Article 10 regarding Outpatient Treatment Facilities. Specifically, these rules regulate and set the minimum requirements for outpatient treatment facilities in the state of Arizona. The Department indicates the rules are clear, concise, understandable, and enforced as written. However, the Department proposes to amend seven (7) rules to comply with statutory changes and improve the effectiveness of the rules, as outlined above. The Department indicates it intends to submit a rulemaking to the Council to address these issues by February 2024.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT OF HEALTH SERVICES

June 20, 2023

VIA: E-MAIL: grrc@azdoa.gov
Nicole Sornsin, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: ADHS, A.A.C. Title 9, Chapter 10, Article 10 Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report from the Arizona Department of Health Services (Department) for A.A.C. Title 9, Chapter 10 Health Care Institutions, Article 10 Outpatient Treatment Facilities which is due on July 31, 2023.

The Department reviewed the following rules in A.A.C. Title 9, Chapter 10, Article 10 with the intention that those rules do not expire under A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Emily Carey at 602-542-5121 or emily.carey@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 10. Department of Health Services – Health Care Institutions: Licensing

Article 10. Outpatient Treatment Facilities

June 2023

1. **Authorization of the rule by existing statutes:**

Authorizing statutes: A.R.S. §§ 36-104(3), 132(A)(1) and (A)(17), and 36-136(G)

Implementing statutes: A.R.S. §§ 36-405 through 36-407, 36-425, and 36-439.01 through 36-439.04

2. **The objective of each rule:**

Rule	Objective
R9-10-1001	To define terms used in the Article to enable readers to better understand the requirements and to allow for consistent interpretation of the terms.
R9-10-1002	To provide additional application requirements specific to an outpatient treatment center.
R9-10-1003	To establish minimum requirements for an outpatient treatment center's governing authority and administrator, including specific administrative policies and procedures to protect patient health and safety.
R9-10-1004	To establish minimum requirements for an outpatient treatment center's quality management program.
R9-10-1005	To establish minimum requirements for a person who contracts with the licensee to provide outpatient treatment center services.
R9-10-1006	To establish minimum requirements for outpatient treatment center personnel and personnel records.
R9-10-1007	To establish minimum requirements for the transport and transfer of a patient to ensure that the health and safety of the patient are not compromised as a result of the patient's transport or transfer.
R9-10-1008	To establish minimum requirements for patient rights.
R9-10-1009	To establish minimum requirements for patient medical records.
R9-10-1010	To establish minimum requirements for medication services in an outpatient treatment center.
R9-10-1011	To establish minimum requirements for behavioral health services in an outpatient treatment center.
R9-10-1012	To establish minimum requirements for behavioral health observation and stabilization services in an outpatient treatment center.
R9-10-1013	To establish a minimum requirement for an outpatient treatment center's administrator to provide a court-ordered evaluation.
R9-10-1014	To establish a minimum requirement for an outpatient treatment center's administrator to provide a court-ordered treatment.

R9-10-1015	To establish a minimum requirement for clinical laboratory services in an outpatient treatment center.
R9-10-1016	To establish a minimum requirement for crisis services in an outpatient treatment center.
R9-10-1017	To establish a minimum requirement for diagnostic imaging services in an outpatient treatment center.
R9-10-1018	To establish a minimum requirement for dialysis services in an outpatient treatment center.
R9-10-1019	To establish a minimum requirement for emergency room services in an outpatient treatment center.
R9-10-1020	To establish minimum requirements for opioid treatment services.
R9-10-1021	To establish minimum requirements for pain management services.
R9-10-1022	To establish minimum requirements for physical health services.
R9-10-1023	To establish minimum requirements for pre-petition screening.
R9-10-1024	To establish minimum requirements for rehabilitation services.

3. Are the rules effective in achieving their objectives? Yes ___ 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
R9-10-1001	The rule is effective in achieving its objective, however could be amended to include a definition for integrated clinic to help make the rules clearer and more understandable, as an integrated clinic is a designation the Department provides to facilities that provide physical health services and behavioral health services. This added definition will help the rules be clearer for the public.
R9-10-1011	The rule is effective in achieving its objective, however the rules could be amended to potentially clarify the difference between an outpatient treatment center and a counseling facility by adding in a medication component to this section. This would better serve the licensee's and clarify the rules.
R9-10-1017	The rule is effective in achieving its objective, however subsection (2)(b) could be amended to remove the term "certificate" as the Department does not require a certificate from the administrator of the outpatient treatment center, rather only documentation that diagnostic imaging services are in compliance with A.R.S. Title 30, Chapter 4 and 9 A.A.C. 7.

4. Are the rules consistent with other rules and statutes? Yes ___ 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
R9-10-1003	The rule is consistent with other rules and statutes, however subsection (D)(2)(g) could be amended to replace the term "telemedicine" with "telehealth" to adhere to the statutory changes pursuant to Laws 2021, Ch. 320, that amended the definitions in A.R.S. § 36-3601 regarding telehealth in the state of Arizona.

R9-10-1018	The rule could be improved to align more with Laws 2022, Ch. 34, by removing sections related to the approval of architectural plans and specifications that an applicant must submit if the health care institution is constructing or modifying due to the legislation requiring a notarized attestation from an architect registered pursuant to A.R.S. Title 32, Chapter 1. The submission of the architectural plans and specifications for this type of change will no longer be required, therefore the rules should be amended to include the requirement of a notarized attestation from an architect.
R9-10-1027	The rule is consistent with other rules and statutes, however needs to be updated to implement A.R.S. 36-420.02 as added by Laws 2022, Ch. 190, which require urgent care facilities to implement and maintain a workplace violence prevention plan for health care workers.
R9-10-1031	The rule is consistent with other rules and statutes, however the exceptions for outpatient treatment centers in regards to colocator's pursuant to A.R.S. § 36-402 should be included.

5. Are the rules enforced as written? Yes _√_ 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 _√_ 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 _√_

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. Economic, small business, and consumer impact comparison (summary):

The rules in 9 A.A.C. 10, Article 10 were made new in their entirety in 2013 as part of an exempt rulemaking of 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96 that required the Department to adopt rules for health care institutions to reduce monetary or regulatory costs on person or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." In 2014, the rules in Article 10 were further revised to comply with Laws 2013, Ch. 10 that extended Laws 2011, Ch. 96 exempt rulemaking time period until April 30, 2014. In addition, in 2016, three of the rules were revised to allow for an outpatient treatment center to provide respite care for children receiving behavioral health services

and a new rule was added to allow for integrated services to occur at the same physical outpatient treatment center location under multiple licenses (colocation). No economic, small business, and consumer impact statements were prepared as a part of the exempt rulemakings. The Department believes persons who are directly affected by, bear the costs of, or directly benefit from the rules are: the Department, outpatient treatment centers, physicians and other health care providers, patients, and the general public. Annual costs and revenues are designated as minimal when more than $0 and less than $5,000, moderate when $5,000 and less than $20,000, and substantial when $20,000 or greater. A cost or benefit is designated as significant when meaningful or important but not readily subject to quantification.

In 2022, the Department reported that 2,790 licensed outpatient treatment centers were operating in the state and 157 outpatient treatment centers elected to close. Additionally, 551 initial applications were approved. No amended applications were received, and no other applications were denied. The Department completed 1,349 initial and re-licensure surveys, and completed 228 complaint investigation surveys. The Department also completed 175 enforcement actions of which 121 were related to surveys and 53 related to late renewal applications. And as a result of the enforcement actions, the Department collected $185,050.00 in civil money penalties.

The rules in Article 10 were amended four times in 2019. R9-10-1001 and R9-10-1021 were amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019. The rules in R9-10-1001 were revised to include a new definition of "pain management services" to ensure the rules are consistent with other sections of the Chapter. R9-10-1021 was amended to include references to new Article 20 that was establish by Laws 2018, Ch. 1. Laws 2018, Ch. 1 implemented the Department to license pain management clinics as a health care institution. The rules in R9-10-1021 were revised to ensure compliance of outpatient treatment facilities with pain management clinics in Article 20. Additionally, the rules in R9-10-1030 were amended by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019. The rules were revised to include a cross-reference regarding pest control programs to ensure health and safety in outpatient treatment facilities and make the rules clearer for the public. The Department believes the costs of these amended rules were minimal and provided a significant benefit to outpatient treatment facilities, patients, families of the patients, and the general public.

As part of a final rulemaking, the rules in R9-10-1002, R9-10-1003, R9-10-1013, R9-10-1014, R9-1017, R-9-10-1018, R9-10-1019, R9-10-1025, and R9-10-1031 were revised at 25 A.A.R. 1583, effective October 1, 2019. The rules were amended to be in compliance with Laws 2017, Ch. 122 that eliminated renewal licensure for health care institutions and stated that a health care institution remains valid unless subsequently suspended or revoked by the Department or a health care institution fails to pay a licensing fee by a specified due date. R9-10-1002 was revised to make the rules clearer with grammatical and formatting changes, and establish rules regarding documentation submission for fees. The rules in R9-10-1002 regarding administration were amended to include behavioral health services in subsection (D)(2) for policies and procedures. The Department believes the changes increase benefits for patients by having more health services available through an outpatient treatment center, and most likely, at a cost lower than if provided at a hospital. Outpatient treatment centers are also

expected to see benefits as a result of providing more health services. R9-10-1013, R9-10-1014, and R9-10-1017 were amended to correct cross-references to reflect statute changes. R9-10-1018 was revised to remove and update the incorporated by reference documents the Department has on file from the Association for the Advancement of Medical Instrumentation in Reprocessing of Hemodialyzers. In addition, the rules in R9-10-1019 and R9-10-1025 for emergency room services and respite services were amended to correct cross-references, and make the rules clearer. Lastly, the rules in R9-10-1031 were revised to correct grammatical and formatting changes, correct cross-references, clarify language regarding collocating outpatient treatment facilities, and remove specifications regarding renewal licensure to adhere to the statutory changes in Laws 2018, Ch. 122. The Department believes the costs of these amended rules were minimal, provided a benefit to make the rules more understandable, and provided a significant benefit to outpatient treatment facilities, patients, families of the patients, and the general public.

The Department later conducted an expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019. The rules in R9-10-1018, R9-10-1019, R9-10-1025, and R9-10-1029 were revised to update the incorporations by reference to the National Fire Protection Association's current codes and standards, to the new section in R9-10-104.01 the Department included to provide clarifications on the incorporations by reference. The Department does not believe that the rules in these Sections lead to cost increases for affected persons. The Department believes the amended rules provided a significant benefit to outpatient treatment facilities, patients, families of the patients, and the general public.

Lastly, the Department amended one section by final expedited rulemaking at 26 A.A.R. 3041, with an immediate effective date of November 3, 2020. The rules in R9-10-1011 were revised to change the personnel age requirements from 21 years of age to 18 years old. The Department revised the rules pursuant to Laws 2019 Ch. 215, which required the Department to allow for a person who is employed at a health care institution and provides behavioral health services, who is not a licensed behavioral health professional and who is at least 18 years of age to provide behavioral health or other related health care services. The Department believes outpatient treatment centers, physicians, other health care providers, and patients may have experienced significant benefits from having: more personnel members who are qualified and trained to perform health services provided to patients, and patient rights that better protect patients, outpatient treatment centers, physicians, and other health care providers. The Department believes the costs of these amended rules were minimal and provided a significant benefit to individuals who are seeking employment, outpatient treatment facilities, patients, families of the patients, and the general public.

The Department believes the rule changes, as described above, that are more easily understood, complied with, and enforced, may have provided a significant benefit to the affected persons, including the Department, outpatient treatment facilities, and patients. On the basis of the information described above, the Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

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.

In the 2018 five-year review report, the Department proposed to amend the rules in a rulemaking. The Department completed this plan of action by final expedited rulemaking at 25 A.A.R. 1583, effective October 1, 2019.

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 rule imposes 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 _√_

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 are not applicable to the rules in 9 A.A.C. 10, Article 10.

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 require the issuance of a specific agency authorization, which is authorized by A.R.S. 36-405, so a general permit is not applicable.

14. Proposed course of action:

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department plans to amend the rules in 9 A.A.C. 10, Article 10 as necessary to comply with statutory changes and improve the effectiveness of the rules. Therefore, the Department intends to complete a rulemaking by February 2024 to amend the rules to address the issue as described in this report.

ARTICLE 10. OUTPATIENT TREATMENT CENTERS

R9-10-1001. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following applies in this Article unless otherwise specified:

1. "Emergency room services" means medical services provided to a patient in an emergency.
2. "Pain management services" means medical services, nursing services, or health-related services provided to a patient to reduce or relieve the patient's chronic pain.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4).

R9-10-1002. Supplemental Application and Documentation Submission Requirements

A. In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, a governing authority applying for a license as an outpatient treatment center shall submit, in a Department-provided format:

1. The days and hours of clinical operation and, if different from the days and hours of clinical operation, the days and hours of administrative operation; and
2. A request to provide one or more of the following services:
    a. Behavioral health services and, if applicable;
        i. Behavioral health observation/stabilization services,
        ii. Children's behavioral health services,
        iii. Court-ordered evaluation,
        iv. Court-ordered treatment,
        v. Counseling,
        vi. Crisis services,
        vii. Opioid treatment services,
        viii. Pre-petition screening,
        ix. Respite services,
        x. Respite services for children on the premises,
        xi. DUI education,
        xii. DUI screening,
        xiii. DUI treatment, or
        xiv. Misdemeanor domestic violence offender treatment;
    b. Diagnostic imaging services;
    c. Clinical laboratory services;
    d. Dialysis services;
    e. Emergency room services;
    f. Pain management services;
    g. Physical health services;
    h. Rehabilitation services;
    i. Sleep disorder services; or
    j. Urgent care services provided in a freestanding urgent care center setting.

B. In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, a governing authority of an:

1. Affiliated outpatient treatment center applying for a license for the affiliated outpatient treatment center shall submit, in a Department-provided format, the following information for each counseling facility for which the affiliated outpatient treatment center is providing administrative support:
    a. Name, and
    b. Either:
        i. The license number assigned to the counseling facility by the Department; or
        ii. If the counseling facility is not currently licensed, the:
            (1) Counseling facility's street address, and
            (2) Date the counseling facility submitted to the Department an application for a health care institution license; and
2. Outpatient treatment center, applying for a license that includes a request for authorization to provide respite services for children on the premises, shall include the requested respite capacity.

C. A licensee of an affiliated outpatient treatment center shall submit to the Department the information required in subsection (B)(1) with the relevant fees required in R9-10-106(C) or (D), as applicable.

D. A licensee of an outpatient treatment center authorized to provide respite services for children on the premises shall submit to the Department with the relevant fees in R9-10-106(C) or (D), as applicable:

1. The respite capacity, and

2. The specific 10 continuous hours per day during which the outpatient treatment center provides respite services on the premises.

E. A licensee of an outpatient treatment center authorized to operate as a collaborating outpatient treatment center shall submit to the Department with the relevant fees in R9-10-106(C) or (D), as applicable:
1. The information and documentation required in R9-10-1031(D)(1); and
2. A floor plan that shows:
   a. Each colocator's proposed treatment area, and
   b. The areas of the collaborating outpatient treatment center shared by a colocator and collaborating outpatient treatment center.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Amended by exempt rulemaking at 22 A.A.R. 1035, pursuant to Laws 2015, Ch. 158, § 3; effective May 1, 2016 (Supp. 16-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-1003. Administration

A. If an outpatient treatment center is operating under a single group license issued to a hospital according to A.R.S. § 36-422(F) or (G), the hospital's governing authority is the governing authority for the outpatient treatment center.

B. A governing authority shall:
1. Consist of one or more individuals accountable for the organization, operation, and administration of an outpatient treatment center;
2. Establish, in writing:
   a. An outpatient treatment center's scope of services, and
   b. Qualifications for an administrator;
3. Designate, in writing, an administrator who has the qualifications established in subsection (B)(2)(b);
4. Adopt a quality management program according to R9-10-1004;
5. Review and evaluate the effectiveness of the quality management program in R9-10-1004 at least once every 12 months;
6. Designate, in writing, an acting administrator who has the qualifications established in subsection (B)(2)(b) if the administrator is:
   a. Expected not to be present on an outpatient treatment center's premises for more than 30 calendar days, or
   b. Not present on an outpatient treatment center's premises for more than 30 calendar days; and
7. Except as provided in subsection (B)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in an administrator and identify the name and qualifications of the new administrator.

C. An administrator:
1. Is directly accountable to the governing authority for the daily operation of the outpatient treatment center and all services provided by or at the outpatient treatment center;
2. Has the authority and responsibility to manage the outpatient treatment center; and
3. Except as provided in subsection (B)(6), designates, in writing, an individual who is present on the outpatient treatment center's premises and accountable for the outpatient treatment center when the administrator is not available.

D. An administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
   b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
   c. Include how a personnel member may submit a complaint relating to services provided to a patient;
   d. Cover the requirements in Title 36, Chapter 4, Article 11;
   e. Cover cardiopulmonary resuscitation training including:
      i. The method and content of cardiopulmonary resuscitation training which includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation,
      ii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
      iii. The time-frame for renewal of cardiopulmonary resuscitation training, and
      iv. The documentation that verifies that an individual has received cardiopulmonary resuscitation training;
   f. Cover first aid training;
   g. Include a method to identify a patient to ensure the patient receives the services ordered for the patient;
   h. Cover patient rights, including assisting a patient who does not speak English or who has a physical or other disability to become aware of patient rights;
   i. Cover health care directives;
   j. Cover medical records, including electronic medical records;
   k. Cover quality management, including incident report and supporting documentation; and
   l. Cover contracted services;

2. Policies and procedures for services provided at or by an outpatient treatment center are established, documented, and implemented to protect the health and safety of a patient that:
    a. Cover patient screening, admission, assessment, transport, transfer, discharge plan, and discharge;
    b. Cover the provision of medical services, nursing services, behavioral health services, health-related services, and ancillary services;
    c. Include when general consent and informed consent are required;
    d. Cover obtaining, administering, storing, and disposing of medications, including provisions for controlling inventory and preventing diversion of controlled substances;
    e. Cover prescribing a controlled substance to minimize substance abuse by a patient;
    f. Cover infection control;
    g. Cover telemedicine, if applicable;
    h. Cover environmental services that affect patient care;
    i. Cover specific steps for:
        i. A patient to file a complaint, and
        ii. An outpatient treatment center to respond to a complaint;
    j. Cover smoking tobacco products on an outpatient treatment center's premises; and
    k. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
3. Outpatient treatment center policies and procedures are:
    a. Reviewed at least once every three years and updated as needed, and
    b. Available to personnel members and employees;
4. Unless otherwise stated:
    a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
    b. When documentation or information is required by this Chapter to be submitted on behalf of an outpatient treatment center, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the outpatient treatment center;
5. The following are conspicuously posted:
    a. The current license for the outpatient treatment center issued by the Department;
    b. The name, address, and telephone number of the Department;
    c. A notice that a patient may file a complaint with the Department about the outpatient treatment center;
    d. One of the following:
        i. A schedule of rates according to A.R.S. § 36-436.01(C), or
        ii. A notice that the schedule of rates required in A.R.S. § 36-436.01(C) is available for review upon request;
    e. A list of patient rights;
    f. A map for evacuating the facility; and
    g. A notice identifying the location on the premises where current license inspection reports required in A.R.S. § 36-425(D), with patient information redacted, are available; and
6. Patient follow-up instructions are:
    a. Provided, orally or in written form, to a patient or the patient's representative before the patient leaves the outpatient treatment center unless the patient leaves against a personnel member's advice; and
    b. Documented in the patient's medical record.

E. If abuse, neglect, or exploitation of a patient is alleged or suspected to have occurred before the patient was admitted or while the patient is not on the premises and not receiving services from an outpatient treatment center's employee or personnel member, an administrator shall y report the alleged or suspected abuse, neglect, or exploitation of the patient as follows:
1. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
2. For a patient under 18 years of age, according to A.R.S. § 13-3620.

F. If an administrator has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a patient is receiving services from an outpatient treatment center's employee or personnel member, an administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
2. Report the suspected abuse, neglect, or exploitation of the patient as follows:
    a. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
    b. For a patient under 18 years of age, according to A.R.S. § 13-3620;
3. Document:
    a. The suspected abuse, neglect, or exploitation;
    b. Any action taken according to subsection (F)(1); and
    c. The report in subsection (F)(2);
4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
    a. The dates, times, and description of the suspected abuse, neglect, or exploitation;

b. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and

6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

G. If an outpatient treatment center is an affiliated outpatient treatment center, an administrator shall ensure that the outpatient treatment center complies with the requirements for an affiliated outpatient treatment center in 9 A.A.C. 10, Article 19.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-1004. Quality Management

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
   a. A method to identify, document, and evaluate incidents;
   b. A method to collect data to evaluate services provided to patients;
   c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
   d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
   e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
   a. An identification of each concern about the delivery of services related to patient care, and
   b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

R9-10-1005. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

R9-10-1006. Personnel

An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
   a. Are based on:
      i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
      ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
   b. Include:
      i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
      ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
      iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
   a. Before the personnel member provides physical health services or behavioral health services, and
   b. According to policies and procedures;
3. Sufficient personnel members are present on an outpatient treatment center's premises with the qualifications, skills, and knowledge necessary to:
   a. Provide the services in the outpatient treatment center's scope of services,
   b. Meet the needs of a patient, and

c. Ensure the health and safety of a patient;
4. A personnel member only provides physical health services or behavioral health services the personnel member is qualified to provide;
5. A plan is developed, documented, and implemented to provide orientation specific to the duties of personnel members, employees, volunteers, and students;
6. A personnel member completes orientation before providing medical services, nursing services or health-related services to a patient;
7. An individual's orientation is documented, to include:
   a. The individual's name,
   b. The date of the orientation, and
   c. The subject or topics covered in the orientation;
8. A plan is developed, documented, and implemented to provide in-service education specific to the duties of a personnel member;
9. A personnel member's in-service education is documented, to include:
   a. The personnel member's name,
   b. The date of the in-service education, and
   c. The subject or topics covered in the in-service education;
10. A personnel member who is a behavioral health technician or behavioral health paraprofessional complies with the applicable requirements in R9-10-115;
11. A record for a personnel member, an employee, a volunteer, or a student is maintained that includes:
    a. The individual's name, date of birth, and contact telephone number;
    b. The individual's starting date of employment or volunteer service, and if applicable, the ending date;
    c. Documentation of:
       i. The individual's qualifications including skills and knowledge applicable to the individual's job duties;
       ii. The individual's education and experience applicable to the individual's job duties;
       iii. The individual's completed orientation and in-service education as required by policies and procedures;
       iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
       v. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
       vi. The individual's compliance with the fingerprinting requirements in A.R.S. § 36-425.03, if applicable; and
       vii. Cardiopulmonary resuscitation training, if the individual is required to have cardiopulmonary resuscitation training according to this Article or policies and procedures; and
12. The record in subsection (A)(11) is:
    a. Maintained while an individual provides services for or at the outpatient treatment center and for at least 24 months after the last date the employee or volunteer provided services for or at the outpatient treatment center; and
    b. If the ending date of employment or volunteer service was 12 or more months before the date of the Department's request, provided to the Department within 72 hours after the Department's request.

R9-10-1007. Transport; Transfer

A. Except as provided in subsection (B), an administrator shall ensure that:
1. A personnel member coordinates the transport and the services provided to the patient;
2. According to policies and procedures:
   a. An evaluation of the patient is conducted before and after the transport,
   b. Information from the patient's medical record is provided to a receiving health care institution,
   c. A personnel member explains risks and benefits of the transport to the patient or the patient's representative; and
   d. A personnel member communicates or documents why the personnel member did not communicate with an individual at a receiving health care institution;
3. The patient's medical record includes documentation of:
   a. Communication or lack of communication with an individual at a receiving health care institution;
   b. The date and time of the transport;
   c. The mode of transportation; and
   d. If applicable, the name of the personnel member accompanying the patient during a transport.

B. Subsection (A) does not apply to:
1. Transportation to a location other than a licensed health care institution,
2. Transportation provided for a patient by the patient or the patient's representative,
3. Transportation provided by an outside entity that was arranged for a patient by the patient or the patient's representative, or
4. A transport to another licensed health care institution in an emergency.

C. Except for a transfer of a patient due to an emergency, an administrator shall ensure that:
1. A personnel member coordinates the transfer and the services provided to the patient;
2. According to policies and procedures:
   a. An evaluation of the patient is conducted before the transfer;

b. Information from the patient's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
c. A personnel member explains risks and benefits of the transfer to the patient or the patient's representative; and

3. Documentation in the patient's medical record includes:
   a. Communication with an individual at a receiving health care institution;
   b. The date and time of the transfer;
   c. The mode of transportation; and
   d. If applicable, the name of the personnel member accompanying the patient during a transfer.

R9-10-1008. Patient Rights

A. An administrator shall ensure that:
1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the premises;
2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
3. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that include:
   a. How and when a patient or the patient's representative is informed of patient rights in subsection (C); and
   b. Where patient rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:
1. A patient is treated with dignity, respect, and consideration;
2. A patient as not subjected to:
   a. Abuse;
   b. Neglect;
   c. Exploitation;
   d. Coercion;
   e. Manipulation;
   f. Sexual abuse;
   g. Sexual assault;
   h. Except as allowed in R9-10-1012(B), restraint or seclusion;
   i. Retaliation for submitting a complaint to the Department or another entity; or
   j. Misappropriation of personal and private property by an outpatient treatment center's personnel member, employee, volunteer, or student; and
3. A patient or the patient's representative:
   a. Except in an emergency, either consents to or refuses treatment;
   b. May refuse or withdraw consent for treatment before treatment is initiated;
   c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication or surgical procedure and associated risks and possible complications of a proposed psychotropic medication or surgical procedure;
   d. Is informed of the following:
      i. The outpatient treatment center's policy on health care directives, and
      ii. The patient complaint process;
   e. Consents to photographs of the patient before a patient is photographed, except that a patient may be photographed when admitted to an outpatient treatment center for identification and administrative purposes; and
   f. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
      i. Medical record, or
      ii. Financial records.

C. A patient has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that supports and respects the patient's individuality, choices, strengths, and abilities;
3. To receive privacy in treatment and care for personal needs;
4. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
5. To receive a referral to another health care institution if the outpatient treatment center is not authorized or not able to provide physical health services or behavioral health services needed by the patient;
6. To participate or have the patient's representative participate in the development of, or decisions concerning, treatment;
7. To participate or refuse to participate in research or experimental treatment; and
8. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

R9-10-1009. Medical Records

A. An administrator shall ensure that:
1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a patient's medical record is:

a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
b. Dated, legible, and authenticated; and
c. Not changed to make the initial entry illegible;

3. An order is:
   a. Dated when the order is entered in the patient's medical record and includes the time of the order;
   b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
   c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A patient's medical record is available to an individual:
   a. Authorized according to policies and procedures to access the patient's medical record;
   b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient's representative; or
   c. As permitted by law;
6. Policies and procedures include the maximum time-frame to retrieve a patient's medical record at the request of a medical practitioner, behavioral health professional, or authorized personnel member; and
7. A patient's medical record is protected from loss, damage, or unauthorized use.

B. If an outpatient treatment center maintains patients' medical records electronically, an administrator shall ensure that:

1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a medical record is recorded by the computer's internal clock.

C. An administrator shall ensure that a patient's medical record contains:

1. Patient information that includes:
   a. Except as specified in A.A.C. R9-6-1005, the patient's name and address;
   b. The patient's date of birth; and
   c. Any known allergies, including medication allergies;
2. A diagnosis or reason for outpatient treatment center services;
3. Documentation of general consent and, if applicable, informed consent for treatment by the patient or the patient's representative, except in an emergency;
4. If applicable, the name and contact information of the patient's representative and:
   a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
   b. If the patient's representative:
      i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      ii. Is a legal guardian, a copy of the court order establishing guardianship;
5. Documentation of medical history and, if applicable, results of a physical examination;
6. Orders;
7. Assessment;
8. Treatment plans;
9. Interval notes;
10. Progress notes;
11. Documentation of outpatient treatment center services provided to the patient;
12. The name of each individual providing treatment or a diagnostic procedure;
13. Disposition of the patient upon discharge;
14. Documentation of the patient's follow-up instructions provided to the patient;
15. A discharge summary;
16. If applicable:
   a. Laboratory reports,
   b. Radiologic reports,
   c. Sleep disorder reports,
   d. Diagnostic reports, and
   e. Consultation reports;
17. If applicable, documentation of any actions taken to control the patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual, other than actions taken while providing behavioral health observation/stabilization services; and
18. Documentation of a medication administered to the patient that includes:
   a. The date and time of administration;
   b. The name, strength, dosage, and route of administration;
   c. For a medication administered for pain:

i. An assessment of the patient's pain before administering the medication, and
ii. The effect of the medication administered;
d. For a psychotropic medication:
i. An assessment of the patient's behavior before administering the psychotropic medication, and
ii. The effect of the psychotropic medication administered;
e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication;
f. Any adverse reaction a patient has to the medication; and
g. For prepacked or sample medication provided to the patient for self-administration, the name, strength, dosage, amount, route of administration, and expiration date.

R9-10-1010. Medication Services

A. If an outpatient treatment center provides medication administration or assistance in the self-administration of medication, an administrator shall ensure that policies and procedures for medication services:
1. Include:
a. A process for providing information to a patient about medication prescribed for the patient including:
i. The prescribed medication's anticipated results,
ii. The prescribed medication's potential adverse reactions,
iii. The prescribed medication's potential side effects, and
iv. Potential adverse reactions that could result from not taking the medication as prescribed;
b. Procedures for preventing, responding to, and reporting:
i. A medication error,
ii. An adverse reaction to a medication, or
iii. A medication overdose;
c. Procedures to ensure that a patient's medication regimen is reviewed by a medical practitioner and meets the patient's needs;
d. Procedures for documenting medication administration and assistance in the self-administration of medication;
e. Procedures for assisting a patient in obtaining medication; and
f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
2. Specify a process for review through the quality management program of:
a. A medication administration error, and
b. An adverse reaction to a medication.

B. If an outpatient treatment center provides medication administration, an administrator shall ensure that:
1. Policies and procedures for medication administration:
a. Are reviewed and approved by a medical practitioner;
b. Specify the individuals who may:
i. Order medication, and
ii. Administer medication;
c. Ensure that medication is administered to a patient only as prescribed; and
d. Cover the documentation of a patient's refusal to take prescribed medication in the patient's medical record;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
3. A medication administered to a patient is:
a. Administered in compliance with an order, and
b. Documented in the patient's medical record.

C. If an outpatient treatment center provides assistance in the self-administration of medication, an administrator shall ensure that:
1. A patient's medication is stored by the outpatient treatment center;
2. The following assistance is provided to a patient:
a. A reminder when it is time to take the medication;
b. Opening the medication container for the patient;
c. Observing the patient while the patient removes the medication from the container;
d. Verifying that the medication is taken as ordered by the patient's medical practitioner by confirming that:
i. The patient taking the medication is the individual stated on the medication container label,
ii. The patient is taking the dosage of the medication stated on the medication container label, and
iii. The patient is taking the medication at the time stated on the medication container label; or
e. Observing the patient while the patient takes the medication;
3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;
4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and

b. Includes:
i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
6. Assistance in the self-administration of medication provided to a patient is:
a. In compliance with an order, and
b. Documented in the patient's medical record.

D. An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members;
2. A current toxicology reference guide is available for use by personnel members;
3. If pharmaceutical services are provided:
a. The pharmaceutical services are provided under the direction of a pharmacist;
b. The pharmaceutical services comply with ARS Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
c. A copy of the pharmacy license is provided to the Department upon request.

E. When medication is stored at an outpatient treatment center, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented for:
a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
c. A medication recall and notification of patients who received recalled medication; and
d. Storing, inventorying, and dispensing controlled substances.

F. An administrator shall ensure that a personnel member immediately reports a medication error or a patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the outpatient treatment center's clinical director.

R9-10-1011. Behavioral Health Services

A. An administrator of an outpatient treatment center that is authorized to provide behavioral health services shall ensure that:
1. The outpatient treatment center does not provide a behavioral health service the outpatient treatment center is not authorized to provide;
2. The behavioral health services provided by or at the outpatient treatment center:
a. Are provided under the direction of a behavioral health professional; and
b. Comply with the requirements:
i. For behavioral health paraprofessionals and behavioral health technicians in R9-10-115, and
ii. For an assessment, in subsection (B);
3. A personnel member who provides behavioral health services is at least 18 years old; and
4. If an outpatient treatment center provides behavioral health services to a patient who is less than 18 years of age, the owner and an employee or a volunteer comply with the fingerprint clearance card requirements in A.R.S. § 36-425.03.

B. An administrator of an outpatient treatment center that is authorized to provide behavioral health services shall ensure that:
1. Except as provided in subsection (B)(2), a behavioral health assessment for a patient is completed before treatment for the patient is initiated;
2. If a behavioral health assessment that complies with the requirements in this Section is received from a behavioral health provider other than the outpatient treatment center or the outpatient treatment center has a medical record for the patient that contains an assessment that was completed within 12 months before the date of the patient's current admission:
a. The patient's assessment information is reviewed and updated if additional information that affects the patient's assessment is identified, and
b. The review and update of the patient's assessment information is documented in the patient's medical record within 48 hours after the review is completed;
3. If a behavioral health assessment is conducted by a:
a. Behavioral health technician or a registered nurse, within 72 hours a behavioral health professional certified or licensed to provide the behavioral health services needed by the patient reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by the patient; or
b. Behavioral health paraprofessional, a behavioral health professional certified or licensed to provide the behavioral health services needed by the patient supervises the behavioral health paraprofessional during the completion of the behavioral health assessment and signs the behavioral health assessment to ensure that the assessment identifies the behavioral health services needed by the patient;

4. A behavioral health assessment:
    a. Documents a patient's:
        i. Presenting issue;
        ii. Substance abuse history;
        iii. Co-occurring disorder;
        iv. Medical condition and history;
        v. Legal history, including:
            (1) Custody,
            (2) Guardianship, and
            (3) Pending litigation;
        vi. Criminal justice record;
        vii. Family history;
        viii. Behavioral health treatment history; and
        ix. Symptoms reported by the patient and referrals needed by the patient, if any;
    b. Includes:
        i. Recommendations for further assessment or examination of the patient's needs;
        ii. The behavioral health services, physical health services, or ancillary services that will be provided to the patient; and
        iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and
    c. Is documented in patient's medical record;
5. A patient is referred to a medical practitioner if a determination is made that the patient requires immediate physical health services or the patient's behavioral health issue may be related to the patient's medical condition;
6. A request for participation in a patient's behavioral health assessment is made to the patient or the patient's representative;
7. An opportunity for participation in the patient's behavioral health assessment is provided to the patient or the patient's representative;
8. Documentation of the request in subsection (B)(6) and the opportunity in subsection (B)(7) is in the patient's medical record;
9. A patient's behavioral health assessment information is documented in the medical record within 48 hours after completing the assessment;
10. If information in subsection (B)(4)(a) is obtained about a patient after the patient's behavioral health assessment is completed, an interval note, including the information, is documented in the patient's medical record within 48 hours after the information is obtained;
11. Counseling is:
    a. Offered as described in the outpatient treatment center's scope of services,
    b. Provided according to the frequency and number of hours identified in the patient's assessment, and
    c. Provided by a behavioral health professional or a behavioral health technician;
12. A personnel member providing counseling that addresses a specific type of behavioral health issue has the skills and knowledge necessary to provide the counseling that addresses the specific type of behavioral health issue; and
13. Each counseling session is documented in the patient's medical record to include:
    a. The date of the counseling session;
    b. The amount of time spent in the counseling session;
    c. Whether the counseling was individual counseling, family counseling, or group counseling;
    d. The treatment goals addressed in the counseling session; and
    e. The signature of the personnel member who provided the counseling and the date signed.

C. An administrator of an outpatient treatment center authorized to provide behavioral health services may request to provide any of the following to individuals required to attend by a referring court:
1. DUI screening,
2. DUI education,
3. DUI treatment, or
4. Misdemeanor domestic violence offender treatment.

D. An administrator of an outpatient treatment center authorized to provide the services in subsection (C):
1. Shall comply with the requirements for the specific service in 9 A.A.C. 20, and
2. May have a behavioral health technician who has the appropriate skills and knowledge established in policies and procedures provide the services.

Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1011 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1011 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed;

new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 3041, with an immediate effective date of November 3, 2020 (Supp. 20-4).

R9-10-1012. Behavioral Health Observation/Stabilization Services

A. An administrator of an outpatient treatment center that is authorized to provide behavioral health observation/stabilization services shall ensure that:

1. Behavioral health observation/stabilization services are available 24 hours a day, every calendar day;
2. Behavioral health observation/stabilization services are provided in a designated area that:
    a. Is used exclusively for behavioral health observation/stabilization services;
    b. Has the space for a patient to receive privacy in treatment and care for personal needs; and
    c. For every 15 observation chairs or less, has at least one bathroom that contains:
        i. A working sink with running water,
        ii. A working toilet that flushes and has a seat,
        iii. Toilet tissue,
        iv. Soap for hand washing,
        v. Paper towels or a mechanical air hand dryer,
        vi. Lighting, and
        vii. A means of ventilation;
3. If the outpatient treatment center is authorized to provide behavioral health observation/stabilization services to individuals under 18 years of age:
    a. There is a separate designated area for providing behavioral health observation/stabilization services to individuals under 18 years of age that:
        i. Meets the requirements in subsection (B)(2), and
        ii. Has floor to ceiling walls that separate the designated area from other areas of the outpatient treatment center;
    b. A registered nurse is present in the separate designated area; and
    c. A patient under 18 years of age does not share any space, participate in any activity or treatment, or have verbal or visual interaction with a patient 18 years of age or older;
4. A medical practitioner is available;
5. If the medical practitioner present at the outpatient treatment center is a registered nurse practitioner or a physician assistant, a physician is on-call;
6. A registered nurse is present and provides direction for behavioral health observation/stabilization services in the designated area;
7. A nurse monitors each patient at the intervals determined according to subsection (A)(12) and documents the monitoring in the patient's medical record;
8. An individual who arrives at the designated area for behavioral health observation/stabilization services in the outpatient treatment center is screened within 30 minutes after entering the designated area to determine whether the individual is in need of immediate physical health services;
9. If a screening indicates that an individual needs immediate physical health services that the outpatient treatment center is:
    a. Able to provide according to the outpatient treatment center's scope of services, the individual is examined by a medical practitioner within 30 minutes after being screened; or
    b. Not able to provide, the individual is transferred to a health care institution capable of meeting the individual's immediate physical health needs;
10. If a screening indicates that an individual needs behavioral health observation/stabilization services and the outpatient treatment center has the capabilities to provide the behavioral health observation/stabilization services, the individual is admitted to the designated area for behavioral health observation/stabilization services and may remain in the designated area and receive observation/stabilization services for up to 23 hours and 59 minutes;
11. Before a patient is discharged from the designated area for behavioral health observation/stabilization services, a medical practitioner determines whether the patient will be:
    a. If the behavioral health observation/stabilization services are provided in a health care institution that also provides inpatient services and is capable of meeting the patient's needs, admitted to the health care institution as an inpatient;
    b. Transferred to another health care institution capable of meeting the patient's needs;
    c. Provided a referral to another entity capable of meeting the patient's needs; or
    d. Discharged and provided patient follow-up instructions;
12. When a patient is admitted to a designated area for behavioral health observation/stabilization services, an assessment of the patient includes the interval for monitoring the patient based on the patient's medical condition, behavior, suspected drug or alcohol abuse, and medication status to ensure the health and safety of the patient;
13. If a patient is not being admitted as an inpatient to a health care institution, before discharging the patient from a designated area for behavioral health observation/stabilization services, a personnel member:
    a. Identifies the specific needs of the patient after discharge necessary to assist the patient to function independently;

b. Identifies any resources, including family members, community social services, peer support services, and Regional Behavioral Health Agency staff, that may be available to assist the patient; and
c. Documents the information in subsection (A)(13)(a) and the resources in subsection (A)(13)(b) in the patient's medical record;

14. When a patient is discharged from a designated area for behavioral health observation/stabilization services, a personnel member:
    a. Provides the patient with discharge information that includes:
        i. The identified specific needs of the patient after discharge, and
        ii. Resources that may be available for the patient; and
    b. Contacts any resources identified as required in subsection (A)(13)(b);
15. Except as provided in subsection (A)(16), a patient is not re-admitted to the outpatient treatment center for behavioral health observation/stabilization services within two hours after the patient's discharge from a designated area for behavioral health observation/stabilization services;
16. A patient may be re-admitted to the outpatient treatment center for behavioral health observation/stabilization services within two hours after the patient's discharge if:
    a. It is at least one hour since the time of the patient's discharge;
    b. A law enforcement officer or the patient's case manager accompanies the patient to the outpatient treatment center;
    c. Based on a screening of the patient, it is determined that re-admission for behavioral health observation/stabilization is necessary for the patient; and
    d. The name of the law enforcement officer or the patient's case manager and the reasons for the determination in subsection (A)(16)(c) are documented in the patient's medical record;
17. A patient admitted for behavioral health observation/stabilization services is provided:
    a. An observation chair; or
    b. A separate piece of equipment for the patient to use to sit or recline that:
        i. Is at least 12 inches from the floor; and
        ii. Has sufficient space around the piece of equipment to allow a personnel member to provide behavioral health services and physical health services, including emergency services, to the patient;
18. If an individual is not admitted for behavioral health observation/stabilization services because there is not an observation chair available for the individual's use, a personnel member provides support to the individual to access the services or resources necessary for the individual's health and safety, which may include:
    a. Admitting the individual to the outpatient treatment center to provide behavioral health services other than behavioral health observation/stabilization services;
    b. Establishing a method to notify the individual when there is an observation chair available;
    c. Referring or providing transportation to the individual to another health care institution;
    d. Assisting the individual to contact the individual's support system; and
    e. If the individual is enrolled with a Regional Behavioral Health Authority, contacting the appropriate person to request assistance for the individual;
19. Personnel members establish a log of individuals who were not admitted because there was not an observation chair available and document the individual's name, actions taken to provide support to the individual to access the services or resources necessary for the individual's health and safety, and date and time the actions were taken;
20. The log required in subsection (A)(19) is maintained for at least 12 months after the date of documentation in the log;
21. An observation chair or, as provided in subsection (A)(17)(b), a piece of equipment used by a patient to sit or recline is visible to a personnel member;
22. Except as provided in subsection (A)(23), a patient admitted to receive behavioral health observation/stabilization services is visible to a personnel member;
23. A patient admitted to receive behavioral health observation/stabilization services may use the bathroom and not be visible to a personnel member, if the personnel member:
    a. Determines that the patient is capable of using the bathroom unsupervised,
    b. Is aware of the patient's location, and
    c. Is able to intervene in the patient's actions to ensure the patient's health and safety; and
24. An observation chair:
    a. Effective until July 1, 2015, has space around the observation chair that allows a personnel member to provide behavioral health services and physical health services, including emergency services, to a patient in the observation chair; and
    b. Effective on July 1, 2015, has at least three feet of clear floor space:
        i. On at least two sides of the observation chair, and
        ii. Between the observation chair and any other observation chair.

B. An administrator of an outpatient treatment center that is authorized to provide behavioral health observation/stabilization services shall:
1. Have a room used for seclusion that complies with requirements for seclusion rooms in R9-10-316, and
2. Comply with the requirements for restraint and seclusion in R9-10-316.

C. An administrator of an outpatient treatment center that is authorized to provide behavioral health observation/stabilization services shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover the process for:
      i. Evaluating a patient previously admitted to the designated area to determine whether the patient is ready for admission to an inpatient setting or discharge, including when to implement the process;
      ii. Contacting other health care institutions that provide behavioral health observation/stabilization services to determine if the patient could be admitted for behavioral health observation/stabilization services in another health care institution, including when to implement the process; and
      iii. Ensuring that sufficient personnel members, space, and equipment are available to provide behavioral health observation/stabilization services to patients admitted to receive behavioral health observation/stabilization services; and
   b. Establish a maximum capacity of the number of patients for whom the outpatient treatment center is capable of providing behavioral health observation/stabilization services;
2. The outpatient treatment center does not:
   a. Exceed the maximum capacity established by the outpatient treatment center in subsection (C)(1)(b); or
   b. Admit an individual if the outpatient treatment center does not have personnel members, space, and equipment available to provide behavioral health observation/stabilization services to the individual; and
3. Effective on July 1, 2015:
   a. If an admission of an individual causes the outpatient treatment center to exceed the outpatient treatment center's licensed occupancy, the individual is only admitted for behavioral health observation/stabilization services after:
      (i.) A behavioral health professional reviews the individual's screening and determines the admission is an emergency; and
      (ii.) Documents the determination in the individual's medical record; and
   b. The outpatient treatment center's quality management program's plan, required in R9-10-1004(1), includes a method to identify and document each occurrence of exceeding licensed occupancy, to evaluate the occurrences of exceeding licensed occupancy, and to review the actions taken to reduce future occurrences of exceeding licensed occupancy.

R9-10-1013. Court-ordered Evaluation

An administrator of an outpatient treatment center that is authorized to provide court-ordered evaluation shall comply with the requirements for court-ordered evaluation in A.R.S. Title 36, Chapter 5, Article 4.

Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1013 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1013 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-1014. Court-ordered Treatment

An administrator of an outpatient treatment center that is authorized to provide court-ordered treatment shall comply with the requirements for court-ordered treatment in A.R.S. Title 36, Chapter 5, Article 5.

Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1014 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1014 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-1015. Clinical Laboratory Services

An administrator of an outpatient treatment center that is authorized to provide clinical laboratory services shall ensure that:

1. If clinical laboratory services are provided on the premises or at another location, the clinical laboratory services are provided by a laboratory that holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the U.S. Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1967, 42 U.S.C. 263a, as amended by Public Law 100-578, October 31, 1988; and
2. A clinical laboratory test result is documented in a patient's medical record including:
    a. The name of the clinical laboratory test;
    b. The patient's name;
    c. The date of the clinical laboratory test;
    d. The results of the clinical laboratory test; and
    e. If applicable, any adverse reaction related to or as a result of the clinical laboratory test.

R9-10-1016. Crisis Services

A. An administrator of an outpatient treatment center that is authorized to provide crisis services shall comply with the requirements for behavioral health services in R9-10-1011.

B. An administrator of an outpatient treatment center that is authorized to provide crisis services shall ensure that:
1. Crisis services are available during clinical hours of operation;
2. A behavioral health technician, qualified to provide crisis services according to the outpatient treatment center's policies and procedures, is present in the outpatient treatment center during clinical hours of operation; and
3. The following individuals, qualified to provide crisis services according to policies and procedures, are available during clinical hours of operation:
    a. A behavioral health professional,
    b. A medical practitioner, and
    c. A registered nurse.

R9-10-1017. Diagnostic Imaging Services

An administrator of an outpatient treatment center that is authorized to provide diagnostic imaging services shall:
1. Designate an individual to provide direction for diagnostic imaging services who is a:
    a. Radiologic technologist, certified under A.R.S. Title 32, Chapter 28, Article 2, who has at least 12 months experience in an outpatient treatment center;
    b. Physician; or
    c. Radiologist; and
2. Ensure that:
    a. Diagnostic imaging services are provided in compliance with A.R.S. Title 30, Chapter 4 and 9 A.A.C. 7;
    b. A copy of a certificate documenting compliance with subsection (2)(a) is maintained;
    c. Diagnostic imaging services are provided to a patient according to an order that includes:
        i. The patient's name,
        ii. The name of the ordering individual,
        iii. The diagnostic imaging procedure ordered, and
        iv. The reason for the diagnostic imaging procedure;
    d. A physician or radiologist interprets the diagnostic image; and
    e. A diagnostic imaging patient report is completed that includes:
        i. The patient's name,
        ii. The date of the procedure, and
        iii. A physician's or radiologist's interpretation of the diagnostic image.

Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1017 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1017 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-1018. Dialysis Services

A. In addition to the definitions in A.R.S. § 36-401, R9-10-101, and R9-10-1001, the following definitions apply in this Section:
1. "Caregiver" means an individual designated by a patient or a patient's representative to perform self-dialysis in the patient's stead.
2. "Chief clinical officer" means a physician appointed to provide direction for dialysis services provided by an outpatient treatment center.

3. "Long-term care plan" means a written plan of action for a patient with kidney failure that is developed to achieve long-term optimum patient outcome.
4. "Modality" means a method of treatment for kidney failure, including transplant, hemodialysis, and peritoneal dialysis.
5. "Nutritional assessment" means an analysis of a patient's weight, height, lifestyle, medication, mobility, food and fluid intake, and diagnostic procedures to identify conditions and behaviors that indicate whether the patient's nutritional needs are being met.
6. "Patient care plan" means a written document for a patient receiving dialysis that identifies the patient's needs for medical services, nursing services, and health-related services and the process by which the medical services, nursing services, or health-related services will be provided to the patient.
7. "Peritoneal dialysis" means the process of using the peritoneal cavity for removing waste products by fluid exchange.
8. "Psychosocial evaluation" means an analysis of an individual's mental and social conditions to determine the individual's need for social work services.
9. "Reprocessing" means cleaning and sterilizing a dialyzer previously used by a patient so that the dialyzer can be reused by the same patient.
10. "Self-dialysis" means dialysis performed by a patient or a caregiver on the patient's body.
11. "Social worker" means an individual licensed according to A.R.S. Title 32, Chapter 33 to engage in the "practice of social work" as defined in A.R.S. § 32-3251.
12. "Stable means" that a patient's blood pressure, temperature, pulse, respirations, and diagnostic procedure results are within medically recognized acceptable ranges or consistent with the patient's usual medical condition so that medical intervention is not indicated.
13. "Transplant surgeon" means a physician who:
    a. Is board eligible or board certified in general surgery or urology by a professional credentialing board, and
    b. Has at least 12 months of training or experience performing renal transplants and providing care for patients with renal transplants.

B. A governing authority of an outpatient treatment center that is authorized to provide dialysis services shall:
1. Ensure that the administrator appointed as required in R9-10-1003(B)(3) has at least 12 months of experience in an outpatient treatment center providing dialysis services; and
2. Appoint a chief clinical officer to direct the dialysis services provided by or at the outpatient treatment center who is a physician who:
    a. Is board eligible or board certified in internal medicine or pediatrics by a professional credentialing board, and
    b. Has at least 12 months of experience or training in providing dialysis services.

C. An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that:
1. In addition to the policies and procedures required in R9-10-1003(D), policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
    a. Long-term care plans and patient care plans,
    b. Assigning a patient an identification number,
    c. Personnel members' response to a patient's adverse reaction during dialysis, and
    d. Personnel members' response to an equipment malfunction during dialysis;
2. A personnel member complies with the requirements in A.R.S. § 36-423 and R9-10-114 for hemodialysis technicians and hemodialysis technician trainees, if applicable;
3. A personnel member completes basic cardiopulmonary resuscitation training specific to the age of the patients receiving dialysis from the outpatient treatment center:
    a. Before providing dialysis services, and
    b. At least once every 12 months after the initial date of employment or volunteer service;
4. A personnel member wears a name badge that displays the individual's first name, job title, and professional license or certification; and
5. At least one registered nurse or medical practitioner is on the premises while a patient receiving dialysis services is on the premises.

D. An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that:
1. The premises of the outpatient treatment center where dialysis services are provided complies with the applicable physical plant health and safety codes and standards for outpatient treatment centers providing dialysis services, incorporated by reference in R9-10-104.01, that were in effect on the date listed on the building permit or zoning clearance submitted, as required by R9-10-104, as part of the application for approval of the architectural plans and specifications submitted before initial approval of the inclusion of dialysis services in the outpatient treatment center's scope of services;
2. Before a modification of the premises of an outpatient treatment center where dialysis services are provided is made, an application for approval of the architectural plans and specifications of the outpatient treatment center required in R9-10-104(A):
    a. Is submitted to the Department; and
    b. Demonstrates compliance with the applicable physical plant health and safety codes and standards for outpatient treatment centers providing dialysis services, incorporated by reference in R9-10-104.01, in effect on the date:
        i. Listed on the building permit or zoning clearance submitted as part of the application for approval of the architectural plans and specifications for the modification, or

ii. The application for approval of the architectural plans and specifications of the modification of the outpatient treatment center required in R9-10-104(A) is submitted to the Department; and

3. A modification of the outpatient treatment center complies with applicable physical plant health and safety codes and standards for outpatient treatment centers providing dialysis services, incorporated by reference in R9-10-104.01 in effect on the date:
   a. Listed on the building permit or zoning clearance submitted as part of the application for approval of the architectural plans and specifications for the modification, or
   b. The application for approval of the architectural plans and specifications required in R9-10-104(A) is submitted to the Department.

E. An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that for a patient receiving dialysis services:

1. The dialysis services provided to the patient meet the needs of the patient;
2. A physician:
   a. Performs a medical history and physical examination on the patient within 30 calendar days before admission or within 48 hours after admission, and
   b. Documents the medical history and physical examination in the patient's medical record within 48 hours after admission;
3. If the patient's medical history and physical examination required in subsection (E)(2) is not performed by the patient's nephrologist, the patient's nephrologist, within 30 calendar days after the date of the medical history and physical examination:
   a. Reviews and authenticates the patient's medical history and physical examination, documents concurrence with the medical history and physical examination, and includes information specific to nephrology; or
   b. Performs a medical history and physical examination that includes information specific to nephrology;
4. The patient's nephrologist or the nephrologist's designee:
   a. Performs a medical history and physical examination on the patient at least once every 12 months after the date of the patient's admission to the outpatient treatment center, and
   b. Documents monthly notes related to the patient's progress in the patient's medical record;
5. A registered nurse responsible for the nursing services provided to the patient receiving dialysis services:
   a. Reviews with the patient the results of any diagnostic tests performed on the patient;
   b. Assesses the patient's medical condition before the patient begins receiving hemodialysis and after the patient has received hemodialysis;
   c. If the patient returns to another health care institution after receiving dialysis services at the outpatient treatment center, provides an oral or written notice of information related to the patient's medical condition to the registered nurse responsible for the nursing services provided to the patient at the health care institution or, if there is not a registered nurse responsible, the individual responsible for the medical services, nursing services, or health-related services provided to the patient at the health care institution;
   d. Informs the patient's nephrologist of any changes in the patient's medical condition or needs; and
   e. Documents in the patient's medical record:
      i. Any notice provided as required in subsection (E)(5)(c), and
      ii Monthly notes related to the patient's progress;
6. If the patient is not stable, before dialysis is provided to the patient, a nephrologist is notified of the patient's medical condition and dialysis is not provided until the nephrologist provides direction;
7. The patient:
   a. Is under the care of a nephrologist;
   b. Is assigned a patient identification number according to the policy and procedure in subsection (C)(1)(b);
   c. Is identified by a personnel member before beginning dialysis;
   d. Receives the dialysis services ordered for the patient by a medical practitioner;
   e. Is monitored by a personnel member while receiving dialysis at least once every 30 minutes; and
   f. If the outpatient treatment center reprocesses and reuses dialyzers, is informed that the outpatient treatment center reprocesses and reuses dialyzers before beginning hemodialysis;
8. Equipment used for hemodialysis is inspected and tested according to the manufacturer's recommendations or the outpatient treatment center's policies and procedures before being used to provide hemodialysis to a patient;
9. The equipment inspection and testing required in subsection (E)(8) is documented in the patient's medical record;
10. Supplies and equipment used for dialysis services for the patient are used, stored, and discarded according to manufacturer's recommendations;
11. If hemodialysis is provided to the patient, a personnel member:
    a. Inspects the dialyzer before use to ensure that the:
       i. External surface of the dialyzer is clean;
       ii. Dialyzer label is intact and legible;
       iii. Dialyzer, blood port, and dialysate port are free from leaks and cracks or other structural damage; and
       iv. Dialyzer is free of visible blood and other foreign material;
    b. Verifies the order for the dialyzer to ensure the correct dialyzer is used for the correct patient;

c. Verifies the duration of dialyzer storage based on the type of germicide used or method of sterilization or disinfection used;
d. If the dialyzer has been reprocessed and is being reused, verifies that the label on the dialyzer includes:
i. The patient's name and the patient's identification number,
ii. The number of times the dialyzer has been used in patient treatments,
iii. The date of the last use of the dialyzer by the patient, and
iv. The date of the last reprocessing of the dialyzer;
e. If the patient's name is similar to the name of another patient receiving dialysis in the same outpatient treatment center, informs other personnel members, employees, and volunteers, of the similar names to ensure that the name or other identifying information on the label corresponds to the correct patient; and
f. Ensures that a patient's vascular access is visible to a personnel member during dialysis;

12. A patient receiving dialysis is visible to a nurse at a location used by nurses to coordinate patients and treatment;
13. If the patient has an adverse reaction during dialysis, a personnel member responds by implementing the policy and procedure required in subsection (C)(1)(c);
14. If the equipment used during the patient's dialysis malfunctions, a personnel member responds by implementing the policy and procedure required in subsection (C)(1)(d); and
15. After a patient's discharge from an outpatient treatment center, the nephrologist responsible for the dialysis services provided to the patient documents the patient's discharge in the patient's medical record within 30 calendar days after the patient's discharge and includes:
a. A description of the patient's medical condition and the dialysis services provided to the patient, and
b. The signature of the nephrologist.

F. If an outpatient treatment center provides support for self-dialysis services, an administrator shall ensure that:
1. A patient or the patient's caregiver is:
a. Instructed to use the equipment to perform self-dialysis by a personnel member trained to provide the instruction, and
b. Monitored in the patient's home to assess the patient's or patient caregiver's ability to use the equipment to perform self-dialysis;
2. Instruction provided to a patient as required in subsection (F)(1)(a) and monitoring in the patient's home as required in subsection (F)(1)(b) is documented in the patient's medical record;
3. All supplies for self-dialysis necessary to meet the needs of the patient are provided to the patient;
4. All equipment necessary to meet the needs of the patient's self-dialysis is provided for the patient and maintained by the outpatient treatment center according to the manufacturer's recommendations;
5. The water used for hemodialysis is tested and treated according to the requirements in subsection (N);
6. Documentation of the self-dialysis maintained by the patient or the patient's caregiver is:
a. Reviewed to ensure that the patient is receiving continuity of care, and
b. Placed in the patient's medical record; and
7. If a patient uses self-dialysis and self-administers medication:
a. The medical practitioner responsible for the dialysis services provided to the patient reviews the patient's diagnostic laboratory tests;
b. The patient and the patient's caregiver are informed of any potential:
i. Side effects of the medication; and
ii. Hazard to a child having access to the medication and, if applicable, a syringe used to inject the medication; and
c. The patient or the patient's caregiver is:
i. Taught the route and technique of administration and is able to administer the medication, including injecting the medication;
ii. Taught and able to perform sterile techniques if the patient or the patient's caregiver will be injecting the medication;
iii. Provided with instructions for the administration of the medication, including the specific route and technique the patient or the patient's caregiver has been taught to use;
iv. Able to read and understand the directions for using the medication;
v. Taught and able to self-monitor the patient's blood pressure; and
vi. Informed how to store the medication according to the manufacturer's instructions.

G. An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a social worker is employed by the outpatient treatment center to meet the needs of a patient receiving dialysis services including:
1. Conducting an initial psychosocial evaluation of the patient within 30 calendar days after the patient's admission to the outpatient treatment center;
2. Participating in reviewing the patient's need for social work services;
3. Recommending changes in treatment based on the patient's psychosocial evaluation;
4. Assisting the patient and the patient's representative in obtaining and understanding information for making decisions about the medical services provided to the patient;

5. Identifying community agencies and resources and assisting the patient and the patient's representative to utilize the community agencies and resources;
6. Documenting monthly notes related to the patient's progress in the patient's medical record; and
7. Conducting a follow-up psychosocial evaluation of the patient at least once every 12 months after the date of the patient's admission to the outpatient treatment center.

H. An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a registered dietitian is employed by the outpatient treatment center to assist a patient receiving dialysis services to meet the patient's nutritional and dietetic needs including:

1. Conducting an initial nutritional assessment of the patient within 30 calendar days after the patient's admission to the outpatient treatment center;
2. Consulting with the patient's nephrologist and recommending a diet to meet the patient's nutritional needs;
3. Providing advice to the patient and the patient's representative regarding a diet prescribed by the patient's nephrologist;
4. Monitoring the patient's adherence and response to a prescribed diet;
5. Reviewing with the patient any diagnostic test performed on the patient that is related to the patient's nutritional or dietetic needs;
6. Documenting monthly notes related to the patient's progress in the patient's medical record; and
7. Conducting a follow-up nutritional assessment of the patient at least once every 12 months after the date of the patient's admission to the outpatient treatment center.

I. An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a long-term care plan for each patient:

1. Is developed by a team that includes at least:
    a. The chief clinical officer of the outpatient treatment center;
    b. If the chief clinical officer is not a nephrologist, the patient's nephrologist;
    c. A transplant surgeon or the transplant surgeon's designee;
    d. A registered nurse responsible for nursing services provided to the patient;
    e. A social worker;
    f. A registered dietitian; and
    g. The patient or patient's representative, if the patient or patient's representative chooses to participate in the development of the long-term care plan;
2. Identifies the modality of treatment and dialysis services to be provided to the patient;
3. Is reviewed and approved by the chief clinical officer;
4. Is signed and dated by each personnel member participating in the development of the long-term care plan;
5. Includes documentation signed by the patient or the patient's representative that the patient or the patient's representative was provided an opportunity to participate in the development of the long-term care plan;
6. Is signed and dated by the patient or the patient's representative; and
7. Is reviewed at least once every 12 months by the team in subsection (I)(1) and updated according to the patient's needs.

J. An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a patient care plan for each patient:

1. Is developed by a team that includes at least:
    a. The patient's nephrologist;
    b. A registered nurse responsible for nursing services provided to the patient;
    c. A social worker;
    d. A registered dietitian; and
    e. The patient or the patient's representative, if the patient or patient's representative chooses to participate in the development of the patient care plan;
2. Includes an assessment of the patient's need for dialysis services;
3. Identifies treatment and treatment goals;
4. Is signed and dated by each personnel member participating in the development of the patient care plan;
5. Includes documentation signed by the patient or the patient's representative that the patient or the patient's representative was provided an opportunity to participate in the development of the patient care plan;
6. Is signed and dated by the patient or the patient's representative;
7. Is implemented;
8. Is evaluated by:
    a. The registered nurse responsible for the dialysis services provided to the patient,
    b. The registered dietitian providing services to the patient related to the patient's nutritional or dietetic needs, and
    c. The social worker providing services to the patient related to the patient's psychosocial needs;
9. Includes documentation of interventions, resolutions, and outcomes related to treatment goals; and
10. Is reviewed and updated according to the needs of the patient:
    a. At least once every six months for a patient whose medical condition is stable, and
    b. At least once every 30 calendar days for a patient whose medical condition is not stable.

K. In addition to the requirements in R9-10-1009(C), an administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a medical record for each patient contains:

1. An annual medical history;
2. An annual physical examination;
3. Monthly notes related to the patient's progress by a medical practitioner, registered dietitian, social worker, and registered nurse;
4. If applicable, documentation of:
    a. The equipment inspection and testing required in subsection (E)(9), and
    b. The self-dialysis required in subsection (F)(2); and
5. If applicable, documentation of the patient's discharge.

L. For a patient who received dialysis services, an administrator shall ensure that after the patient's discharge from an outpatient treatment center that is authorized to provide dialysis services, the nephrologist responsible for the dialysis services provided to the patient documents the patient's discharge in the patient's medical record within 30 calendar days after the patient's discharge and includes:
1. A description of the patient's medical condition and the dialysis services provided to the patient, and
2. The signature of the nephrologist.

M. If an outpatient treatment center reuses dialyzers or other dialysis supplies, an administrator shall ensure that the outpatient treatment center complies with the guidelines adopted by the Association for the Advancement of Medical Instrumentation in Reprocessing of Hemodialyzers, ANSI/AAMI RD47:2008/(R)2013, incorporated by reference, available through http://my.aami.org/store/, on file with the Department, and including no future editions or amendments.

N. A chief clinical officer shall ensure that the quality of water used in dialysis conforms to the guidelines adopted by the Association for the Advancement of Medical Instrumentation in Dialysis Water and Dialysate Recommendations: A User Guide, incorporated by reference, available through http://my.aami.org/store/, on file with the Department, and including no future editions or amendments.

Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1018 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1018 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-1019. Emergency Room Services

An administrator of an outpatient treatment center that is authorized to provide emergency room services shall ensure that:
1. Emergency room services are:
    a. Available on the premises:
        i. At all times, and
        ii. To stabilize an individual's emergency medical condition; and
    b. Provided:
        i. In a designated area, and
        ii. Under the direction of a physician;
2. Clinical laboratory services are available on the premises;
3. Diagnostic imaging services are available on the premises;
4. An area designated for emergency room services complies with the physical plant codes and standards for a freestanding emergency care facility in R9-10-104.01;
5. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that specify requirements for the use of a room used for seclusion that meets the requirements in R9-10-217(D);
6. A physician is present in an area designated for emergency room services;
7. A registered nurse is present in an area designated for emergency room services and provides direction for nursing services in the designated area;
8. The outpatient treatment center has a documented transfer agreement with a general hospital;
9. Emergency room services are provided to an individual, including a woman in active labor, requesting medical services in an emergency;
10. If emergency room services cannot be provided at the outpatient treatment center, measures and procedures are implemented to minimize the risk to the patient until the patient is transferred to the general hospital with which the outpatient treatment center has a transfer agreement as required in subsection (8);
11. There is a chronological log of emergency room services provided to a patient that includes:
    a. The patient's name;
    b. The date, time, and mode of arrival; and
    c. The disposition of the patient, including discharge or transfer; and

12. The chronological log required in subsection (11) is maintained:
    a. In the designated area for emergency room services for at least 12 months after the date the emergency room services were provided; and
    b. By the outpatient treatment center for a total of at least 24 months after the date the emergency room services were provided.

Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1019 adopted as an emergency now adopted as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1019 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-1020. Opioid Treatment Services

A. A governing authority of an outpatient treatment center that is authorized to provide opioid treatment services shall:
1. Ensure that the outpatient treatment center obtains certification by the Substance Abuse and Mental Health Services Administration before providing opioid treatment,
2. Maintain a current Substance Abuse and Mental Health Services Administration certificate for the outpatient treatment center on the premises, and
3. Ensure that the administrator appointed as required in R9-10-1003(B)(3) is named on the Substance Abuse and Mental Health Services Administration certificate as the individual responsible for the opioid treatment services provided by or at the outpatient treatment center.

B. An administrator of an outpatient treatment center that is authorized to provide opioid treatment services shall ensure that:
1. In addition to the policies and procedures required in R9-10-1003(D), policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
    a. Include the criteria for receiving opioid treatment services and address:
        i. Comprehensive maintenance treatment consisting of dispensing or administering an opioid agonist treatment medication at stable dosage levels to a patient for a period in excess of 21 calendar days and providing medical and health-related services to the patient, and
        ii. Detoxification treatment that occurs over a continuous period of more than 30 calendar days;
    b. Include the criteria and procedures for discontinuing opioid treatment services;
    c. Address the needs of specific groups of patients, such as patients who:
        i. Are pregnant;
        ii. Are children;
        iii. Have chronic or acute medical conditions such as HIV infection, hepatitis, diabetes, tuberculosis, or cardiovascular disease;
        iv. Have a mental disorder;
        v. Abuse alcohol or other drugs; or
        vi. Are incarcerated or detained;
    d. Contain a method of patient identification to ensure the patient receives the opioid treatment services ordered;
    e. Contain methods to assess whether a patient is receiving concurrent opioid treatment services from more than one health care institution;
    f. Contain methods to ensure that the opioid treatment services provided to a patient by or at the outpatient treatment center meet the patient's needs;
    g. Include relapse prevention procedures;
    h. Include for laboratory testing:
        i. Criteria for the assessment of a patient's opioid agonist blood levels,
        ii. Procedures for specimen collection and processing to reduce the risk of fraudulent results, and
        iii. Procedures for conducting random drug testing of patients receiving an opioid agonist treatment medication;
    i. Include procedures for the response of personnel members to a patient's adverse reaction during opioid treatment; and
    j. Include criteria for dispensing one or more doses of an opioid agonist treatment medication to a patient for use off the premises and address:
        i. Who may authorize dispensing,
        ii. Restrictions on dispensing, and
        iii. Information to be provided to a patient or the patient's representative before dispensing;
2. A physician provides direction for the opioid treatment services provided at the outpatient treatment center;
3. If a patient requires administration of an opioid agonist treatment medication as a result of chronic pain, the patient:

a. Receives consultation with or a referral for consultation with a physician or registered nurse practitioner who specializes in chronic pain management, and
b. Is not admitted for opioid treatment services:
i. Unless the patient is physically addicted to an opioid drug, as manifested by the symptoms of withdrawal in the absence of the opioid drug; and
ii. A medical practitioner at the outpatient treatment center coordinates with the physician or registered nurse practitioner who is providing chronic pain management to the patient; and

4. In addition to the requirements in R9-10-1009(C), a medical record for each patient contains:
a. If applicable, documentation of the dispensing of doses of an opioid agonist treatment medication to the patient for use off the premises; and
b. If applicable, documentation of the patient's discharge from receiving opioid treatment services.

C. An administrator of an outpatient treatment center that is authorized to provide opioid treatment services shall ensure that for a patient receiving opioid treatment services:
1. The opioid treatment services provided to the patient meet the needs of the patient;
2. A physician or a medical practitioner under the direction of a physician:
a. Performs a medical history and physical examination on the patient within 30 calendar days before admission or within 48 hours after admission, and
b. Documents the medical history and physical examination in the patient's medical record within 48 hours after admission;
3. Before receiving opioid treatment, the patient is informed of the following:
a. The progression of opioid addiction and the patient's apparent stage of opioid addiction;
b. The goal and benefits of opioid treatment;
c. The signs and symptoms of overdose and when to seek emergency assistance;
d. The characteristics of opioid agonist treatment medication, including common side-effects and potential interaction effects with other drugs;
e. The requirement for a staff member to report suspected or alleged abuse or neglect of a child or an incapacitated or vulnerable adult according to state law;
f. Confidentiality requirements;
g. Drug screening and urinalysis procedures;
h. Requirements for dispensing to a patient one or more doses of an opioid agonist treatment medication for use by the patient off the premises;
i. Testing and treatment available for HIV and other communicable diseases; and
j. The patient complaint process;
4. Documentation of the provision of the information specified in subsection (C)(3) is included in the patient's medical record;
5. The patient receives a dose of an opioid agonist treatment medication only on the order of a medical practitioner;
6. The patient begins detoxification treatment only at the request of the patient or according to the outpatient treatment center's policy and procedure for discontinuing opioid treatment services required in subsection (B)(1)(b);
7. If the patient has an adverse reaction during opioid treatment, a personnel member and, if appropriate, a medical practitioner responds by implementing the policy and procedure required in subsection (B)(1)(i);
8. Before the patient's discharge from opioid treatment services, the patient is provided with patient follow-up instructions that:
a. Include information that may reduce the risk of relapse; and
b. May include a referral for counseling, support groups, or medication for depression or sleep disorders; and
9. After the patient's discharge from opioid treatment services provided by or at the outpatient treatment center, the medical practitioner responsible for the opioid treatment services provided to the patient documents the patient's discharge in the patient's medical record within 30 calendar days after the patient's discharge and includes:
a. A description of the patient's medical condition and the opioid treatment services provided to the patient, and
b. The signature of the medical practitioner.

D. An administrator of an outpatient treatment center that is authorized to provide opioid treatment services shall ensure that an assessment for each patient receiving opioid treatment services:
1. Includes, in addition to the information in R9-10-1010(B):
a. An assessment of the patient's need for opioid treatment services,
b. An assessment of the patient's medical conditions that may be affected by opioid treatment,
c. An assessment of other medications being taken by the patient and conditions that may be affected by opioid treatment, and
d. A plan to prevent relapse;
2. Identifies the treatment to be provided to the patient and treatment goals; and
3. Specifies whether the patient may receive an opioid agonist treatment medication for use off the premises and, if so, the number of doses that may be dispensed.

R9-10-1021. Pain Management Services

A medical director of an outpatient treatment center that is authorized to provide pain management services shall ensure that:

1. Pain management services are provided under the direction of:
   a. A physician; or
   b. A nurse practitioner licensed according to A.R.S. Title 32, Chapter 15 with advanced pain management certification from a nationally recognized accreditation or certification entity;
2. A personnel member certified in cardiopulmonary resuscitation is available on the outpatient treatment center's premise;
3. If a controlled substance is used to provide pain management services:
   a. A medical practitioner discusses the risks and benefits of using a controlled substance with a patient;
   b. If the controlled substance is an opioid, the outpatient treatment center complies with the requirements in R9-10-2006; and
   c. The following information is included in a patient's medical record:
      i. The patient's history of substance use disorder,
      ii. Documentation of the discussion in subsection (3)(a),
      iii. The nature and intensity of the patient's pain, and
      iv. The objectives used to determine whether the patient is being successfully treated; and
4. If an injection or a nerve block is used to provide pain management services:
   a. Before the injection or nerve block is initially used on a patient, an evaluation of the patient is performed by a physician or nurse anesthetist;
   b. An injection or nerve block is administered by a physician or nurse anesthetist; and
   c. The following information is included in a patient's medical record:
      i. The evaluation of the patient required in subsection (4)(a),
      ii. A record of the administration of the injection or nerve block, and
      iii. Any resuscitation measures taken; and
5. An outpatient treatment center that meets the definition of a pain management clinic in A.R.S. § 36-448.01 and complies with 9 Article 20 of this Chapter.

Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1021 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1021 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4).

R9-10-1022. Physical Health Services

An administrator of an outpatient treatment center that is authorized to provide physical health services shall ensure that:

1. Medical services provided at or by the outpatient treatment center are provided under the direction of a physician or a registered nurse practitioner,
2. Nursing services provided at or by the outpatient treatment center are provided under the direction of a registered nurse, and
3. A personnel member certified in cardiopulmonary resuscitation is available on the outpatient treatment center's premise.

R9-10-1023. Pre-petition Screening

An administrator of an outpatient treatment center that is authorized to provide pre-petition screening shall comply with the requirements for pre-petition screening in A.R.S. Title 36, Chapter 5, Article 4.

R9-10-1024. Rehabilitation Services

An administrator shall ensure that if an outpatient treatment center is authorized to provide:

1. Occupational therapy services, an occupational therapist provides direction for the occupational therapy services provided at or by the outpatient treatment center;
2. Physical therapy services, a physical therapist provides direction for the physical therapy services provided at or by the outpatient treatment center; or
3. Speech-language pathology services, a speech-language pathologist provides direction for the speech-language pathology services provided at or by the outpatient treatment center.

R9-10-1025. Respite Services

A. In addition to the definitions in A.R.S. § 36-401, R9-10-101, and R9-10-1001, the following definitions apply in this Section:
1. "Emergency safety response" has the same meaning as in R9-10-701.
2. "Outing" means travel by a child, who is receiving respite services provided by an outpatient treatment center, to a location away from the outpatient treatment center premises or, if applicable, the child's residence for a specific activity.
3. "Parent" means a child's:
   a. Mother or father, or

b. Legal guardian.

B. An administrator of an outpatient treatment center that is authorized to provide respite services shall ensure that:

1. Respite services are not provided in a personnel member's residence unless the personnel member's residence is licensed as a behavioral health respite home;
2. Except for an outpatient treatment center that is authorized to provide respite services for children on the premises, respite services are provided:
   a. In a patient's residence; or
   b. Up to 10 continuous hours in a 24-hour time period while the individual who is receiving the respite services is:
      i. Supervised by a personnel member;
      ii. Awake;
      iii. Except as stated in subsection (B)(3), provided food;
      iv. Allowed to rest;
      v. Provided an opportunity to use the toilet and meet the individual's hygiene needs; and
      vi. Participating in activities in the community but is not in a licensed health care institution or child care facility; and
3. If a child is provided respite services according to subsection (B)(2)(b), the child is provided the appropriate meals or snacks in subsection (J)(1) for the amount of time the child is receiving respite services from the outpatient treatment center.

C. If an outpatient treatment center that is authorized to provide respite services for children includes outings in the outpatient treatment center's scope of services, an administrator shall ensure that:

1. Before a personnel member takes a child receiving respite services on an outing, written permission is obtained from the child's parent that includes:
   a. The child's name;
   b. A description of the outing;
   c. The name of the outing destination, if applicable;
   d. The street address and, if available, the telephone number of the outing destination;
   e. Either:
      i. The date or dates of the outing; or
      ii. The time period, not to exceed 12 months, during which the permission is given;
   f. The projected time of departure from the outpatient treatment center or, if applicable, the child's residence;
   g. The projected time of arrival back at the outpatient treatment center or, if applicable, the child's residence; and
   h. The dated signature of the child's parent;
2. Each motor vehicle used on an outing by a personnel member for a child receiving respite services from the outpatient treatment center:
   a. Is maintained in a mechanically safe condition;
   b. Is free from hazards;
   c. Has an operational heating system;
   d. Has an operational air-conditioning system; and
   e. Is equipped with:
      i. A first-aid kit that meets the requirements in subsection (S)(1), and
      ii. Two large, clean towels or blankets;
3. On an outing, a child does not ride in a truck bed, camper, or trailer attached to a motor vehicle;
4. The Department is notified within 24 hours after a motor vehicle accident that involves a child who is receiving respite services while riding in the motor vehicle on an outing; and
5. A personnel member who drives a motor vehicle with children receiving respite services from the outpatient treatment center in the motor vehicle:
   a. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
   b. Does not permit a child to be seated in front of a motor vehicle's air bag;
   c. Requires that a child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
   d. Requires that a child is secured, as required in A.R.S. § 28-907 or A.R.S. § 28-909, before the motor vehicle is set in motion and while the motor vehicle is in motion;
   e. Assists a child into or out of the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose;
   f. Carries drinking water in an amount sufficient to meet the needs of each child on the outing and a sufficient number of cups or other drinking receptacles so that each child can drink from a different cup or receptacle; and
   g. Accounts for each child while on the outing.

D. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that:

1. Respite services are only provided on the premises for up to 10 continuous hours per day between the hours of 6:00 a.m. and 10:00 p.m.;

2. The specific 10 continuous hours per day during which the outpatient treatment center provides respite services on the premises is stated in the outpatient treatment center's hours of operation that is submitted as part of the outpatient treatment center's license application and according to R9-10-1002(D);
3. A personnel member, who is expected to provide respite services eight or more hours a week, complies with the requirements for tuberculosis screening in R9-10-113;
4. At least one personnel member who has current training in first aid and cardiopulmonary resuscitation is available on the premises when a child is receiving respite services on the premises;
5. At least one personnel member who has completed training in crisis intervention according to R9-10-716(F) is available on the premises when a child is receiving respite services on the premises;
6. A personnel member does not use or possess any of the following items when a child receiving respite services is on the premises:
    a. A controlled substance as listed in A.R.S. Title 36, Chapter 27, Article 2, except where used as a prescription medication in the manner prescribed;
    b. A dangerous drug as defined in A.R.S. § 13-3401, except where used as a prescription medication in the manner prescribed;
    c. A prescription medication as defined in A.R.S. § 32-1901, except where used in the manner prescribed; or
    d. A firearm as defined in A.R.S. § 13-105;
7. An unannounced fire and emergency evacuation drill is conducted at least once a month, and at different times of the day, and each personnel member providing respite services for children on the premises and each child receiving respite services on the premises participates in the fire and emergency evacuation drill;
8. Each fire and emergency evacuation drill is documented, and the documentation is maintained for at least 12 months after the date of the fire and emergency evacuation drill;
9. Before a child receives respite services on the premises of the outpatient treatment center, in addition to the requirements in R9-10-1009, the following information is obtained and maintained in the child's medical record;
    a. The name, home address, city, state, zip code, and contact telephone number of each parent of the child;
    b. The name and contact telephone number of at least two additional individuals authorized by the child's parent to collect the child from the outpatient treatment center;
    c. The name and contact telephone number of the child's health care provider;
    d. The written authorization for emergency medical care of the child when the parent cannot be contacted at the time of an emergency;
    e. The name of the individual to be contacted in case of injury or sudden illness of the child;
    f. If applicable, a description of any dietary restrictions or needs due to a medical condition or diagnosed food sensitivity or allergy;
    g. A written record completed by the child's parent or health care provider noting the child's susceptibility to illness, physical conditions of which a personnel member should be aware, and any specific requirements for health maintenance; and
10. Documentation is obtained and maintained in the child's medical record each time the child receives respite services on the premises that includes:
    a. The date and time of each admission to and discharge from receiving respite services; and
    b. A signature, which contains at least a first initial of a first name and the last name of the child's parent or other individual designated by the child's parent, each time the child is admitted or discharged from receiving respite services on the premises;
11. Policies and procedures are developed, documented, and implemented to ensure that the identity of an individual is known to a personnel member or is verified with picture identification before the personnel member discharges a child to the individual;
12. A child is not discharged to an individual other than the child's parent or other individual designated according to subsection (D)(9)(b), except:
    a. When the child's parent authorizes the administrator by telephone or electronic means to release the child to an individual not so designated, and
    b. The administrator can verify the telephone or electronic authorization using a means of verification that has been agreed to by the administrator and the child's parent and documented in the child's medical record; and
13. The number of personnel members providing respite services for children on the premises is determined by the needs of the children present, with a minimum of at least:
    a. One personnel member providing supervision for every five children receiving respite services on the premises; and
    b. Two personnel members on the premises when a child is receiving respite services on the premises.

E. If swimming activities are conducted at a swimming pool for a child receiving respite services on the premises of an outpatient treatment center, an administrator shall ensure that there is an individual at the swimming pool on the premises who has current lifeguard certification that includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation. If the individual is a personnel member, the personnel member cannot be counted in the personnel member-to-children ratio required by subsection (D)(13).

F. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that in each area designated for providing respite services:

1. Drinking water is provided sufficient for the needs of and accessible to each child in both indoor and outdoor areas;
2. Indoor areas used by children are decorated with age-appropriate articles such as bulletin boards, pictures, and posters;
3. Storage space is provided for indoor and outdoor toys, materials, and equipment in areas accessible to children;
4. Clean clothing is available to a child when the child needs a change of clothing;
5. At least one indoor area in the outpatient treatment center where respite services are provided for children is equipped with at least one cot or mat, a sheet, and a blanket, where a child can rest quietly away from the other children;
6. Except as provided in subsection (AA)(2)(a), outdoor or large muscle development activities are scheduled to allow not less than 75 square feet for each child occupying the outdoor area or indoor area substituted for outdoor area at any time;
7. The premises, including the buildings, are maintained free from hazards;
8. Toys and play equipment, required in this Section, are maintained:
    a. Free from hazards, and
    b. In a condition that allows the toy or play equipment to be used for the original purpose of the toy or play equipment;
9. Temperatures are maintained between 70° F and 84° F in each room or indoor area used by children;
10. Except when a child is napping or sleeping or for a child who has a sensory issue documented in the child's behavioral health assessment, each room or area used by a child is maintained at a minimum of 30 foot candles of illumination;
11. When a child is napping or sleeping in a room, the room is maintained at a minimum of five foot candles of illumination;
12. Each child's toothbrush, comb, washcloth, and cloth towel that are provided for the child's use by the child's parent are maintained in a clean condition and stored in an identified space separate from those of other children;
13. Except as provided in subsection (F)(14), the following are stored separate from food storage areas and are inaccessible to a child:
    a. All materials and chemicals labeled as a toxic or flammable substance;
    b. All substances that have a child warning label and may be a hazard to a child; and
    c. Lawn mowers, ladders, toilet brushes, plungers, and other equipment that may be a hazard to a child;
14. Hand sanitizers:
    a. When being stored, are stored separate from food storage areas and are inaccessible to children; and
    b. When being provided for use, are accessible to children; and
15. Except when used as part of an activity, the following are stored in an area inaccessible to a child:
    a. Garden tools, such as a rake, trowel, and shovel; and
    b. Cleaning equipment and supplies, such as a mop and mop bucket.

G. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that a personnel member:

1. Supervises each child at all times;
2. Does not smoke or use tobacco:
    a. In any area where respite services may be provided for a child, or
    b. When transporting or transferring a child;
3. Except for a child who can change the child's own clothing, changes a child's clothing when wet or soiled;
4. Empties clothing soiled with feces into a toilet without rinsing;
5. Places a child's soiled clothing in a plastic bag labeled with the child's name, stores the clothing in a container used for this purpose, and sends the clothing home with the child's parent;
6. Prepares and posts in each indoor area, before the first child arrives to receive respite services that day, a current schedule of age-appropriate activities that meet the needs of the children receiving respite services that day, including the times the following are provided:
    a. Meals and snacks,
    b. Naps,
    c. Indoor activities,
    d. Outdoor or large muscle development activities,
    e. Quiet and active activities,
    f. Personnel member-directed activities,
    g. Self-directed activities, and
    h. Activities that develop small muscles;
7. Provides activities and opportunities, consistent with a child's behavioral health assessment, for each child to:
    a. Gain a positive self-concept;
    b. Develop and practice social skills;
    c. Acquire communication skills;
    d. Participate in large muscle physical activity;
    e. Develop habits that meet health, safety, and nutritional needs;
    f. Express creativity;
    g. Learn to respect cultural diversity of children and staff;
    h. Learn self-help skills; and
    i. Develop a sense of responsibility and independence;
8. Implements the schedule in subsection (G)(6);

9. If an activity on the schedule in subsection (G)(6) is not implemented, writes on the schedule the activity that was not implemented and what activity was substituted;
10. Ensures that each indoor area has a supply of age-appropriate toys, materials, and equipment, necessary to implement the schedule required in subsection (G)(6), in a quantity sufficient for the number of children receiving respite services at the outpatient treatment center that day, including:
    a. Art and crafts supplies;
    b. Books;
    c. Balls;
    d. Puzzles, blocks, and toys to enhance manipulative skills;
    e. Creative play toys;
    f. Musical instruments; and
    g. Indoor and outdoor equipment to enhance large muscle development;
11. Does the following when a parent permits or asks a personnel member to apply personal products, such as petroleum jelly, diaper rash ointments, sun screen or sun block preparations, toothpaste, and baby diapering preparations on the parent's child:
    a. Obtains the child's personal products and written approval for use of the personal products from the child's parent;
    b. Labels the personal products with the child's name; and
    c. Keeps the personal products inaccessible to children; and
12. Monitors a child for overheating or overexposure to the sun.

H. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises and includes in the outpatient treatment center's scope of respite services for children wearing diapers shall ensure that there is a diaper changing space in the area designated for providing respite services for children that contains:
1. A nonabsorbent, sanitizable diaper changing surface that is:
    a. Seamless and smooth, and
    b. Kept clear of items not required for diaper changing;
2. A hand-washing sink adjacent to the diaper changing surface, for a personnel member's use when changing diapers and for washing a child during or after diapering, that provides:
    a. Running water,
    b. Soap from a dispenser, and
    c. Single-use paper hand towels from a dispenser;
3. At least one waterproof, sanitizable container with a waterproof liner and a tight-fitting lid for soiled diapers; and
4. At least one waterproof, sanitizable container with a waterproof liner and a tight-fitting lid for soiled clothing.

I. In a diaper changing space, an administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that:
1. A diaper changing procedure is established, documented, and implemented that states that a child's diaper is changed as soon as it is soiled and that a personnel member when diapering:
    a. Washes and dries the child, using a separate wash cloth and towel only once for each child;
    b. If applicable, applies the child's individual personal products labeled with the child's name;
    c. Uses single-use non-porous gloves;
    d. Washes the personnel member's own hands with soap and running water according to the requirements in R9-10-1028(5);
    e. Washes each child's hands with soap and running water after each diaper change; and
    f. Cleans, sanitizes, and dries the diaper changing surface following each diaper change; and
2. A personnel member:
    a. Removes disposable diapers and disposable training pants from a diaper changing space as needed or at least twice every 24 hours to a waste receptacle outside the building; and
    b. Does not:
        i. Permit a bottle, formula, food, eating utensil, or food preparation in a diaper changing space;
        ii. Draw water for human consumption from the hand-washing sink adjacent to a diaper changing surface, required in subsection (H)(2); or
        iii. If responsible for food preparation, change diapers until food preparation duties have been completed for the day.

J. Except as provided in subsection (K)(3), an administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall:
1. Serve the following meals or snacks to a child receiving respite services on the premises:
    a. For the following periods of time:
        i. Two to four hours, one or more snacks;
        ii. Four to eight hours, one or more snacks and one or more meals; and
        iii. More than eight hours, two snacks and one or more meals;
    b. Make breakfast available to a child receiving respite services on the premises before 8:00 a.m.;
    c. Serve lunch to a child who is receiving respite services on the premises between 11:00 a.m. through 1:00 p.m.; and

d. Serve dinner to a child who is receiving respite services on the premises from 5:00 p.m. through 7:00 p.m. and who will remain on the premises after 7:00 p.m.;

2. Ensure that a meal or snack provided by the outpatient treatment center meets the meal pattern requirements in Table 10.1; and
3. If the outpatient treatment center provides a meal or snack to a child:
   a. Make a second serving of a food component of a provided snack or meal available to a child who requests a second serving, and
   b. Substitute a food that is equivalent to a specific food component if a requested second serving of a specific food component is not available.

K. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises:
1. May serve food provided for a child by the child's parent;
2. If a child's parent does not provide a sufficient number of meals or snacks to meet the requirements in subsection (J)(1), shall supplement, according to the requirements in Table 10.1, the meals or snacks provided by the child's parent; and
3. If applicable, shall serve food to a child at the times and in quantities consistent with the information documented according to subsection (D)(9)(f) for the child and the child's behavioral health assessment, to meet the child's dietary and nutritional needs.

L. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises that has a respite capacity of more than 10 shall obtain a food establishment license or permit according to the requirements in 9 A.A.C. 8, Article 1, and, if applicable, maintain documentation of the current food establishment license or permit.

M. If an administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises serves food to a child receiving respite services on the premises that is not prepared by the outpatient treatment center or provided by the child's parent, the administrator shall ensure that the food was prepared by a food establishment, as defined according to A.A.C. R9-8-101.

N. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that:
1. Children, except infants and children who cannot wash their own hands, wash their hands with soap and running water before and after handling or eating food;
2. A personnel member:
   a. Washes the hands of an infant or a child who cannot wash the child's own hands before and after the infant or child handles or eats food, using:
      i. A washcloth,
      ii. A single-use paper towel, or
      iii. Soap and running water; and
   b. If using a washcloth, uses each washcloth on only one child and only one time before it is laundered or discarded;
3. Non-single-use utensils and equipment used in preparing, eating, or drinking food are:
   a. After each use:
      i. Washed in an automatic dishwasher and air dried or heat dried; or
      ii. Washed in hot soapy water, rinsed in clean water, sanitized, and air dried or heat dried; and
   b. Stored in a clean area protected from contamination;
4. Single-use utensils and equipment are disposed of after being used;
5. Perishable foods are covered and stored in a refrigerator at a temperature of 41° F or less;
6. A refrigerator at the outpatient treatment center maintains a temperature of 41° F or less, as shown by a thermometer kept in the refrigerator at all times;
7. A freezer at the outpatient treatment center maintains a temperature of 0° F or less, as shown by a thermometer kept in the freezer at all times; and
8. Foods are prepared as close as possible to serving time and, if prepared in advance, are either:
   a. Cold held at a temperature of 45° F or less or hot held at a temperature of 130° F or more until served, or
   b. Cold held at a temperature of 45° F or less and then reheated to a temperature of at least 165° F before being served.

O. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises:
1. May allow a personnel member to separate a child who is receiving respite services on the premises from other children for unacceptable behavior for no longer than three minutes after the child has regained self-control, but not more than 10 minutes without the personnel member interacting with the child, consistent with the child's behavioral health assessment;
2. Shall ensure that:
   a. A personnel member, consistent with the child's behavioral health assessment:
      i. Defines and maintains consistent and reasonable guidelines and limitations for a child's behavior;
      ii. Teaches, models, and encourages orderly conduct, personal control, and age-appropriate behavior; and
      iii. Explains to a child why a particular behavior is not allowed, suggests an alternative, and assists the child to become engaged in an alternative activity;
   b. An emergency safety response is:
      i. Only used:
         (1) By a personnel member trained according to R9-10-716(F)(1) to use an emergency safety response,

(2) For the management of a child's violent or self-destructive behavior, and
(3) When less restrictive interventions have been determined to be ineffective; and

ii. Discontinued at the earliest possible time, but no longer than five minutes after the emergency safety response is initiated;

c. If an emergency safety response was used for a child, a personnel member, when the child is discharged to the child's parent:
   i. Notifies the child's parent of the use of the emergency safety response for the child and the behavior, event, or environmental factor that caused the need for the emergency safety response; and
   ii. Documents in the child's medical record that the child's parent was notified of the use of the emergency safety response;

d. Within 24 hours after an emergency safety response is used for a child receiving respite services on the premises, the following information is entered into the child's medical record:
   i. The date and time the emergency safety response was used;
   ii. The name of each personnel member who used an emergency safety response;
   iii. The specific emergency safety response used;
   iv. The behavior, event, or environmental factor that caused the need for the emergency safety response; and
   v. Any injury that resulted from the use of the emergency safety response;

e. Within 10 working days after an emergency safety response is used for a child receiving respite services on the premises, a behavioral health professional reviews the information in subsection (O)(2)(d) and documents the review in the child's medical record;

f. After the review required in subsection (O)(2)(e), the following information is entered into the child's medical record:
   i. Actions taken or planned to prevent the need for a subsequent use of an emergency safety response for the child,
   ii. A determination of whether the child is appropriately placed at the outpatient treatment center providing respite services for children on the premises, and
   iii. Whether the child's treatment plan was reviewed or needs to be reviewed and amended to ensure that the child's treatment plan is meeting the child's treatment needs;

g. Emergency safety response training is documented according to the requirements in R9-10-716(F)(2); and

h. Materials used for emergency safety response training are maintained according to the requirements in R9-10-716(F)(3); and

3. A personnel member does not use or permit:
   a. A method of discipline that could cause harm to the health, safety, or welfare of a child;
   b. Corporal punishment;
   c. Abusive language;
   d. Discipline associated with:
      i. Eating, napping, sleeping, or toileting;
      ii. Medication; or
      iii. Mechanical restraint; or
   e. Discipline administered to any child by another child.

P. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall:
1. Provide each child who naps or sleeps on the premises with a separate cot or mat and ensure that:
   a. A cot or mat used by the child accommodates the child's height and weight;
   b. A personnel member covers each cot or mat with a clean sheet that is laundered when soiled, or at least once every seven days and before use by a different child;
   c. A clean blanket or sheet is available for each child;
   d. A rug, carpet, blanket, or towel is not used as a mat; and
   e. Each cot or mat is maintained in a clean and repaired condition;
2. Not use bunk beds or waterbed mattresses for a child receiving respite services;
3. Provide an unobstructed passageway at least 18 inches wide between each row of cots or mats to allow a personnel member access to each child;
4. Ensure that if a child naps or sleeps while receiving respite services at the outpatient treatment center, the administrator:
   a. Does not permit the child to lie in direct contact with the floor while napping or sleeping;
   b. Prohibits the operation of a television in a room where the child is napping or sleeping; and
   c. Requires that a personnel member remain awake while supervising the napping or sleeping child; and
5. Ensure that storage space is provided on the premises for cots, mats, sheets, and blankets, that is:
   a. Accessible to an area used for napping or sleeping; and
   b. Separate from food service and preparation areas, toilet rooms, and laundry rooms.

Q. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall, in the area of the premises where the respite services are provided:
1. Maintain the premises and furnishings:

a. Free of insects and vermin,
b. In a clean condition, and
c. Free from odor; and

2. Ensure that:
   a. Floor coverings are:
      i. Clean; and
      ii. Free from:
         (1) Dampness,
         (2) Odors, and
         (3) Hazards;
   b. Toilet bowls, lavatory fixtures, and floors in toilet rooms and kitchens are cleaned and sanitized as often as necessary to maintain them in a clean and sanitized condition or at least once every 24 hours;
   c. Each toilet room used by children receiving respite services on the premises contains, within easy reach of children:
      i. Mounted toilet tissue;
      ii. A sink with running water;
      iii. Soap contained in a dispenser; and
      iv. Disposable, single-use paper towels, in a mounted dispenser, or a mechanical hand dryer;
   d. Personnel members wash their hands with soap and running water after toileting;
   e. A child's hands are washed with soap and running water after toileting;
   f. Except for a cup or receptacle used only for water, food waste is stored in a covered container and the container is clean and lined with a plastic bag;
   g. Food waste and other refuse is removed from the area of the premises where respite services are provided for children at least once every 24 hours or more often as necessary to maintain a clean condition and avoid odors;
   h. A personnel member or a child does not draw water for human consumption from a toilet room hand-washing sink;
   i. Toys, materials, and equipment are maintained in a clean condition;
   j. Plumbing fixtures are maintained in a clean and working condition; and
   k. Chipped or cracked sinks and toilets are replaced or repaired.

R. If laundry belonging to an outpatient treatment center providing respite services for children on the premises is done on the premises, an administrator shall:

1. Not use a kitchen or food storage area for sorting, handling, washing, or drying laundry;
2. Locate the laundry equipment in an area that is separate from areas used by children and inaccessible to children;
3. Not permit a child to be in a laundry room or use a laundry area as a passageway for children; and
4. Ensure that laundry soiled by vomitus, urine, feces, blood, or other body fluid is stored, cleaned, and sanitized separately from other laundry.

S. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that there is a first aid kit in the designated area of the outpatient treatment center where respite services are provided that:

1. Contains first aid supplies in a quantity sufficient to meet the needs of the children receiving respite services, including the following:
   a. Sterile bandages including:
      i. Self-adhering bandages of assorted sizes,
      ii. Sterile gauze pads, and
      iii. Sterile gauze rolls;
   b. Antiseptic solution or sealed antiseptic wipes;
   c. A pair of scissors;
   d. Self-adhering tape;
   e. Single-use, non-porous gloves; and
   f. Reclosable plastic bags of at least one-gallon size; and
2. Is accessible to personnel members but inaccessible to children receiving respite services on the premises.

T. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall:

1. Prepare and date a written fire and emergency plan that contains:
   a. The location of the first aid kit;
   b. The names of personnel members who have first aid training;
   c. The names of personnel members who have cardiopulmonary resuscitation training;
   d. The directions for:
      i. Initiating notification of a child's parent by telephone or other equally expeditious means within 60 minutes after a fire or emergency; and
      ii. Providing written notification to the child's parent within 24 hours after a fire or emergency; and
   e. The outpatient treatment center's street address and the emergency telephone numbers for the local fire department, police department, ambulance service, and poison control center;
2. Maintain the plan required in subsection (T)(1) in the area designated for providing respite services;

3. Post the plan required in subsection (T)(1) in any indoor area where respite services are provided that does not have an operable telephone service or two-way voice communication system that connects the indoor area where respite services are provided with an individual who has direct access to an in-and-out operable telephone services; and
4. Update the plan in subsection (T)(1) at least once every 12 months after the date of initial preparation of the plan or when any information changes.

U. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall in the area designated for providing respite services:
1. Post, near a room's designated exit, a building evacuation plan that details the designated exits from the room and the facility where the outpatient treatment center is located; and
2. Maintain and use a communication system that contains:
   a. A direct-access, in-and-out, operating telephone service in the area where respite services are provided; or
   b. A two-way voice communication system that connects the area where respite services are provided with an individual who has direct access to an in-and-out, operating telephone service.

V. If, while receiving respite services at an outpatient treatment center authorized to provide respite services for children on the premises, a child has an accident, injury, or emergency that, based on an evaluation by a personnel member, requires medical treatment by a health care provider, an administrator shall ensure that a personnel member:
1. Notifies the child's parent immediately after the accident, injury, or emergency;
2. Documents:
   a. A description of the accident, injury, or emergency, including the date, time, and location of the accident, injury, or emergency;
   b. The method used to notify the child's parent; and
   c. The time the child's parent was notified; and
3. Maintains the documentation required in subsection (V)(2) for at least 12 months after the date the child last received respite services on the outpatient treatment center's premises.

W. If a parent of a child who received respite services at an outpatient treatment center authorized to provide respite services for children on the premises informs a personnel member that the child's parent obtained medical treatment for the child from a health care provider for an accident, injury, or emergency the child had while on the premises, an administrator shall ensure that a personnel member:
1. Documents any information about the child's accident, injury, or emergency received from the child's parent; and
2. Maintains the documentation required in subsection (W)(1) for at least 12 months after the date the child last received respite services on the outpatient treatment center's premises.

X. If a child exhibits signs of illness or infestation at an outpatient treatment center authorized to provide respite services for children on the premises, an administrator shall ensure that a personnel member:
1. Immediately separates the child from other children,
2. Immediately notifies the child's parent by telephone or other expeditious means to arrange for the child's discharge from the outpatient treatment center,
3. Documents the notification required in subsection (X)(2), and
4. Maintains documentation of the notification required in subsection (X)(3) for at least 12 months after the date of the notification.

Y. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall comply with the following physical plant requirements:
1. Toilets and hand-washing sinks are available to children in the area designated for providing respite services or on the premises as follows:
   a. At least one flush toilet and one hand-washing sink for 10 or fewer children;
   b. At least two flush toilets and two hand-washing sinks for 11 to 25 children; and
   c. At least one flush toilet and one hand-washing sink for each additional 20 children;
2. A hand-washing sink provides running water with a drain connected to a sanitary sewer as defined in A.R.S. § 45-101;
3. A glass mirror, window, or other glass surface that is located within 36 inches of the floor is made of safety glass that has been manufactured, fabricated, or treated to prevent the glass from shattering or flying when struck or broken, or is shielded by a barrier to prevent impact by or physical injury to a child; and
4. There is at least 30 square feet of unobstructed indoor space for each child who may be receiving respite services on the premises, which excludes floor space occupied by:
   a. The interior walls;
   b. A kitchen, a bathroom, a closet, a hallway, a stair, an entryway, an office, an area designated for isolating a child from other children, a storage room, or a room or floor space designated for the sole use of personnel members;
   c. Room space occupied by desks, file cabinets, storage cabinets, or hand-washing sinks for a personnel member's use; or
   d. Indoor area that is substituted for required outdoor area.

Z. An administrator of an outpatient treatment center authorized to provide respite services for children on the premises shall ensure that, in addition to the policies and procedures required in this Article, policies and procedures are established, documented, and implemented for the children's use of a toilet and hand-washing sink that ensure the children's health and safety and include:

1. Supervision requirements for children using the toilet, based on a child's age, gender, and behavioral health issue; and
2. If the outpatient treatment center does not have a toilet and hand-washing sink available for the exclusive use of children receiving respite services, a method to ensure that an individual, other than a child receiving respite services or a personnel member providing respite services, is not present in the toilet and hand-washing sink area when a child receiving respite services is present in the toilet and hand-washing sink area.

AA. To provide activities that develop large muscles and an opportunity to participate in structured large muscle physical activities, an administrator of an outpatient treatment center authorized to provide respite services for children on the premises shall:

1. Provide at least 75 square feet of outdoor area per child for at least 50% of the outpatient treatment center's respite capacity; or
2. Comply with one of the following:
   a. If no child receives respite services on the premises for more than four hours per day, provide at least 50 square feet of indoor area for each child, based on the outpatient treatment center's respite capacity;
   b. If a child receives respite services on the premises for more than four hours but less than six hours per day, provide at least 75 square feet of indoor area per child for at least 50% of the outpatient treatment center's respite capacity, in addition to the indoor area required in subsection (Y)(4); or
   c. Provide at least 37.5 square feet of outdoor area and 37.5 square feet of indoor area per child for at least 50% of the outpatient treatment center's respite capacity, in addition to the activity area required in subsection (Y)(4).

BB. If an administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises is substituting indoor area for outdoor area, the administrator shall:

1. Designate, on the site plan and the floor plan submitted with the license application or a request for an intended change or modification, the indoor area that is being substituted for an outdoor area; and
2. In the indoor area substituted for outdoor area, install and maintain a mat or pad designed to provide impact protection in the fall zone of indoor swings and climbing equipment.

CC. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that:

1. An outdoor area used by children receiving respite services:
   a. Is enclosed by a fence:
      i. A minimum of 4.0 feet high,
      ii. Secured to the ground, and
      iii. With either vertical or horizontal open spaces on the fence or gate that do not exceed 4.0 inches;
   b. Is maintained free from hazards, such as exposed concrete footings and broken toys; and
   c. Has gates that are kept closed while a child is in the outdoor area;
2. The following is provided and maintained within the fall zones of swings and climbing equipment in an outdoor area:
   a. A shock-absorbing unitary surfacing material manufactured for such use in outdoor activity areas; or
   b. A minimum depth of 6.0 inches of a nonhazardous, resilient material such as fine loose sand or wood chips;
3. Hard surfacing material such as asphalt or concrete is not installed or used under swings or climbing equipment unless used as a base for shock-absorbing unitary surfacing material;
4. A swing or climbing equipment is not located in the fall zone of another swing or climbing equipment; and
5. A shaded area for each child occupying an outdoor area at any time of the day is provided.

DD. An administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall install and maintain a portable, pressurized fire extinguisher that meets, at a minimum, a 2A-10-BC rating of the Underwriters Laboratories in an outpatient treatment center's kitchen and any other location required for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in R9-10-104.01.

EE. In addition to the requirements in R9-10-1029(F), an administrator of an outpatient treatment center that is authorized to provide respite services for children on the premises shall ensure that:

1. Combustible material, such as paper, boxes, or rags, is not permitted to accumulate inside or outside the premises;
2. An unvented or open-flame space heater or portable heater is not used on the premises;
3. A gas valve on an unused gas outlet is removed and capped where it emerges from the wall or floor;
4. Heating and cooling equipment is inaccessible to a child;
5. Fans are mounted and inaccessible to a child;
6. Toilet rooms are ventilated to the outside of the building, either by a screened window open to the outside air or by an exhaust fan and duct system that is operated when the toilet room is in use;
7. A toilet room with a door that opens to the exterior of a building is equipped with a self-closing device that keeps the door closed except when an individual is entering or exiting; and
8. A toilet room door does not open into a kitchen or laundry.

Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1025 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1025 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-

2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 22 A.A.R. 1035, pursuant to Laws 2015, Ch. 158, § 3; effective May 1, 2016 (Supp. 16-2). Sequential numbering corrections made under subsection R9-10-1025(G) at the request of the Department of Health Services on June 27, 2016; file number M16-185 (Supp. 16-3). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

Table 10.1 Meal Pattern Requirements for Children

Meal Pattern Requirements for Children

Food Components	Ages 1 through 2 years	Ages 3 through 5 years	Ages 6 and older
Breakfast:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetable, fruit, or full-strength juice	1/4 cup	1/2 cup	1/2 cup
3. Bread and bread alternates (whole grain or enriched):			
Bread	1/2 slice	1/2 slice	1 slice
or cornbread, rolls, muffins, or biscuits	1/2 serving	1/2 serving	1 serving
or cold dry cereal (volume or weight, whichever is less)	1/4 cup	1/3 cup	3/4 cup
or cooked cereal, pasta, noodle products, or cereal grains	1/4 cup	1/4 cup	1/2 cup
Lunch or Supper:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetable and/or fruit (2 or more kinds)	1/4 cup total	1/2 cup total	3/4 cup total
3. Bread and bread alternates (whole grain or enriched):			
Bread	1/2 slice	1/2 slice	1 slice
or cornbread, rolls, muffins, or biscuits	1/2 serving	1/2 serving	1 serving
or cold dry cereal (volume or weight, whichever is less)	1/4 cup	1/3 cup	3/4 cup
or cooked cereal, pasta, noodle products, or cereal grains	1/4 cup	1/4 cup	1/2 cup
4. Meat or meat alternates:	1 oz.	1 1/2 oz.	2 oz.
Lean meat, fish, or poultry (edible portion as served)	1 oz.	1 1/2 oz.	2 oz.
or cheese	1/2 egg	3/4 egg	1 egg
or egg	1/4 cup	3/8 cup	1/2 cup
or cooked dry beans or peas*	2 tbsp.**	3 tbsp.**	4 tbsp.**
or peanut butter, soy nut butter, or other nut or seed butters	1/2 oz.**	3/4 oz.**	1 oz.**
or peanuts, soy nuts, tree nuts, or seeds			
or an equivalent quantity of any combination of the above meat/meat alternates	4 oz.	6 oz.	8 oz.
or yogurt			
Lunch or Supper:			
1. Milk, fluid	1/2 cup	1/2 cup	1 cup
2. Vegetable and/or fruit (2 or more kinds)	1/2 cup	1/2 cup	3/4 cup
3. Bread and bread alternates (whole grain or enriched):			
Bread	1/2 slice	1/2 slice	1 slice
or cornbread, rolls, muffins, or biscuits	1/2 serving	1/2 serving	1 serving
or cold dry cereal (volume or weight, whichever is less)	1/4 cup	1/3 cup	3/4 cup
or cooked cereal, pasta, noodle products, or cereal grains	1/4 cup	1/4 cup	1/2 cup
4. Meat or meat alternates:	1/2 oz.	1/2 oz.	1 oz.
Lean meat, fish, or poultry (edible portion as served)	1/2 oz.	1/2 oz.	1 oz.
or cheese	1/2 egg	1/2 egg	1/2 egg
or egg	1/8 cup	1/8 cup	1/4 cup
or cooked dry beans or peas*	1 tbsp.	1 tbsp.	2 tbsp.
or peanut butter, soy nut butter, or other nut or seed butters	1/2 oz.	1/2 oz.	1 oz.
or peanuts, soy nuts, tree nuts, or seeds			
or an equivalent quantity of any combination of the above meat/meat alternates	2 oz.	2 oz.	4 oz.
or yogurt			

* In the same meal service, dried beans or dried peas may be used as a meat alternate or as a vegetable; however, such use does not satisfy the requirement for both components.

** At lunch and supper, no more than 50% of the requirement shall be met with nuts, seeds, or nut butters. Nuts, seeds, or nut butters shall be combined with another meat or meat alternative to fulfill the requirement. Two tablespoons of nut butter or one ounce of nuts or seeds equals one ounce of meat.

*** Juice may not be served when milk is served as the only other component.

R9-10-1026. Sleep Disorder Services

An administrator of an outpatient treatment center that is authorized to provide sleep disorder services shall ensure that:

1. A physician provides direction for the sleep disorder services provided by the outpatient treatment center;
2. At least one of the following is present on the premise of the outpatient treatment center:
   a. A polysomnographic technician certified by the Board of Registered Polysomnographic Technologists (BRPT),
   b. A polysomnographic technician accepted by the BRPT to sit for the BRPT certification examination, or
   c. A respiratory therapist;
3. There is at least one patient testing room having a minimum of 140 square feet and no dimension less than 10 feet;
4. There is a bathroom available for use by a patient that contains:
   a. A working sink with running water,
   b. A working toilet that flushes and has a seat,
   c. Toilet tissue,
   d. Soap for hand washing,
   e. Paper towels or a mechanical air hand dryer,
   f. Lighting, and
   g. A means of ventilation;
5. A personnel member certified in cardiopulmonary resuscitation is available on the outpatient treatment center's premise; and
6. Equipment for the delivery of continuous positive airway pressure and bi-level positive airway pressure, including remote control of the airway pressure, is available on the premises of the outpatient treatment center.

R9-10-1027. Urgent Care Services Provided in a Freestanding Urgent Care Setting

An administrator of an outpatient treatment center that is authorized to provide urgent care services in a freestanding urgent care setting shall ensure that:

1. In addition to the policies and procedures required in R9-10-1003(D)(1), policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover basic life support training and pediatric basic life support training including:
   a. Method and content of training,
   b. Qualifications of individuals providing the training, and
   c. Documentation that verifies a medical practitioner has received the training;
2. A medical practitioner is on the premises during hours of clinical operation to provide the medical services, nursing services, and health-related services included in the outpatient treatment center's scope of services;
3. If a physician is not on the premises during hours of operation, a notice stating this fact is conspicuously posted in the waiting room according to A.R.S. § 36-432;
4. If a patient's death occurs at the outpatient treatment center, a written report is submitted to the Department as required in A.R.S. § 36-445.04;
5. A medical practitioner completes basic life support training and pediatric basic life support training:
   a. Before providing medical services, nursing services, or health-related services at the outpatient treatment center, and
   b. At least once every 24 months after the initial date of employment;
6. Except as provided in subsection (5), a personnel member completes basic adult and pediatric cardiopulmonary resuscitation training:
   a. Before providing medical services, nursing services, or health-related services at the outpatient treatment center; and
   b. At least once every 24 months after the initial date of employment or volunteer service; and
7. In addition to the requirements in R9-10-1006(11), a medical practitioner's record includes documentation of completion of basic life support training and pediatric basic life support training.

R9-10-1028. Infection Control

An administrator shall ensure that:

1. An infection control program is established, under the direction of an individual qualified according to the outpatient treatment center's policies and procedures, to prevent the development and transmission of infections and communicable diseases including:
   a. A method to identify and document infections occurring at the outpatient treatment center;
   b. Analysis of the types, causes, and spread of infections and communicable diseases at the outpatient treatment center;
   c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases at the outpatient treatment center; and
   d. Documentation of infection control activities including:
      i. The collection and analysis of infection control data,
      ii. The actions taken related to infections and communicable diseases, and
      iii. Reports of communicable diseases to the governing authority and state and county health departments;

2. Infection control documentation is maintained for at least 12 months after the date of the documentation;
3. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
    a. If applicable:
        i. Handling and disposal of biohazardous medical waste;
        ii. Isolation of a patient;
        iii. Sterilization and disinfection of medical equipment and supplies;
        iv. Use of personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable; and
        v. Collection, storage, and cleaning of soiled linens and clothing;
    b. Cleaning an individual's hands when the individual's hands are visibly soiled;
    c. Training of personnel members, employees, and volunteers in infection control practices; and
    d. Work restrictions for a personnel member, employee, or volunteer with a communicable disease or infected skin lesion;
4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures; and
5. A personnel member, employee, or volunteer washes his or her hands with soap and water or uses a hand disinfection product before and after each patient contact and after handling soiled linen, soiled clothing, or a potentially infectious material.

R9-10-1029. Emergency and Safety Standards

A. An administrator shall ensure that policies and procedures for providing emergency treatment are established, documented, and implemented that protect the health and safety of patients and include:
1. A list of the medications, supplies, and equipment required on the premises for the emergency treatment provided by the outpatient treatment center;
2. A system to ensure medications, supplies, and equipment are available, have not been tampered with, and, if applicable, have not expired;
3. A requirement that a cart or a container is available for emergency treatment that contains the medication, supplies, and equipment specified in the outpatient treatment center's policies and procedures; and
4. A method to verify and document that the contents of the cart or container are available for emergency treatment.

B. An administrator shall ensure that emergency treatment is provided to a patient admitted to the outpatient treatment center according to the outpatient treatment center's policies and procedures.

C. An administrator shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to personnel members, and, if necessary, implemented that includes:
    a. Procedures for protecting the health and safety of patients and other individuals on the premises;
    b. Assigned responsibilities for each personnel member, employee, or volunteer;
    c. Instructions for the evacuation of patients and other individuals on the premises; and
    d. Arrangements to provide medical services, nursing services, and health-related services to meet patients' needs;
2. The disaster plan required in subsection (C)(1) is reviewed at least once every 12 months;
3. An evacuation drill is conducted on each shift at least once every 12 months;
4. A disaster plan review required in subsection (C)(2) or an evacuation drill required in subsection (C)(3) is documented as follows:
    a. The date and time of the evacuation drill or disaster plan review;
    b. The name of each personnel member, employee, or volunteer participating in the evacuation drill or disaster plan review;
    c. A critique of the evacuation drill or disaster plan review; and
    d. If applicable, recommendations for improvement;
5. Documentation required in subsection (C)(4) is maintained for at least 12 months after the date of the evacuation drill or disaster plan review; and
6. An evacuation path is conspicuously posted on each hallway of each floor of the outpatient treatment center.

D. An administrator shall ensure that an outpatient treatment center has either:
1. Both of the following that are tested and serviced at least once every 12 months:
    a. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, that is in working order; and
    b. A sprinkler system installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, that is in working order; or
2. The following:
    a. A smoke detector installed in each hallway of the outpatient treatment center that is:
        i. Maintained in an operable condition;
        ii. Either battery operated or, if hard-wired into the electrical system of the outpatient treatment center, has a back-up battery; and
        iii. Tested monthly; and

b. A portable, operable fire extinguisher, labeled as rated at least 2A-10-BC by the Underwriters Laboratories, that:
   i. Is available at the outpatient treatment center;
   ii. Is mounted in a fire extinguisher cabinet or placed on wall brackets so that the top handle of the fire extinguisher is not over five feet from the floor and the bottom of the fire extinguisher is at least four inches from the floor;
   iii. If a disposable fire extinguisher, is replaced when its indicator reaches the red zone; and
   iv. If a rechargeable fire extinguisher, is serviced at least once every 12 months and has a tag attached to the fire extinguisher that specifies the date of the last servicing and the name of the servicing person.

E. An administrator shall ensure that documentation of a test required in subsection (D) is maintained for at least 12 months after the date of the test.

F. An administrator shall ensure that:
1. Exit signs are illuminated, if the local fire jurisdiction requires illuminated exit signs;
2. Except as provided in subsection (G), a corridor in the outpatient treatment center is at least 44 inches wide;
3. Corridors and exits are kept clear of any obstructions;
4. A patient can exit through any exit during hours of operation;
5. An extension cord is not used instead of permanent electrical wiring;
6. Each electrical outlet and electrical switch has a cover plate that is in good repair;
7. If applicable, a sign is placed at the entrance of a room or an area indicating that oxygen is in use; and
8. Oxygen and medical gas containers:
   a. Are maintained in a secured, upright position; and
   b. Are stored in a room with a door:
      i. In a building with sprinklers, at least five feet from any combustible materials; or
      ii. In a building without sprinklers, at least 20 feet from any combustible materials.

G. If an outpatient treatment center licensed before October 1, 2013 has a corridor less than 44 inches wide, an administrator shall ensure that:
1. The corridor is wide enough to allow for:
   a. Unobstructed movement of patients within the outpatient treatment center, and
   b. The safe evacuation of patients from the outpatient treatment center; and
2. The corridor is used only as a passageway.

H. An administrator shall:
1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
2. Make any repairs or corrections stated on the fire inspection report, and
3. Maintain documentation of a current fire inspection.

Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1029 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1029 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-1030. Physical Plant, Environmental Services, and Equipment Standards

A. An administrator shall ensure that:
1. An outpatient treatment center's premises are:
   a. Sufficient to provide the outpatient treatment center's scope of services;
   b. Cleaned and disinfected according to the outpatient treatment center's policies and procedures to prevent, minimize, and control illness and infection; and
   c. Free from a condition or situation that may cause an individual to suffer physical injury;
2. If an outpatient treatment center collects urine or stool specimens from a patient, except as provided in subsection (B), or is authorized to provide respite services for children on the premises, the outpatient treatment center has at least one bathroom on the premises that:
   a. Contains:
      i. A working sink with running water,
      ii. A working toilet that flushes and has a seat,
      iii. Toilet tissue,
      iv. Soap for hand washing,
      v. Paper towels or a mechanical air hand dryer,
      vi. Lighting, and

vii. A means of ventilation; and
b. Is for the exclusive use of the outpatient treatment center;
3. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
4. A tobacco smoke-free environment is maintained on the premises;
5. A refrigerator used to store a medication is:
a. Maintained in working order, and
b. Only used to store medications;
6. Equipment at the outpatient treatment center is:
a. Sufficient to provide the outpatient treatment center's scope of services;
b. Maintained in working condition;
c. Used according to the manufacturer's recommendations; and
d. If applicable, tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
7. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of testing, calibration, or repair.

B. An outpatient treatment center may have a bathroom used for the collection of a patient's urine or stool that is not for the exclusive use of the outpatient treatment center if:
1. The bathroom is located in the same contiguous building as the outpatient treatment center's premises,
2. The bathroom is of a sufficient size to support the outpatient treatment center's scope of services, and
3. There is a documented agreement between the licensee and the owner of the building stating that the bathroom complies with the requirements in this Section and allowing the Department access to the bathroom to verify compliance.

C. If an outpatient treatment center has a bathroom that is not for the exclusive use of the outpatient treatment center as allowed in subsection (B), an administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to:
a. Protect the health and safety of an individual using the bathroom; and
b. Ensure that the bathroom is cleaned and sanitized to prevent, minimize, and control illness and infection;
2. Documented instructions are provided to a patient that cover:
a. Infection control measures when a patient uses the bathroom, and
b. The safe return of a urine or stool specimen to the outpatient treatment center;
3. The bathroom complies with the requirements in subsection (A)(2)(a); and
4. The bathroom is free from a condition or situation that may cause an individual using the bathroom to suffer a physical injury.

Historical Note

Adopted effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1030 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 22 A.A.R. 1035, pursuant to Laws 2015, Ch. 158, § 3; effective May 1, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019 (Supp. 19-1).

R9-10-1031. Colocation Requirements

A. In addition to the definitions in A.R.S. §§ 36-401 and 36-439 and R9-10-101 and R9-10-1001, the following definition applies in this Section:
"Patient" means an individual who enters the premises of a collaborating outpatient treatment center to obtain physical health services or behavioral health services from the collaborating outpatient treatment center or a colocator that shares areas of the collaborating outpatient treatment center's premises.

B. Only one outpatient treatment center in a facility may be designated as a collaborating outpatient treatment center for the facility.

C. The following health care institutions are not permitted to be a collaborating outpatient treatment center or a colocator in a collaborating outpatient treatment center:
1. An affiliated counseling facility;
2. An outpatient treatment center authorized by the Department to provide dialysis services according to R9-10-1018;
3. An outpatient treatment center authorized by the Department to provide emergency room services according to R9-10-1019; or
4. An outpatient treatment center operating under a single group license according to A.R.S. § 36-422(F) or (G).

D. In addition to the requirements for a license application in R9-10-105, a governing authority of an outpatient treatment center requesting authorization to operate or continue to operate as a collaborating outpatient treatment center shall submit, in a Department-provided format:

1. The following information for each proposed colocator that may share an area of the collaborating outpatient treatment center's premises and nontreatment personnel at the collaborating outpatient treatment center:
    a. For each proposed associated licensed provider:
        i. Name,
        ii. The associated licensed provider's license number or the date the associated licensed provider submitted to the Department a license application for an outpatient treatment center or a counseling facility license,
        iii. Proposed scope of services, and
        iv. A copy of the written agreement with the collaborating outpatient treatment center required in subsection (E); and
    b. For each exempt health care provider:
        i. Name,
        ii. Current health care professional license number,
        iii. Proposed scope of services, and
        iv. A copy of the written agreement required in subsection (F) with the collaborating outpatient treatment center; and
2. In addition to the requirements in R9-10-105(A)(5)(b)(vi), a floor plan that shows:
    a. Each colocator's proposed treatment area, and
    b. The areas of the collaborating outpatient treatment center's premises shared with a colocator.

E. An administrator of a collaborating outpatient treatment center shall have a written agreement with each associated licensed provider that includes:

1. In a Department-provided format:
    a. The associated licensed provider's name;
    b. The name of the associated licensed provider's governing authority;
    c. Whether the associated licensed provider plans to share medical records with the collaborating outpatient treatment center;
    d. If the associated licensed provider plans to share medical records with the collaborating outpatient treatment center, specific information about which party will obtain a patient's:
        i. General consent or informed consent, as applicable;
        ii. Consent to allow a colocator access to the patient's medical record; and
        iii. Advance directives;
    e. How the associated licensed provider will transport or transfer a patient to another colocator within the collaborating outpatient treatment center;
    f. How the associated licensed provider will ensure controlled substances stored in the associated licensed provider's licensed premises are not diverted;
    g. How the associated licensed provider will ensure environmental services in the associated licensed provider's licensed premises will not affect patient care in the collaborating outpatient treatment center;
    h. How the associated licensed provider's personnel members will respond to a patient's sudden, intense, or out-of-control behavior, in the associated licensed provider's treatment area, to prevent harm to the patient or another individual in the collaborating outpatient treatment center;
    i. A statement that, if any of the colocators include children's behavioral health services in the colocator's scope of services, the associated licensed provider will ensure that all employees and personnel members of the associated licensed provider comply the fingerprint clearance card requirements in A.R.S. § 36-425.03;
    j. A statement that the associated licensed provider will:
        i. Document the following each time another colocator provides emergency health care services in the associated licensed provider's treatment area:
            (1) The name of the colocator;
            (2) If different from the name of the colocator, the name of the physician, physician assistant, registered nurse practitioner, or behavioral health professional providing the emergency health care services;
            (3) A description of the emergency health care services provided; and
            (4) The date and time the emergency health care services were provided;
        ii. Maintain the documentation in subsection (E)(1)(j)(i) for at least 12 months after the emergency health care services were provided; and
        iii. Submit a copy of the documentation to the collaborating outpatient treatment center within 48 hours after the provision of the emergency health care services;
    k. A statement that the associated licensed provider will:
        i. Document the following each time the associated licensed provider provides emergency health care services in another colocator's treatment area:
            (1) If different from the name of the associated licensed provider, the name of the physician, physician assistant, registered nurse practitioner, or behavioral health professional providing the emergency health care services;
            (2) The name of the colocator;
            (3) A description of the emergency health care services provided; and

(4) The date and time the emergency health care services were provided;

ii. Maintain the documentation in subsection (E)(1)(k)(i) for at least 12 months after the emergency health care services were provided; and

iii. Submit a copy of the documentation to the collaborating outpatient treatment center within 48 hours after the provision of the emergency health care services;

l. An attestation that the associated licensed provider will comply with the written agreement;

m. The signature of the associated licensed provider's governing authority according to A.R.S. § 36-422(B) and the date signed; and

n. The signature of the collaborating outpatient treatment center's governing authority according to A.R.S. § 36-422(B) and the date signed; and

2. A copy of the associated licensed provider's scope of services, including whether the associated licensed provider plans to provide behavioral health services for children.

F. An administrator of a collaborating outpatient treatment center shall have a written agreement with each exempt health care provider that includes:

1. In a Department-provided format:
   a. The exempt health care provider's name;
   b. The exempt health care provider license type and license number;
   c. Whether the exempt health care provider plans to share medical records with the collaborating outpatient treatment center;
   d. If the exempt health care provider plans to share medical records with the collaborating outpatient treatment center, specific information about which party will obtain a patient's:
      i. General consent or informed consent, as applicable;
      ii. Consent to allow a colocator access to the patient's medical record; and
      iii. Advance directives;
   e. How the exempt health care provider will transport or transfer a patient to another colocator within the collaborating outpatient treatment center;
   f. How the exempt health care provider will ensure controlled substances stored in the exempt health care provider's designated premises are not diverted;
   g. How the exempt health care provider will ensure environmental services in the exempt health care provider's licensed premises will not affect patient care in the collaborating outpatient treatment center;
   h. How the exempt health care provider and any staff of the exempt health care provider will respond to a patient's sudden, intense, or out-of-control behavior, in the exempt health care provider's treatment area, to prevent harm to the patient or another individual in the collaborating outpatient treatment center;
   i. A statement that, if any of the colocators include children's behavioral health services in the colocator's statement of services, the exempt health care provider will ensure that all employees and staff of the exempt health care provider comply with the fingerprint clearance card requirements A.R.S. § 36-425.03;
   j. A statement that the exempt health care provider will:
      i. Document the following each time another colocator provides emergency health care services in the exempt health care provider's treatment area:
         (1) The name of the colocator;
         (2) If different from the name of the colocator, the name of the physician, physician assistant, registered nurse practitioner, or behavioral health professional providing the emergency health care services;
         (3) A description of the emergency health care services provided; and
         (4) The date and time the emergency health care services were provided;
      ii. Maintain the documentation in subsection (F)(1)(j)(i) for at least 12 months after the emergency health care services were provided; and
      iii. Submit a copy of the documentation to the collaborating outpatient treatment center within 48 hours after the provision of the emergency health care services;
   k. A statement that the exempt health care provider will:
      i. Document the following each time the exempt health care provider provides emergency health care services in another colocator's treatment area:
         (1) If different from the name of the exempt health care provider, the name of the physician, physician assistant, registered nurse practitioner, or behavioral health professional providing the emergency health care services;
         (2) The name of the colocator;
         (3) A description of the emergency health care services provided; and
         (4) The date and time the emergency health care services were provided;
      ii. Maintain the documentation in subsection (F)(1)(k)(i) for at least 12 months after the emergency health care services were provided; and
      iii. Submit a copy of the documentation to the collaborating outpatient treatment center within 48 hours after the provision of the emergency health care services;
   l. An attestation that the exempt health care provider will comply with the written agreement;

m. The signature of the exempt health care provider and the date signed; and
n. The signature of the collaborating outpatient treatment center's governing authority according to A.R.S. § 36-422(B) and the date signed; and

2. A copy of the exempt health care provider's scope of services, including whether the exempt health care provider plans to provide behavioral health services for children.

G. As part of the policies and procedures required in this Article, an administrator of a collaborating outpatient treatment center shall ensure that policies and procedures are established, documented, and implemented to protect the health and safety of a patient based on the scopes of services of all colocators that:

1. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for nontreatment personnel who may provide services in the areas of the collaborating outpatient treatment center's premises shared with a colocator;
2. Cover orientation and in-service education for nontreatment personnel who may provide services in the areas of the collaborating outpatient treatment center's premises shared with a colocator;
3. Cover cardiopulmonary resuscitation training, including:
   a. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation;
   b. The qualifications for an individual to provide cardiopulmonary resuscitation training;
   c. The time-frame for renewal of cardiopulmonary resuscitation training; and
   d. The documentation that verifies that an individual has received cardiopulmonary resuscitation training;
4. Cover first aid training;
5. Cover patient screening, including a method to ensure that, if a patient identifies a specific colocator, the patient is directed to the identified colocator;
6. Cover the provision of emergency treatment to protect the health and safety of a patient or individual present in an area of the collaborating outpatient treatment center's premises shared with a colocator according to the requirements for emergency treatment policies and procedures in R9-10-1029(A);
7. If medication is stored in an area of the collaborating outpatient treatment center's premises shared with a colocator, cover obtaining, storing, accessing, and disposing of medications, including provisions for controlling inventory and preventing diversion of controlled substances;
8. Cover biohazardous wastes, if applicable;
9. Cover environmental services in an area of the collaborating outpatient treatment center's premises shared with a colocator that affect patient care; and
10. Cover how personnel members and nontreatment personnel will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual in an area of the collaborating outpatient treatment center's premises shared with a colocator.

H. An administrator of a collaborating outpatient treatment center shall ensure that:

1. Areas of the collaborating outpatient treatment center's premises shared with a colocator are:
   a. Sufficient to accommodate the outpatient treatment center's and any colocators' scopes of services;
   b. Cleaned and disinfected according to the outpatient treatment center's policies and procedures to prevent, minimize, and control illness and infection; and
   c. Free from a condition or situation that may cause an individual to suffer physical injury;
2. A written log is maintained that documents the date, time, and circumstances each time a colocator provides emergency health care services in another colocator's designated treatment area; and
3. The documentation in the written log required in subsection (H)(2) is maintained for at least 12 months after the date the colocator provides emergency health care services in another colocator's designated treatment area.

I. If any colocator at a collaborating outpatient treatment center includes children's behavioral health services as part of the colocator's scope of services, an administrator of the collaborating outpatient treatment center shall ensure that the governing authority, employees, personnel members, nontreatment personnel, and volunteers of the collaborating outpatient treatment center comply with the fingerprint clearance card requirements in A.R.S. § 36-425.03.

Historical Note

New Section made by exempt rulemaking at 22 A.A.R. 1035, pursuant to Laws 2015, Ch. 158, § 3; effective May 1, 2016 (Supp. 16-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

Authorizing Statutes

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.

18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

20. 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.

21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

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.

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.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room. Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

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

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for selecting health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-405.01. Health screening services; violation; classification

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

1. Health screening services shall be conducted under the direction of or, when required by good medical practice, under the supervision of a physician.

2. Any diagnosis of collected health-related data shall be performed by a physician.

3. Any examination of secretions, body fluids or excretions of the human body shall be performed pursuant to title 36, chapter 4.1.

4. Individuals may obtain health screening services on their own initiative.

5. Data given health-screened individuals shall be properly informative and not misleading.

6. Activities engaged in or materials used to educate, promote or otherwise solicit individuals to use health screening services shall not:

(a) Be misleading.

(b) Include the name of any physician, physician's office or clinic.

(c) Use or contain any language that directly or indirectly lauds the professional competence, skill or reputation of any physician.

7. A patient who is in need of medical care shall be informed that he should see a physician without referral to any particular physician.

B. The director may adopt such other regulations necessary or appropriate to carry out the purposes of this section.

C. Physicians affiliated with health screening services shall continue to be bound by the laws and ethics governing their practice. However, affiliation with health screening services conducted in conformity with this chapter shall not constitute a violation of such laws or ethics.

D. Health-screened individuals, with respect to their disclosures to and records with health screening services, shall have the same protections regarding privileged communication and the same rights to the possession and confidentiality of their records as are accorded by law to patients of physicians.

E. Health screening services shall be exempt from the provisions of articles 2 through 5 of this chapter.

F. Any person who conducts health screening services in violation of this section or in violation of any rule or regulation adopted by the director is guilty of a class 2 misdemeanor. In addition, the director may exercise the same powers with respect to health screening services as are provided in section 36-427, subsection B with respect to licensed health care institutions.

36-405.02. Outpatient behavioral health and other related health care services; employees; rules

The department shall allow a person who is employed at a health care institution that provides outpatient behavioral health services, who is not a licensed behavioral health professional and who is at least eighteen years of age to provide outpatient behavioral health or other related health care

services pursuant to all applicable department rules. The director shall adopt rules consistent with this section.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

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

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

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

36-407. Prohibited acts; required acts

A. A person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining. The license is valid only for the establishment, operation and

maintenance of the class or subclass of health care institution, the type of services and, except for emergency admissions as prescribed by the director by rule, the licensed capacity specified by the license.

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

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

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

E. The licensee shall submit an itemized statement of charges to each patient.

F. A health care institution shall refer a patient who is discharged after receiving emergency services for a drug-related overdose to a behavioral health services provider.

36-425. Inspections; issuance of license; posting requirements; provisional license; denial of license

A. On receipt of a properly completed application for a health care institution license, the director shall conduct an inspection of the health care institution as prescribed by this chapter. If an application for a license is submitted due to a planned change of ownership, the director shall determine the need for an inspection of the health care institution. Based on the results of the inspection and after the submission of the applicable licensing fee, the director shall either deny the license or issue a regular or provisional license. A license issued by the department shall be posted in a conspicuous location in the reception area of that institution.

B. The director shall issue a license if the director determines that an applicant and the health care institution for which the license is sought substantially comply with the requirements of this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the director to eliminate any deficiencies. The director shall not require a health care institution that was designated as a critical access hospital to make any modifications required by this chapter or rules adopted pursuant to this chapter in order to obtain an amended license with the same licensed capacity the health care institution had before it was designated as a critical access hospital if all of the following are true:

1. The health care institution has subsequently terminated its critical access hospital designation.

2. The licensed capacity of the health care institution does not exceed its licensed capacity before its designation as a critical access hospital.

3. The health care institution remains in compliance with the applicable codes and standards that were in effect at the time the facility was originally licensed with the higher licensed capacity.

C. A health care institution license does not expire and remains valid unless:

1. The department subsequently revokes or suspends the license.

2. The license is considered void because the licensee did not pay the licensing fee before the licensing fee due date.

D. Except as provided in section 36-424, subsection B and subsection E of this section, the department shall conduct a compliance inspection of a health care institution to determine compliance with this chapter and rules adopted pursuant to this chapter at least once annually.

E. If the department determines a facility to be deficiency free on a compliance survey, the department shall not conduct a compliance survey of that facility for twenty-four months after the date of the deficiency free survey. This subsection does not prohibit the department from enforcing licensing requirements as authorized by section 36-424.

F. A hospital licensed as a rural general hospital may provide intensive care services.

G. The director shall issue a provisional license for a period of not more than one year if an inspection or investigation of a currently licensed health care institution or a health care institution for which an applicant is seeking a license reveals that the institution is not in substantial compliance with department licensure requirements and the director believes that the immediate interests of the patients and the general public are best served if the institution is given an opportunity to correct deficiencies. The applicant or licensee shall agree to carry out a plan to eliminate deficiencies that is acceptable to the director. The director shall not issue consecutive provisional licenses to a single health care institution. The director shall not issue a license to the current licensee or a successor applicant before the expiration of the provisional license unless the health care institution submits an application for a substantial compliance survey and is found to be in substantial compliance. The director may issue a license only if the director determines that the institution is in substantial compliance with the licensure requirements of the department and this chapter. This subsection does not prevent the director from taking action to protect the safety of patients pursuant to section 36-427.

H. Subject to the confidentiality requirements of articles 4 and 5 of this chapter, title 12, chapter 13, article 7.1 and section 12-2235, the licensee shall keep current department inspection reports at the health care institution. Unless federal law requires otherwise, the licensee shall post in a conspicuous location a notice that identifies the location at that institution where the inspection reports are available for review.

I. A health care institution shall immediately notify the department in writing when there is a change of the chief administrative officer specified in section 36-422, subsection A, paragraph 1, subdivision (g).

J. When the department issues an original license or an original provisional license to a health care institution, it shall notify the owners and lessees of any agricultural land within one-fourth mile of the health care institution. The health care institution shall provide the department with the names and addresses of owners or lessees of agricultural land within one-fourth mile of the proposed health care institution.

K. In addition to the grounds for denial of licensure prescribed pursuant to subsection A of this section, the director may deny a license because an applicant or anyone in a business relationship with the applicant, including stockholders and controlling persons, has had a license to operate a health care institution denied, revoked or suspended or a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title denied, revoked or suspended or has a licensing history of recent serious violations occurring in this state or in another state that posed a direct risk to the life, health or safety of patients or residents.

L. In addition to the requirements of this chapter, the director may prescribe by rule other licensure requirements.

36-439.01. Colocation of licensees

Notwithstanding any other provision of this chapter, one or more licensed outpatient treatment centers or exempt outpatient treatment centers that provide medical, nursing and health-related services may colocate or colocate with one or more licensees or exempt outpatient treatment centers that provide behavioral health services or with one or more licensed counseling facilities and may share common areas at the collaborating outpatient treatment center premises and share nontreatment personnel pursuant to the requirements of this article.

36-439.02. Colocators; collaborating outpatient treatment centers; requirements

In addition to any other requirements of this chapter, colocators at a collaborating outpatient treatment center shall:

1. Designate which outpatient treatment center will act as the collaborating outpatient treatment center and be liable and responsible for the health, safety, cleanliness and maintenance of all common areas and the supervision and training of all shared nontreatment personnel pursuant to written policies of the collaborating outpatient treatment center.

2. Designate which areas are considered common areas and which personnel are designated as shared nontreatment personnel.

3. Designate the associated licensed providers.

4. Ensure that medical records that are located in common areas or shared by colocators are maintained pursuant to all federal and state confidentiality laws. A colocator may have access to a patient's medical records only if the patient has consented.

36-439.03. Use of treatment areas

Colocators shall solely maintain and use treatment areas that are designated pursuant to each of their respective licenses and may not use another colocator's treatment areas except as follows:

1. For the provision of emergency health care services.

2. During hours of operation by a colocator that are clearly identified by signage to the public and notice to the department.

36-439.04. Colocation; outpatient treatment centers; health care providers

A. The governing authority of a licensed collaborating outpatient treatment center or a collaborating exempt outpatient treatment center, by agreement, may share common areas and may share nontreatment personnel with one or more exempt health care providers or one or more licensed counseling facilities pursuant to section 36-439.02.

B. Treatment areas that are licensed under an outpatient treatment center may also be used by an exempt health care provider or an exempt outpatient treatment center if the provider's treatment areas and hours of operation are clearly identified by signage to the public and notice to the department.

C. Notwithstanding subsections A and B of this section, a licensed or exempt outpatient treatment center may contract with or employ an exempt health care provider to provide health care services to the licensed or exempt outpatient treatment center's patients.

ARIZONA GAME AND FISH COMMISSION
Title 12, Chapter 4, Article 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 3, 2023

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

FROM: Council Staff

DATE: September 13, 2023

SUBJECT: **ARIZONA GAME AND FISH COMMISSION**
Title 12, Chapter 4, Article 1

Summary

This Five-Year Review Report (5YRR) from the Arizona Game and Fish Commission (Commission) relates to twenty-six (26) rules in Title 12, Chapter 4, Article 1 regarding Definitions and General Provisions.

In the prior 5YRR for these rules, which was approved by the Council in June 2019, the Commission proposed to amend several rules to make them more clear, concise, understandable, consistent, and effective. Additionally, while the Commission indicated the rules were generally enforced as written, the Commission identified several amendments that would improve enforcement. The Commission completed its prior proposed course of action in a rulemaking which became effective on July 1, 2023.

Proposed Action

In the current report, the Commission is proposing to amend eleven (11) rules to improve their clarity, conciseness, understandability, consistency, and effectiveness as outlined in more detail below. The Commission states it anticipates requesting an exception to the rulemaking moratorium prescribed under A.R.S. 41-1039(A) by December 2023 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by March 2025.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

According to the Commission most of the rules under review resulted in the estimated economic, small business, and consumer impacts as stated in their final rulemaking packages. Two rules (R12-4-102 and R12-4-114) were recently amended and, according to the Commission, require more time to assess the actual economic, small business, and consumer impacts.

Stakeholders include the Commission, Indian Reservations, and individuals who have been issued licenses, permits, stamps, or tags by the Commission.

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 Commission, the rules allow for the adoption of updated business practices and represent the most cost-effective and efficient method of fulfilling the Commission's and Department's responsibilities and impose only those requirements that are necessary to meet the Commission's objectives. The Commission believes the rules impose the least burden and costs to persons regulated by the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission indicates it received numerous written criticisms of the rules. These written criticisms, as well as the Commission's responses, are outlined in Section 7 of the Commission's report for the Council's reference.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Commission indicates the rules are generally clear, concise, and understandable except for the following:

- **R12-4-108. Management Unit Boundaries:** Because landmarks change over time due to environmental factors, as local opinion changes regarding its destination, or the names of places and things change due to political or historical factors, the Department recommends amending the rule to update boundary revisions as necessary to clearly define roads and intersections with sufficient detail to reflect on the ground signage and current maps. The update serves to provide additional clarity and maintain recreational opportunities for the public (both hunters and outdoor recreationists).

- **R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags:** With the last rulemaking the Commission amended the rule to require the winning bidder to possess a hunting or combination hunting and fishing license to validate the special license tag. The Department recommends amending the rule to replace references to "license-tags" with "tags" to make the rule more concise.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Commission indicates the rules are generally consistent with other rules and statutes except for the following:

- **R12-4-102. License, Permit, Stamp, and Tag Fees:** The rule establishes the fees for licenses and permits offered by the Department. The rule references R12-4-209. Community Fishing License, which was repealed January 1, 2022. The Department recommends removing the reference to the repealed rule to increase consistency between Commission rules.
- **R12-4-103. Duplicate Tags and Licenses:** Since the rule was last amended, the Department implemented a paperless tag process which allows a customer to purchase a license and permit-tag, view their license, bonus point, and tag information and electronically "tag" an animal using an App on their own electronic device. The Department recommends amending the rule to clarify that a person who validates their tag electronically for a harvested animal that was subsequently condemned and surrendered to a Department employee may apply for a duplicate tag upon submitting the condemned meat duplicate tag authorization form issued by the Department.
- **R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points:** The current language requires a person to provide their license number when applying for a hunt permit-tag issued by computer draw. A person 10 years of age and under is not required to possess a hunting license unless they are applying for a big game hunt permit-tag. The Department recently began issuing Sandhill Crane tags by computer draw; under A.R.S. § 17-101, Sandhill Crane are not considered big game. The Department recommends amending the rule to establish an exemption to allow minors applying for draw hunts other than big game to do so without having to purchase a license. This recommendation will also require amending R12-4-107 (bonus points) to ensure consistency between Commission Rules.
- **R12-4-107. Bonus Point System:** Under R12-4-104, the Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application and the application is unsuccessful in the computer draw. R12-4-104 also prohibits a person under the age of 10 from applying for the purchase of a bonus point. This was largely due to the fact that persons under the age of 10 are not eligible to hunt big game and, until just recently, the Department's computer draws were specific to big game animals only. Over the years, the interest in Sandhill Crane tags increased to the point where the interest in Sandhill Crane tags outnumbered the number of tags issued. A determination was made to issue Sandhill Cranes permit-tags by computer draw and add them to the list of game for which a bonus point may be awarded or purchased. This is problematic because a person 10 years of age and under is not eligible to purchase or accrue a bonus point. To

address this conflict, the Department recommends amending the rule to award a Sandhill Crane bonus point to an applicant who is under the age of 10 and whose application was unsuccessful in the computer draw. These applicants would not be eligible to purchase a bonus point to avoid an over-accumulation of bonus points that would grant them an unfair advantage over other applicants.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Commission indicates the rules are generally effective in achieving their objectives except for the following:

- **R12-4-101. Definitions:** Over time, the Department has diligently worked towards moving its processes to the Department's online platform. Many of the applications, forms, reports, etc. require the person submitting them to sign and date the application, form, report, etc. The Department recommends amending the rule to define "electronic signature" to further enhance and support the use of online Department forms, applications, reports, etc. that require the submitter to provide a signature and date. This may also be used to indicate the person's intent to agree to payment, conditions, terms, etc. as applicable to the online application, form, report, etc.
- **R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool:** The current process for accepting Hunter Pool applications requires customers to submit a paper application to the Department's Draw Unit staff who then manually enter the customer's application into the Department's Customer Database. This process is time consuming and cumbersome. The Department is developing an online solution that will allow customers to apply online, eliminating the many hours needed for manual entry and freeing up Draw Unit staff to focus on other duties. The Department anticipates the online application will contain expanded criteria that the customer may select to further reduce the burden on the Department when making phone calls to potential tag recipients (i.e.; a customer applying for an elk hunt may select whether they are interested in an 'any elk,' 'cow elk,' or 'bull elk' hunt). The Department recommends amending the rule to allow the Department to specify the manner and method by which a person may submit an application for a supplemental hunt or hunter pool, such as online or by paper application to reduce administrative burden.
- **R12-4-125. Public Solicitation or Event on Department Property:** The rule requires all solicitations to undergo review by the branch chief or regional supervisor who then determines whether a solicitation is required. The rule identifies that the solicitation cannot conflict with the Department's mission nor constitute partisan political activity, but otherwise leaves the responsibility for determining whether the solicitation process should apply to an event and, if it does, whether an event may be held is left to the branch chief or regional supervisor. Applying the rule to all Department facilities and areas pose concerns about applicability, inconsistent application, and the potential of creating extra work for both the public and Department staff. In addition, the rule does not address leased or licensed property. The rule covers both solicitations and events; however, the term "events" is not defined. This leads to a potentially burdensome approach to this rule. The Department recommends amending the rule to define "events," specify that

solicitation requests are only required when the request made to use the property is contrary to its established primary function, and establish the branch chief or regional supervisor and property stewards should determine acceptable uses for the facilities they are responsible for.

- **R12-4-127. Civil Liability for Loss of Wildlife:** The Department operates six fish hatcheries. Five of these fish hatcheries are used for cold water production and play a major role in providing trout fishing opportunities in Arizona. The sixth hatchery is dedicated to warm water fish production. Hatchery fish are raised from eggs which are purchased and imported from other federal, state, or private hatcheries in the nation. Almost all of the trout harvested in Arizona are stocked from Commission-owned hatcheries. Every year, Department fish hatcheries contribute to Arizona's economy by producing on average 385,000 pounds of fish. This equates to over 3 million fish that are stocked into 118 locations throughout Arizona. The rule allows the Commission to establish civil penalties intended to recover the cost of wildlife unlawfully taken, lost, or injured. Internal discussions indicate the rule does not adequately address the loss of aquatic wildlife. The Department recommends amending the rule to establish values intended to recover hatchery expenses per fish, which includes the costs to purchase, raise, feed, transport, and release aquatic wildlife.

8. Has the agency analyzed the current enforcement status of the rules?

The Commission indicates the rules 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 it has determined rule R12-4-113. Small Game Depredation Permit is not more stringent than corresponding federal laws. Specifically, federal regulations 50 C.F.R. 21.41 and 50 C.F.R 21.43 are applicable to the subject of the rule. 50 C.F.R. 21.41 establishes depredation permit requirements as they apply to the take, possession, and transport of migratory birds; 50 C.F.R 21.43 establishes depredation permit requirements specific to blackbirds, cowbirds, crows, grackles, and magpies.

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 Commission indicates the following rules require the issuance of a "general permit" as defined under A.R.S. § 41-1001(11):

- R12-4-105. License Dealer's License. The License Dealer's License described in the rule falls within the definition of "general permit" and is in compliance with A.R.S. § 41-1037.
- R12-4-113. Small Game Depredation Permit. The small game depredation permit described in the rule falls within the definition of "general permit" and is in compliance with A.R.S. § 41-1037.

Council staff believes the Commission is in compliance with A.R.S. § 41-1037

11. Conclusion

This 5YRR from the Commission relates to twenty-six (26) rules in Title 12, Chapter 4, Article 1 regarding Definitions and General Provisions. While the Commission indicates the rules are enforced as written, it is proposing amendments to eleven (11) rules to improve their clarity, conciseness, understandability, consistency, and effectiveness as outlined in more deltail above. The Commission states it anticipates requesting an exception to the rulemaking moratorium prescribed under A.R.S. 41-1039(A) by December 2023 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by March 2025.

Council staff recommends approval of this report.

September 19, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Game and Fish Commission, 12 A.A.C. 4., Arizona Game and Fish Commission, Article 1. Definitions and General Provisions, Five Year Review Report

Dear Nicole Sornsin:

Please find enclosed the Five-year Review Report of Arizona Game and Fish Commission for 12 A.A.C. 4., Arizona Game and Fish Commission, Article 1. Definitions and General Provisions which is due on December 31, 2023.

The Arizona Game and Fish Commission hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Celeste Cook at (623) 236-7390 or ccook@azgfd.gov.

Sincerely,

Tom Finley for

Ty E. Gray
Director

Arizona Game and Fish Commission

Article 1. Definitions and General Provisions

Five-year Review Report

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

For all rules within Article 1, the authorizing statute is A.R.S. § 17-231(A)(1).		
For each rule within Article 1, the implementing statutes are as follows:		
R12-4-101.	Definitions	• A.R.S. § 17-231(A)(1)
R12-4-102.	License, Permit, Stamp, and Tag Fees	• A.R.S. §§ 17-102, 17-333, 17-335.01, 17-342, 17-345, and 41-1005
R12-4-103.	Duplicate Tags and Licenses	• A.R.S. §§ 17-331(A) and 17-332
R12-4-104.	Application Procedures for Issuance of Hunt Permit-tags by Drawing and Purchase of Bonus Points	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(8), 25-320(P), 25-502(K), and 25-518
R12-4-105.	License Dealer's License	• A.R.S. §§ 17-332, 17-333, 17-334, 17-338, and 17-339
R12-4-106.	Special Licenses Licensing Time-frames	• A.R.S. §§ 41-1072 and 41-1073
R12-4-107.	Bonus Point System	• A.R.S. §§ 17-102, 17-231(A)(2) and 17-231(A)(8)
R12-4-108.	Management Unit Boundaries	• A.R.S. §§ 17-102, 17-231(B)(2) 17-234, 17-241, 17-452, 17-453, 17-454, and 17-455
R12-4-109.	Approved Trapping Education Course Fee	• A.R.S. § 17-333.02
R12-4-110.	Posting and Access to State Land	• A.R.S. §§ 17-102, 17-231(B)(2) and 17-304
R12-4-111.	Repealed	
R12-4-112.	Diseased, Injured, or Chemically-Immobilized Wildlife	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(8), and 17-250(A)(3)
R12-4-113.	Small Game Depredation Permit	• A.R.S. §§ 17-102 and 17-239
R12-4-114.	Issuance of Nonpermit-tags and Hunt Permit-tags	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-331(A), 17-332(A), and 17-371
R12-4-115.	Supplemental Hunts and Hunter Pool	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-239, 17-331(A), and 17-332(A)
R12-4-116.	Issuance of Limited-entry Tags	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-331(A), 17-332(A), and 17-371

R12-4-117.	Indian Reservations	● A.R.S. §§ 17-211(E)(4) and 17-309(A)(19)
R12-4-118.	Hunt Permit-tag Surrender	● A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(A)(8), 17-331(A), 17-332(A), and 17-371
R12-4-119.	Arizona Game and Fish Department Reserve	● A.R.S. §§ 17-231(A)(1) and 17-214
R12-4-120.	Issuance, Sale, and Transfer of Special Big Game License Tags	● A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(A)(8), 17-331(A), 17-332(A), and 17-346
R12-4-121.	Tag Transfer	● A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(A)(8), 17-331(A), 17-332(A), and 17-346(D)
R12-4-122.	Handling, Transporting, Processing and Storing of Game Meat Given to Public Institutions and Charitable Organizations	● A.R.S. §§ 17-102, 17-211(E)(4), 17-233, 17-239(D), and 17-240(A)
R12-4-123.	Expenditure of Funds	● A.R.S. §§ 17-231(A)(7) and 17-231(A)(8)
R12-4-124.	Proof of Domicile	● A.R.S. § 17-231(A)(1)
R12-4-125.	Public Solicitation or Event on Department Property	● A.R.S. §§ 17-231(A)(1), 17-231(B)(13), 17-231(B)(14), and 41-2752
R12-4-126.	Reward Payments	● A.R.S. §§ 17-231(A)(7) and 17-315(B)(1)
R12-4-127.	Civil Liability for Loss of Wildlife	● A.R.S. §§ 17-231(A)(1), 17-231(B)(13), 17-231(B)(14), and 17-314

2. Objective of the rule, including the purpose for the existence of the rule.

R12-4-101. Definitions: The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout 12 A.A.C. Chapter 4. The rule was adopted to facilitate consistent interpretation and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

R12-4-102. License, Permit, Stamp, and Tag Fees: The objective of the rule is to prescribe fees for licenses, tags, stamps, and permits within statutory confines to meet Department operating expenditures and wildlife conservation. The Department receives no appropriations from the general fund and operates primarily with the revenue it generates from the sale of licenses, permits, stamps, tags, and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment. The rule was adopted to provide persons regulated by the rule with a comprehensive listing of license, permit, stamp, and tag fees and to ensure consistency between the fees collected by the Department and license dealers.

R12-4-103. Duplicate Tags and Licenses: The objective of the rule is to establish requirements for the issuance of a duplicate license or tag when the original license or tag was not used and was lost, destroyed, mutilated or is otherwise unusable or was placed on a harvested animal that was subsequently condemned and surrendered to a Department employee. The rule was adopted to ensure consistency between the Department and license dealers when issuing a duplicate license or tag.

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points: The objective of the rule is to prescribe application requirements for the purchase of a bonus point and the issuance of hunt permit-tags; meaning a permit-tag for which the Commission has assigned a hunt number. The rule was adopted to provide persons regulated by the rule with the information necessary to successfully apply for a computer draw or the purchase of a bonus point.

R12-4-105. License Dealer's License: The objective of the rule is to establish definitions, eligibility criteria, application procedures, license holder requirements, authorized activities, and prohibited activities for a license dealer's license. The rule was adopted in order to provide better customer service to the public, while protecting the Department's license sales revenue, by authorizing businesses to sell hunting and fishing licenses.
The Department issues an approximately:

- Sixty-five license dealer's licenses on an annual basis.
- One-hundred seventy-five dealer outlet licenses on an annual basis.

The fee for the:

- License dealer's license is $100.
- License dealer outlet license is $25.

R12-4-106. Special Licenses Licensing Time-frames (Table 1. Time-Frames): The objective of the rule is to establish the time-frame during which the agency will either grant or deny a special license subject to the requirements of A.R.S. § 41-1073. The overall time-frame consists of both the administrative review time-frame and the substantive review time-frame. The rule was adopted to comply with the requirements established under A.R.S. § 41-1073 and to provide persons regulated by the rule with a definitive timeline for the review of license applications submitted to the Department.

R12-4-107. Bonus Point System: The objective of the rule is to establish requirements for applying for and maintaining bonus points, which may improve an applicant's draw odds for big game computer draws. The rule was adopted in response to customer comments requesting the Department implement a method that would reward loyal applicants and improve the drawing odds for a previously unsuccessful computer draw applicant. The "bonus point" system increases the number of chances for an application to receive a low random number in the computer draw. Bonus points are accumulated by failing to draw a hunt permit-tag or by buying a bonus point. Applications are assigned a random, computer-generated number. Applications that are assigned the

lowest random number draw a tag first. It is important to note, having the greatest number of points does not guarantee a person will draw a tag. However, it does provide a better chance of being assigned a low random number in the computer draw.

R12-4-108. Management Unit Boundaries: The objective of the rule is to establish Game Management Unit boundaries for the preservation and management of wildlife. The Commission divides the state into 76 units for the purpose of managing wildlife. These units are known as Game Management Units and are composed of state, federal, military, and private land. These units define legally huntable areas and are essential to the Department's licensing, hunt permit-tag and law enforcement operations. Department biologists and Regional offices responsible for the management of a specific unit submit data concerning wildlife and wildlife habitat to the Department's Terrestrial Wildlife Program. The Terrestrial Wildlife Program then uses this data to formulate hunting seasons. Hunters purchase tags that authorize the person to participate in a specific hunting season in a Game Management Unit, portion of a unit, or group of units that are open to hunting. It is illegal for a person to take any wildlife in any area, other than the unit and wildlife specified on the tag, and hunters rely on the unit boundary descriptions provided in R12-4-108 to ensure that they are complying.

R12-4-109. Approved Trapping Education Course Fee: The objective of the rule is to establish the maximum fee a person may charge for a trapping education course. The rule was adopted to ensure compliance with A.R.S. § 17-333.02.

R12-4-110. Posting and Access to State Land: The objective of the rule is to prescribe the required conduct on State Trust Lands by licensed sportsmen and also ensure access by such sportsmen is not unlawfully blocked. The rule also sets forth the Commission's criteria for allowing the closure of roads that lead to hunting and fishing areas. The rule was adopted to prevent a person from denying access to or use of any existing road located on state lands by persons lawfully scouting for, taking, or retrieving wildlife and to ensure continued use of state lands while protecting public health and property. A memorandum of understanding outlines coordination between the Arizona Game and Fish Department and the Arizona State Land Department to ensure that sportsmens access and the integrity of the State Land Trust are protected. The Game and Fish Commission process has been used by several state land operators to limit conflicts in sensitive areas while preserving general area access for recreation by means of alternate route access.

R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife: The objective of the rule is to establish the Director's authority to authorize Department employees to condemn a lawfully taken animal that is unfit for consumption and issue a duplicate tag, thus allowing the hunter the opportunity to take another permitted animal. The rule also clarifies that this condition must not be created by the actions of the person who took the animal, and prescribes the procedure for obtaining a tag for the purpose of preserving hunting opportunities for the state's hunters.

R12-4-113. Small Game Depredation Permit: The objective of the rule is to establish authorized activities and application requirements for the complimentary small game depredation permit authorized under A.R.S. § 17-239(D). Depredation includes agricultural damage, private property damage, threats to human health and safety, and threats to recovery of protected wildlife. The permit is intended to provide short-term relief for small game damage until long-term, non-lethal measures can be implemented to eliminate or significantly reduce the problem. The rule was adopted to establish that the person suffering property damage from small game must exhaust all remedies under statute prior to requesting the depredation permit. The Department issued approximately three permits in 2021 and 2022 to an airport for public safety purposes and a public venue suffering property damage from wildlife.

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags: The objective of the rule is to prescribe the hunt permit-tag structure, conditions under which the Commission may issue tags, application procedures, and distribution and use of hunt permit- and nonpermit-tags. The rule was adopted to provide persons regulated by the rule with the information necessary to apply for a hunt permit-tag and obtain a nonpermit-tag and describe the computer draw process. *Hunt permit-tags are issued by computer draw and nonpermit-tags are available at any Department office or license dealer.* Certain percentages are made available to persons with bonus points and nonresidents. Any tags remaining after the computer draw are made available to the public on a first-come, first-served basis. The information provided in rule also makes the computer draw process more transparent to the public.

R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool: The objective of the rule is to establish the Commission's authority to implement a supplemental hunt when necessary to achieve management objectives when those objectives are not being reached through the regular season structures, take depredating wildlife, or address an immediate threat to the health, safety, or management of wildlife or its habitat, or to public health or safety. The rule also establishes the requirements for the supplemental hunter pool, comprised of persons who may be called upon to receive restricted nonpermit-tags when a supplemental hunt is authorized by the Commission. Under A.R.S. § 17-239(D), the Commission may establish special seasons, special bag limits, and reduce or waive license and tag fees to manage wildlife. The rule was adopted to establish an application process and hunter pool to enable the Department conduct those authorized activities.

R12-4-116. Issuance of Limited-Entry Permit-tag: The limited-entry event permit is established to provide the Commission greater flexibility in the hunting and angling opportunities offered to the public. These opportunities are offered on a limited basis and are based on biological recommendations made for each species in a process similar to the hunt guidelines recommendation process. These opportunities are offered in the same manner as the hunter pool, meaning a person need only apply and pay an application fee in order to participate. The rule is adopted to prescribe the limited-entry permit-tag structure, conditions under which the Commission may issue tags, application procedures, distribution process, and use of limited-entry permit-tags.
Since the rule was adopted on July 1, 2021, the Department:

- Offered approximately 18 limited-entry permit-tags.
- Received approximately 89,373 applications for limited-entry permit-tags.
- Generated approximately $1.2 million in revenue from the sale of limited-entry permit-tags.

R12-4-117. Indian Reservations: The objective of the rule is to specify that a state license, permit, or tag is not required to hunt or fish on any Indian reservation, that any lawfully taken game or fish may be transported and/or processed anywhere in the state if it can be identified as to species and legality pursuant to statute, and that all wildlife transported in this state is subject to inspection. Tribal governments may require a tribal license, permit, or tag for the take of wildlife, however, the state may not impose any requirements on a hunter or angler who is taking wildlife on an Indian reservation. Under A.R.S. § 17-102, wildlife found in this state are property of the state. Under A.R.S. § 17-211(E), a Game Ranger or Wildlife Manager may inspect all wildlife taken or transported in this state. Wildlife pose a unique "property" issue as it does not recognize land boundaries and frequently moves onto and off of state and tribal lands. When found on an Indian reservation, wildlife is property of that reservation. When found on state land (includes private land), the wildlife is property of the state. The Department recognizes wildlife found on an Indian reservation belong to the tribal government and are under tribal jurisdiction. The rule was adopted to provide notice to members of the public that, even though wildlife may have been lawfully taken on an Indian reservation, all wildlife transported anywhere in this state is subject to inspection.

R12-4-118. Hunt Permit-tag Surrender: The objective of the rule is to enable the Department to implement a tag surrender program, to include the establishment of a membership program and the requirements and limitations for the surrender of an unused hunt permit-tag. The rule was adopted in response to Commission direction as a means to encourage participation in recreational activities and generate additional revenue for the Game and Fish Fund as well as provide the public with a way to stay up-to-date on the latest hunting, angling, volunteer, and Department activities. In addition, the Commission also directed the Department to establish a satisfactory remedy to address the scenario where a person who applied for the wrong hunt (e.g., hunter meant to apply for a bull elk hunt, but entered a cow elk hunt number on the application) or is unable to use the hunt permit-tag due to unforeseen circumstances and is requesting the restoration of those bonus points expended for the hunt permit-tag. At that time, the current statutes and administrative rules did not provide a remedy when a person was unable to use the hunt permit-tag for any reason.

Since the membership program was implemented in January 2016:

- 416,172 memberships were purchased (January 2016 through June 30, 2022).
- 3,821 hunt permit-tags were surrendered (January 2016 through September 30, 2022).
- 1,046 hunt permit-tags were donated to nonprofit organizations (January 2016 through September 30, 2022).

R12-4-119. Arizona Game and Fish Department Reserve: The objective of the rule is to prescribe requirements and duties for commissioned reserve officers and noncommissioned reserve volunteers for the

purposes stated under A.R.S. § 17-214(B). The rule was adopted to further the Department's resources by allowing qualified individuals to assist in conducting Department enforcement and non-enforcement activities, as applicable.

R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags: The objective of the rule is to establish procedures for the application and issuance of special big game tags, including the selection criteria for choosing applicants who are awarded such tags as authorized under A.R.S. § 17-346. The rule was adopted to ensure compliance with the requirements of A.R.S. § 17-346. The Commission is authorized to issue three special big game tags each year for each species of big game to 501(c)(3) organizations. The Commission reviews applications submitted by eligible wildlife conservation organizations and, through a public process, awards those tags to selected organizations to raise funds for wildlife. Tags are awarded to eligible wildlife conservation organizations in June and are valid from August 15th of the year in which they were purchased until August 14th the following year; a separate hunting license is required.

The year-round season allows a special big game tag winner the time to pursue a big game animal, many of which can only be found in the southwest and some only in Arizona: Gould's wild turkey, desert and Rocky Mountain bighorn sheep, Coues white-tailed deer, and Kaibab mule deer.

The selected organizations market and sell the special big game tags. These tags are typically made available to the public through auctions or raffles. Every dollar raised from each species tag goes directly to the management of that species through wildlife and habitat management in coordination with the Arizona Habitat Partnership Committee. Since the implementation of this program, the Department has generated approximately $44.5 million from the sale of special big game tags. Projects range from water improvements, wildlife friendly fencing, wildlife studies, game surveys, translocations, habitat restorations, land acquisitions and more. Many of these projects are matched and further leveraged with other funding sources, labor, or supplied materials, stretching every dollar spent even further. Administrative and marketing costs are covered by the wildlife conservation organization.

R12-4-121. Tag Transfer: The objective of the rule is to establish the requirements for the transfer of an unused big game tag as authorized under A.R.S. § 17-332, which allows a parent, guardian, or grandparent to transfer their unused big game tag to a minor child or grandchild; or a person to transfer their unused big game tag to a 501(c)(3) organization that provides hunting opportunities and experiences to persons eligible under A.R.S. § 17-332(D). The rule was adopted to ensure compliance with A.R.S. § 17-332. The Department processes approximately 700 transfers on an annual basis, this figure includes transfers to a minor child or grandchild and transfers to a 501(c)(3) organization. Each transfer represents an opportunity that would likely have gone unrealized. Persons who are eligible to receive a donated, unused big game tag include:

- Children with life-threatening medical conditions or physical disabilities;
- Children whose parent was killed in action while serving in the U.S. Armed Forces, in the course and scope

of employment as a peace officer; or in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department; and

- Veterans with service-connected disabilities.

R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations: The objective of the rule is to establish requirements for game meat that can or cannot be donated to a public institution or charitable organization; and to include who is authorized to determine when game meat is safe and appropriate for donation. Department staff who have been trained in protecting recipients of donated meat from diseased or unwholesome products are the primary means of enforcement and serve to expeditiously get donated meat to appropriate organizations or arrange for disposal if it is determined the game meat is unsuitable for safe human consumption. The rule was adopted to provide a mechanism that prevents game meat from going to waste by allowing the Department to donate game meat to public institutions and charitable organizations, which includes but is not limited to soup kitchens and prisons. Instead of discarding or wasting harvested game meat, the Department's donation program was developed with the purpose of distributing surplus meat to put healthy meals onto the tables of those in need which helps to maintain the historical role of hunters as food providers and ensure game meat is not wasted.

R12-4-123. Expenditure of Funds: The objective of the rule is to establish the Director's authority to expend funds from specific sources within prescribed guidelines, and to require the Director to ensure the Department's infrastructure complies with those guidelines. The rule was adopted to formalize the processes used by the Commission for the expenditure of funds arising from appropriations, licenses, gifts, and other sources in a manner that is consistent with the goals and objectives of the Commission.

R12-4-124. Proof of Domicile: The objective of the rule is to establish the documents a person may use to provide acceptable "proof of domicile." In law, "domicile" is the status or attribution of being a lawful permanent resident in a particular jurisdiction. In creating this list, the Department reviewed lists of documents considered to prove residency for the purposes of registering a motor vehicle, attending state college, and applying for a hunting or fishing license in other states. The rule was adopted to comply with statute. It is important to determine residency in order to assess license and tag fees. Typically, nonresident fees are higher and some persons will commit fraud in order to pay a lower fee. Since 1999, 1,161 citations were issued for license fraud, which resulted in a minimum of $125,000 in lost revenue for license purchases. This amount does not include the amount of revenue lost for the big game tags that were purchased fraudulently. The dollar amount for the lost revenue pales in comparison to the amount of resources spent investigating these violations due to the labor-intensive process necessary to follow the paper trail. To control and protect the wildlife populations, state wildlife agencies limit recreational hunting by limiting permits and imposing higher fees on nonresident hunters. This provides nonresident hunters with the opportunity to contribute to the state wildlife agency funds that are used to protect and manage wildlife. Resident hunters pay local and state taxes to support the wildlife and wildlife habitat in their areas. The higher fees for nonresidents help compensate for the taxes

that residents pay. Therefore, nonresident fee and license regulations provide state wildlife agencies with funds to manage the wildlife, which in turn benefits both resident and nonresident hunters. Fee differentials for residents and nonresidents have been upheld in other areas. In *Baldwin vs Fish and Game Commission of Montana*, the U.S. Supreme Court upheld a higher hunting license fee imposed upon nonresidents by the State of Montana. The Court stated that, where the opportunity to enjoy a recreational activity is created or supported by a state, where there is no nexus between the activity and any fundamental right, and where by its very nature the activity can be enjoyed by only a portion of those who would enjoy it, a state may prefer its residents over the residents of other states or condition the enjoyment of the nonresident upon such terms as it sees fit.

R12-4-125. Public Solicitation or Event on Department Property: The objective of the rule is to establish the requirements and procedures the public shall use to request permission to conduct a solicitation or event on Department property, and to provide guidance to the Department for the review and management of public solicitations and events on Department property. The Department has received requests from organized groups for the use of Department facilities for the benefit of private interests or for solicitation purposes. The rule was adopted to ensure all solicitations and events are subject to the same regulatory measures that are intended to protect Commission-owned and/or -managed property.

R12-4-126. Reward Payments: The objective of the rule is to establish the requirements necessary for reward payments to include the schedule of reward payments. The reward program is established to motivate persons to report violations and provide information that will result in the arrest of a perpetrator when a case cannot otherwise be resolved. The rule was adopted to protect future populations and keep the state's wildlife resources available and abundant for the long-term. Reward payments have successfully been distributed on wildlife law enforcement cases that meet certain criteria since the inception of Operation Game Thief (OGT) in 1979. Through OGT, a person can receive a reward when a tip they provided results in an arrest. The illegal take of game or fish is known as poaching; poaching reduces opportunities to hunt and fish in Arizona. Game laws are in place to restrict hunting limits and protect the numbers of animals available year after year. When poachers take wildlife out of season or kill more than state bag limits, they can jeopardize the health and longevity of the herd and interrupt breeding seasons. Reward payments of $50 to $1,000 are offered in certain cases for information leading to the arrest of wildlife violators. Many states require a conviction before a reward payment may be offered. However, in Arizona, if the information provided is enough to warrant a citation or physical arrest, reward payments are made immediately. If desired, the reward is offered confidentially. Funding for reward payments comes from fines and civil penalties assessed to the poachers. The Department has paid out a total of $52,000 over the past five fiscal years.

R12-4-127. Civil Liability for Loss of Wildlife: The rule was adopted to prescribe the civil liability values for the loss of wildlife when a person convicted of unlawfully taking, wounding, or killing wildlife or unlawfully in possession of unlawfully taken wildlife. This information is used by the Commission as a tool to establish the reasonable ‘market’ value when the Commission is determining the civil assessment to recover lost revenue to

the state for the unlawful take of wildlife. The formula remains consistent while figures are researched and presented to the Commission each January for approval. The rule was adopted to allow the Commission to recover lost revenue when the value of the wildlife taken exceeds the minimal values prescribed under A.R.S. § 17-314. Prior to the adoption of this rule, the Commission used the statutory minimum values for reimbursement to the state as prescribed under A.R.S. § 17-314. These values were derived from baseline figures taken from other western states and initially adopted and approved as reasonable average values. The statutory values have remained the same since adoption in law and left no process for future modification based on market fluctuations. Many factors were explored in the process of determining an updated version of value associated with wildlife for the state. Research of processes and methods of valuation from other states was conducted to determine best practices. It was decided that using market values associated with wildlife and parts of wildlife would be the most defensible and repeatable year after year.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes. In addition, comments received since the last rule review was conducted are reviewed and considered. Comments indicate the rules are understandable and applicable. The Department believes this data indicates the rules are effective. The Department believes the following rules are effective in achieving the objectives identified above:

- R12-4-102. License, Permit, Stamp, and Tag Fees
- R12-4-103. Duplicate Tags and Licenses
- R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points
- R12-4-105. License Dealer's License
- R12-4-106. Special Licenses Licensing Time-frames
  Table 1. Time-Frames
- R12-4-107. Bonus Point System
- R12-4-108. Management Unit Boundaries
- R12-4-109. Approved Trapping Education Course Fee
- R12-4-110. Posting and Access to State Land
- R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife
- R12-4-113. Small Game Depredation Permit
- R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags
- R12-4-116. Issuance of Limited-Entry Permit-tag
- R12-4-117. Indian Reservations
- R12-4-118. Hunt Permit-tag Surrender
- R12-4-119. Arizona Game and Fish Department Reserve

- R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags
- R12-4-121. Tag Transfer
- R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and
- Charitable Organizations
- R12-4-123. Expenditure of Funds
- R12-4-124. Proof of Domicile
- R12-4-126. Reward Payments

The Department proposes to increase the effectiveness of the following rules as described below:

- **R12-4-101. Definitions:** Over time, the Department has diligently worked towards moving its processes to the Department's online platform. Many of the applications, forms, reports, etc. require the person submitting them to sign and date the application, form, report, etc. The Department recommends amending the rule to define "electronic signature" to further enhance and support the use of online Department forms, applications, reports, etc. that require the submitter to provide a signature and date. This may also be used to indicate the person's intent to agree to payment, conditions, terms, etc. as applicable to the online application, form, report, etc.
- **R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool:** The current process for accepting Hunter Pool applications requires customers to submit a paper application to the Department's Draw Unit staff who then manually enter the customer's application into the Department's Customer Database. This process is time consuming and cumbersome. The Department is developing an online solution that will allow customers to apply online, eliminating the many hours needed for manual entry and freeing up Draw Unit staff to focus on other duties. The Department anticipates the online application will contain expanded criteria that the customer may select to further reduce the burden on the Department when making phone calls to potential tag recipients (i.e.; a customer applying for an elk hunt may select whether they are interested in an 'any elk,' 'cow elk,' or 'bull elk' hunt). The Department recommends amending the rule to allow the Department to specify the manner and method by which a person may submit an application for a supplemental hunt or hunter pool, such as online or by paper application to reduce administrative burden.
- **R12-4-125. Public Solicitation or Event on Department Property:** The rule requires all solicitations to undergo review by the branch chief or regional supervisor who then determines whether a solicitation is required. The rule identifies that the solicitation cannot conflict with the Department's mission nor constitute partisan political activity, but otherwise leaves the responsibility for determining whether the solicitation process should apply to an event and, if it does, whether an event may be held is left to the branch chief or regional supervisor. Applying the rule to all Department facilities and areas pose concerns about applicability, inconsistent application, and the potential of creating extra work for both the public and Department staff. In addition, the rule does not address leased or licensed property. The rule covers both solicitations and events; however, the term "events" is not defined. This leads to a potentially burdensome approach to this rule. The Department recommends amending the rule to define "events," specify that

solicitation requests are only required when the request made to use the property is contrary to its established primary function, and establish the branch chief or regional supervisor and property stewards should determine acceptable uses for the facilities they are responsible for.

- **R12-4-127. Civil Liability for Loss of Wildlife:** The Department operates six fish hatcheries. Five of these fish hatcheries are used for cold water production and play a major role in providing trout fishing opportunities in Arizona. The sixth hatchery is dedicated to warm water fish production. Hatchery fish are raised from eggs which are purchased and imported from other federal, state, or private hatcheries in the nation. Almost all of the trout harvested in Arizona are stocked from Commission-owned hatcheries. Every year, Department fish hatcheries contribute to Arizona's economy by producing on average 385,000 pounds of fish. This equates to over 3 million fish that are stocked into 118 locations throughout Arizona. The rule allows the Commission to establish civil penalties intended to recover the cost of wildlife unlawfully taken, lost, or injured. Internal discussions indicate the rule does not adequately address the loss of aquatic wildlife. The Department recommends amending the rule to establish values intended to recover hatchery expenses per fish, which includes the costs to purchase, raise, feed, transport, and release aquatic wildlife.

4. Consistency of the rule 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.

The Department believes the following rules are consistent with statutes and rules; statutes and rules used to determine consistency include A.R.S. § Title 17 and 12 A.A.C. Chapter 4:

- R12-4-101. Definitions
- R12-4-105. License Dealer's License
- R12-4-106. Special Licenses Licensing Time-frames
  Table 1. Time-Frames
- R12-4-108. Management Unit Boundaries
- R12-4-109. Approved Trapping Education Course Fee
- R12-4-110. Posting and Access to State Land
- R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife
- R12-4-113. Small Game Depredation Permit
- R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags
- R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool
- R12-4-116. Issuance of Limited-Entry Permit-tag
- R12-4-117. Indian Reservations
- R12-4-119. Arizona Game and Fish Department Reserve
- R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags
- R12-4-121. Tag Transfer
- R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations

- R12-4-123. Expenditure of Funds
- R12-4-124. Proof of Domicile
- R12-4-125. Public Solicitation or Event on Department Property
- R12-4-126. Reward Payments
- R12-4-127. Civil Liability for Loss of Wildlife

The following rules are not consistent with or are in conflict with statutes and rules; the Department proposes to increase their consistency with statutes and rules as described below:

- **R12-4-102. License, Permit, Stamp, and Tag Fees:** The rule establishes the fees for licenses and permits offered by the Department. The rule references R12-4-209. Community Fishing License, which was repealed January 1, 2022. The Department recommends removing the reference to the repealed rule to increase consistency between Commission rules.
- **R12-4-103. Duplicate Tags and Licenses:** Since the rule was last amended, the Department implemented a paperless tag process which allows a customer to purchase a license and permit-tag, view their license, bonus point, and tag information and electronically "tag" an animal using an App on their own electronic device. The Department recommends amending the rule to clarify that a person who validates their tag electronically for a harvested animal that was subsequently condemned and surrendered to a Department employee may apply for a duplicate tag upon submitting the condemned meat duplicate tag authorization form issued by the Department.
- **R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points:** The current language requires a person to provide their license number when applying for a hunt permit-tag issued by computer draw. A person 10 years of age and under is not required to possess a hunting license unless they are applying for a big game hunt permit-tag. The Department recently began issuing Sandhill Crane tags by computer draw; under A.R.S. § 17-101, Sandhill Crane are not considered big game. The Department recommends amending the rule to establish an exemption to allow minors applying for draw hunts other than big game to do so without having to purchase a license. This recommendation will also require amending R12-4-107 (bonus points) to ensure consistency between Commission Rules.
- **R12-4-107. Bonus Point System:** Under R12-4-104, the Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application and the application is unsuccessful in the computer draw. R12-4-104 also prohibits a person under the age of 10 from applying for the purchase of a bonus point. This was largely due to the fact that persons under the age of 10 are not eligible to hunt big game and, until just recently, the Department's computer draws were specific to big game animals only. Over the years, the interest in Sandhill Crane tags increased to the point where the interest in Sandhill Crane tags outnumbered the number of tags issued. A determination was made to issue Sandhill Cranes permit-tags by computer draw and add them to the list of game for which a bonus point may be awarded or purchased. This is problematic because a person 10 years of age and under is not eligible to purchase or accrue a bonus point. To address this conflict, the Department recommends amending the rule to award a

Sandhill Crane bonus point to an applicant who is under the age of 10 and whose application was unsuccessful in the computer draw. These applicants would not be eligible to purchase a bonus point to avoid an over-accumulation of bonus points that would grant them an unfair advantage over other applicants.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The following rules are currently being enforced. Department employees can inspect documentation for rule compliance. Officers can check for rule compliance when routinely patrolling the lands and waterways of Arizona, and issue warning orders or citations. To the extent that the Department is aware, the Department believes there are no problems with the enforcement of the following rules:

- R12-4-101. Definitions
- R12-4-102. License, Permit, Stamp, and Tag Fees
- R12-4-103. Duplicate Tags and Licenses
- R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points
- R12-4-105. License Dealer's License
- R12-4-106. Special Licenses Licensing Time-frames
  Table 1. Time-Frames
- R12-4-107. Bonus Point System
- R12-4-108. Management Unit Boundaries
- R12-4-109. Approved Trapping Education Course Fee
- R12-4-110. Posting and Access to State Land
- R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife
- R12-4-113. Small Game Depredation Permit
- R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags
- R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool
- R12-4-116. Issuance of Limited-Entry Permit-tag
- R12-4-117. Indian Reservations
- R12-4-118. Hunt Permit-tag Surrender
- R12-4-119. Arizona Game and Fish Department Reserve
- R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags
- R12-4-121. Tag Transfer
- R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations
- R12-4-123. Expenditure of Funds
- R12-4-124. Proof of Domicile

- R12-4-125. Public Solicitation or Event on Department Property
- R12-4-126. Reward Payments
- R12-4-127. Civil Liability for Loss of Wildlife

6. Clarity, conciseness, and understandability of the rule.

The Department believes the following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

- R12-4-101. Definitions
- R12-4-102. License, Permit, Stamp, and Tag Fees
- R12-4-103. Duplicate Tags and Licenses
- R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points
- R12-4-105. License Dealer's License
- R12-4-106. Special Licenses Licensing Time-frames
  Table 1. Time-Frames
- R12-4-107. Bonus Point System
- R12-4-109. Approved Trapping Education Course Fee
- R12-4-110. Posting and Access to State Land
- R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife
- R12-4-113. Small Game Depredation Permit
- R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags
- R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool
- R12-4-116. Issuance of Limited-Entry Permit-tag
- R12-4-117. Indian Reservations
- R12-4-118. Hunt Permit-tag Surrender
- R12-4-119. Arizona Game and Fish Department Reserve
- R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations
- R12-4-123. Expenditure of Funds
- R12-4-124. Proof of Domicile
- R12-4-125. Public Solicitation or Event on Department Property
- R12-4-126. Reward Payments
- R12-4-127. Civil Liability for Loss of Wildlife

Overall, the following rules are clear, concise, understandable, are logically organized, and generally written in the active voice, however, the Department proposes to further clarify the following rules as indicated:

- **R12-4-108. Management Unit Boundaries:** Because landmarks change over time due to environmental

factors, as local opinion changes regarding its destination, or the names of places and things change due to political or historical factors, the Department recommends amending the rule to update boundary revisions as necessary to clearly define roads and intersections with sufficient detail to reflect on the ground signage and current maps. The update serves to provide additional clarity and maintain recreational opportunities for the public (both hunters and outdoor recreationists).

- **R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags:** With the last rulemaking the Commission amended the rule to require the winning bidder to possess a hunting or combination hunting and fishing license to validate the special license tag. The Department recommends amending the rule to replace references to "license-tags" with "tags" to make the rule more concise.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

The Department did not receive any written comments for the following rules.

- R12-4-101. Definitions
- R12-4-103. Duplicate Tags and Licenses
- R12-4-105. License Dealer's License
- R12-4-106. Special Licenses Licensing Time-frames
  Table 1. Time-Frames
- R12-4-109. Approved Trapping Education Course Fee
- R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife
- R12-4-113. Small Game Depredation Permit
- R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool
- R12-4-116. Issuance of Limited-Entry Permit-tag
- R12-4-117. Indian Reservations
- R12-4-119. Arizona Game and Fish Department Reserve
- R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations
- R12-4-123. Expenditure of Funds
- R12-4-125. Public Solicitation or Event on Department Property
- R12-4-126. Reward Payments
- R12-4-127. Civil Liability for Loss of Wildlife

The Department received the following comments relating to rules within Article 1. Definitions and General

Provisions:

R12-4-102. License, Permit, Stamp, and Tag Fees:

Comments suggest the Commission should lower the cost of the nonresident combination hunting and fishing licenses (both short-term and one-year licenses).

Agency Response: The Department's principle operational revenue comes from the sale of hunting and fishing licenses, hunt permit-tags, stamps and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment. The Commission, through an extensive public process, amended the rule to require both residents and nonresidents to purchase a hunting license in order to be considered during the hunt draw process. This requirement was put in place with the understanding that the ultimate beneficiaries are Arizona's wildlife resources and hunters (both resident and nonresident), since license fees go directly into wildlife conservation, development, and management. The Commission and Department hold that over time, the fees paid for hunting and fishing licenses, both resident and nonresident, create a benefit to all hunters who enjoy Arizona's wildlife opportunities by providing greater revenue for Department wildlife management objectives. Ultimately, this will enable the Department to maintain the nationally-recognized wildlife populations for which Arizona is known. In addition, several other western states require draw applicants to purchase a hunting license in order to participate in their limited draws: Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. Furthermore, while unsuccessful applicants may not have the opportunity to hunt the big game animal of their choice in Arizona, the license they purchase will allow them to participate in many other hunting and fishing opportunities within the state including over-the-counter archery deer hunts, population management hunts, and multiple small game and waterfowl hunting opportunities, to include cottontail rabbits, tree squirrels, upland game birds (quails, chukar, grouse, and pheasants), and migratory game birds (ducks, geese, swan, sandhill, cranes, coot, gallinule, common snipe, mourning and white-winged doves, and band-tailed pigeon). If you look at most any state's hunting and fishing license fees, most state wildlife agencies charge nonresident applicants higher license and tag fees than residents. This provides nonresident hunters with the opportunity to contribute to the state wildlife agency funds that are used to protect and manage wildlife. In 1978, the U.S. Supreme Court upheld a higher hunting license fee imposed upon nonresidents by the State of Montana. The Court stated that, where the opportunity to enjoy a recreational activity is created or supported by a state, where there is no nexus between the activity and any fundamental right, and where by its very nature the activity can be enjoyed by only a portion of those who would enjoy it, a state may prefer its residents over the residents of other states or condition the enjoyment of the nonresident upon such terms as it sees fit. In 2005, Congress enacted Public Law Number 109-13, section 6036, which reaffirmed each state's right to regulate hunting. The purpose of section 6036 was to prohibit courts from declaring nonresident hunting regulations unconstitutional based on the Dormant Commerce Clause.

Comments suggest the Commission should provide nonresident members of the military the same discounts as resident members of the military.

Agency Response: Currently, the Department offers a complimentary license to a veteran who receives compensation from the U.S. government for a permanent service-connected disability rated as 100% disabling; a 50% reduced-fee license to bona fide recipient of a Purple Heart Medal; and a 25% reduced-fee license to a veteran who has a service-connected disability. In addition, under A.R.S. § 17-332(D), any veteran with a service-connected disability is eligible to receive a donated unused big game permit-tag, this includes both residents and nonresidents. To learn more about this program, visit https://www.azgfd.com/Hunting/TagTransfer/. It is true, the honored military licenses require the veteran be a resident of Arizona for one-year immediately preceding application for the license. The one-year residency requirement is mandated by statute and a legislative amendment is required before the Commission may implement this suggestion. While wildlife is considered a national resource, A.R.S. § 17-102 clarifies that wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the Commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission. In 1978, the U.S. Supreme Court stated that, where the opportunity to enjoy a recreational activity is created or supported by a state, where there is no nexus between the activity and any fundamental right, and where by its very nature the activity can be enjoyed by only a portion of those who would enjoy it, a state may prefer its residents over the residents of other states or condition the enjoyment of the nonresident upon such terms as it sees fit. In 2005, Congress enacted Public Law Number 109-13, section 6036, which reaffirmed each state's right to regulate hunting. The purpose of section 6 036 was to prohibit courts from declaring nonresident hunting regulations unconstitutional based on the Dormant Commerce Clause.

Comments suggest the Commission should regulate the use of trail cameras by selling permits, regardless of whether the trail camera is used for the purpose of hunting, security, or wildlife viewing.

Agency Response: The Commission prohibited the use of trail cameras for the purpose of hunting January 1, 2022. The prohibition was intended to address the divisive and social aspects of trail cameras used for the purpose of hunting. Implementing a registration process would not address the concerns surrounding the use of trail cameras for the purpose of hunting and would also result in the Department expending additional resources to establish and maintain a registration or permitting system, as well as any associated administration costs. For these reasons, it is not reasonable to establish a registration or permitting system that allows paying hunters to use a trail camera for the purpose of hunting.

Comments suggest the Commission should issue "outfitter tags" that are only offered to licensed guides at premium prices; and the Commission should issue a mentor tag that allows a hunter and a youth to apply

for a tag issued by computer draw only the application would be given two opportunities in the computer draw (one for each person identified on the application).

Agency Response: The Commission's tag processes are designed to provide equal opportunity to all classes of individuals and not to provide an advantage to certain groups. As a result, the Department does not believe that any group of individuals should be offered tags for which others are not eligible.

Comments suggest the Commission should establish hunting categories such as general, high demand, and trophy hunts (seasons) and then charge different fees for the different hunts.

Agency Response: In 2012, the Commission directed the Department to conduct a review of its license structure and fees in an effort to simplify and streamline the license structure, and to add value to the licenses the Department offered. To solicit feedback and support, the Department deployed an extensive outreach campaign from October 2012 through June 2013 to collect feedback about a conceptual license and fee structure. The campaign included public meetings in Ajo, Eagar, Flagstaff, Globe, Havasu, Kingman, Mesa, Page, Payson, Phoenix, Pinetop, Prescott, Safford, Sierra Vista, Tucson, Wickenburg, and Yuma (the Phoenix meeting was also webcast through the Department website). In addition, the Department created a dedicated web page (www.azgfd.gov/LicenseSimplification) with a dedicated e-mail address through which the public could submit comments and suggestions. Press releases were issued to announce public meeting dates and direct people to the web page. The Department also held meetings with a number of conservation groups to discuss the conceptual license structure and fees. The Department received more than 1,400 comments during this same time-frame. The Department also conducted a science-based mail survey of hunters and anglers and received more than 1,480 responses. One of the most discussed concepts was that of a "premium" hunt structure for certain deer and elk hunts (predominantly against the premium concept). Based on the public comment, the Department does not recommend establishing a premium hunt structure.

Comments suggest the Commission should establish higher fees for nonresident licenses and tags and that the number of nonresident tags should be reduced.

Agency Response: In 2014, the Department simplified its license structure by reducing more than forty hunting and fishing licenses to just six. At that time, the Commission directed the Department to create additional ways to generate revenue without increasing the costs of licenses and tags. The Department limits the number of nonresident permits under A.R.S. § 17-332, the Commission is authorized to limit the number of big game permits issued to nonresidents in a random drawing to ten percent or fewer; and recently, to limit the number of nonpermit-tags that are issued to nonresident hunters. The Department is following the statute.

Comments suggest the Commission should repeal the current youth license and tag fees and charge the same fees as those charged to persons 18 years of age and older.

Agency Response: Most, if not all, wildlife agencies offer programs geared towards encouraging youth to hunt (such as reduced fees, mentored hunting clinics, and youth only hunts). Encouraging youth to participate in hunting and shooting activities is critical to conservation. Having programs dedicated for youth to experience a hunt for the first time, getting some extra practice or hunting an animal that is new to them are important to keep our youth excited and engaged within the hunting community. In addition, having a separate tags and seasons demonstrates the importance of conservation and wildlife management. If our children are not educated on the benefits that hunting offers to conservation and wildlife management, in future years our ecosystem could be out of balance.

Comments suggest the Commission should make it harder for first time applicants to draw a "dream tag," such as bighorn sheep and bison, because those tags should be going to longtime hunters, perhaps for hunters who have applied for these hunts for five or more years.

Agency Response: The bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the computer draw. The intent of the Department's draw process and bonus point system have always been to allow every applicant a chance of drawing a tag, even when the odds are very low. The bonus point system has been successful in meeting its objective to improve odds for long-term participants and those with no or low bonus points, even for the high demand hunts. The Commission believes every applicant, regardless of residency and number of bonus points, should have an opportunity to draw a tag in any given hunt.

Comments suggest the Commission should require all applicants for a big game tag to submit all required fees at the time of application.

Agency Response: Requiring applicants to pay application, license (when required), and tag fees up front would result in a loss of revenue to the Department and an unnecessary administrative burden to the State agencies involved. If a person is unsuccessful in the computer draw, the Department processes a refund for the tag fee, only. The refund process involves multiple state agencies: the Department initiates the refund action; the General Accounting Office (GAO) processes the request and issues the warrants (refunds); the Department receives the warrants, verifies the payee and warrant amount, mails valid warrants, removes warrants payable to persons who subsequently submitted an insufficient funds payment, and initiates warrant corrections when necessary; GAO processes and issues the corrected warrants; and the Arizona Department of Revenue (ADOR) manages the unclaimed property process for any unclaimed refunds. Each refund costs the Department approximately $3 to $8 to process (Department materials and equipment as well as GAO and ADOR costs are not included in this estimate).

Comments suggest the Department refund the fees paid for an unused big game tag when the person is unable to use their hunt permit-tag due to a d*ocumented proof of illness or family tragedy.*

Agency Response: The Department is unable to refund any license or application fees, except as

authorized under A.R.S. § 17-332(E).

Comments suggest the Commission should establish a residency category for persons who own land in more than one state.

Agency Response: The Department recognizes that the two categories of Resident or Nonresident exist and, based on your suggestion, a third classification is not feasible. The current classification of resident vs nonresident takes into consideration what legally makes a person either a resident by establishing a permanent home or domicile, pay Arizona state income taxes, receive Arizona benefits and not be able to gain any benefit from any other state. The term "Domicile" is defined as a person's true, fixed and permanent home and principal residence. Criteria considered for Residency status are the following:

- Does not claim residency for any purpose in any other state or jurisdiction.
- Has been issued an Arizona driver's license or an Arizona commercial driver's license. The possession of an Arizona ID card is not considered evidence of residency.
- Is employed full-time in Arizona.
- Files federal and/or state income taxes as an Arizona resident.
- Is registered to vote in Arizona.
- Is enrolled in, or has minor children enrolled in an Arizona public school without payment of non-resident tuition.

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points:

Comments suggest the Department should give resident hunters preference over nonresident hunters when conducting the computer draw.

Agency Response: The first phase of the current draw system issues 20% of the available tags to those persons with the maximum number of bonus points. The second phase then issues the remaining 80% of the tags randomly, also giving preference to those with the greatest number of bonus points, while still providing opportunity for all applicants to draw a tag (for every bonus point, applicants have one additional 'chance' in the draw). The computer draw system monitors the number of nonresidents drawn for tags and once the 10% nonresident cap, required under A.R.S. § 17-332, is reached it will eliminate all other nonresidents from the draw pool. Because nonresidents typically carry higher bonus point totals than residents, the 10% nonresident cap is sometimes reached in the first phase of the computer draw, which means a nonresident with no or few bonus points may never have the opportunity to draw a tag (this is especially true for high demand hunts). Over the years, the Department received numerous comments from the public suggesting the Department modify the draw process to ensure all nonresidents, even those with no or low bonus points, are afforded an opportunity to draw a tag; even for the high demand hunts. As it is now, there are some hunts for which a nonresident applicant with no or low bonus points will never have a chance of drawing a tag due to the

number of nonresident applicants with maximum bonus points. The current computer draw system brought the draw process back in line with the original intent and ensured all applicants, regardless of residency and number of bonus points, would have an opportunity to draw a tag in any given hunt.

Comments suggest the Department should give allocate more big game tags to nonresident hunters because they pay higher license and tag fees.

Agency Response: The Department is unable to increase the percentage of tags allocated to nonresidents. Under A.R.S. § 17-332, the Commission shall limit the number of big game permits issued to nonresidents in a random drawing to ten per cent or fewer of the total hunt permits; and a recent legislative amendment allows the Commission to limit the number or use of licenses and tags issued, that are not issued by a computer draw, to nonresidents. A legislative amendment is required before the Commission may amend the rule as suggested. To control and protect the wildlife populations, state wildlife agencies limit recreational hunting by limiting permits and imposing higher fees on nonresident hunters. This provides nonresident hunters with the opportunity to contribute to the state wildlife agency funds that are used to protect and manage wildlife. Resident hunters pay local and state taxes to support the wildlife and wildlife habitat in their areas. The higher fees for nonresidents help compensate for the taxes that residents pay. Therefore, nonresident fee and license regulations provide state wildlife agencies with funds to manage the wildlife, which in turn benefits both resident and nonresident hunters. Fee differentials for residents and nonresidents have been upheld in other areas. In Baldwin *vs* Fish and Game Commission of Montana, the U.S. Supreme Court upheld a higher hunting license fee imposed upon nonresidents by the State of Montana. The Court stated that, where the opportunity to enjoy a recreational activity is created or supported by a state, where there is no nexus between the activity and any fundamental right, and where by its very nature the activity can be enjoyed by only a portion of those who would enjoy it, a state may prefer its residents over the residents of other states or condition the enjoyment of the nonresident upon such terms as it sees fit.

Comments suggest the Commission repeal the requirement that a person possess, or purchase at the time of the hunt, a valid hunting or combination hunting and fishing license that is valid when applying for a hunt permit-tag issued by computer draw.

Agency Response: The Commission, through an extensive public process, amended the rule to require both residents and nonresidents to purchase a hunting license in order to be considered during the hunt draw process. This requirement was put in place with the understanding that the ultimate beneficiaries are Arizona's wildlife resources and hunters (both resident and nonresident), since license fees go directly into wildlife conservation, development, and management. The Commission and Department hold that over time, the increased costs will create a benefit to all hunters who enjoy Arizona's wildlife opportunities by providing greater revenue for Department wildlife management objectives. Ultimately, this will enable the Department to maintain the nationally-recognized wildlife populations for which Arizona is known. In addition, several other western states require draw applicants to

purchase a hunting license in order to participate in their limited draws: Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. Furthermore, while unsuccessful applicants may not have the opportunity to hunt the big game animal of their choice in Arizona, the license they purchase will allow them to participate in many other hunting and fishing opportunities within the state including over-the-counter archery deer hunts, population management hunts, and multiple small game and waterfowl hunting opportunities, to include cottontail rabbits, tree squirrels, upland game birds (quails, chukar, grouse, and pheasants), and migratory game birds (ducks, geese, swan, sandhill, cranes, coot, gallinule, common snipe, mourning and white-winged doves, and band-tailed pigeon).

Comments suggest the Commission should issue tags to residents only.

Agency Response: Wildlife freely travel between contiguous state boundaries and as such are considered to be a national resource. In order to prohibit the issuance of tags to nonresident hunters the Department would have the burden of proving a jurisdictional need to discriminate against nonresident hunters exists when challenged in court. Litigation over discriminatory nonresident hunting regulations hurts hunters for three reasons: (1) it pits hunters against hunters; (2) it limits a state's ability to protect wildlife; and (3) it provides incentives for states to retaliate.

R12-4-107. Bonus Point System:

Comments suggest the Commission should allow persons the ability to gift, transfer, or will their bonus points to another person:

Agency Response: The Commission determined through an extensive public process and a random survey of hunters that a bonus point system was preferred by the regulated public. The computer draw process is designed to provide equal opportunity to all persons and not to provide an advantage to certain persons; a bonus point is awarded to an applicant who submits a valid application and is either unsuccessful in the drawing or the application is for a bonus point only. As a result, the Commission does not believe that persons should be able to give their bonus points to another person.

Comments suggest the Commission should award special bonus points to specific categories, such as native Arizonans, lifetime license holders, disabled veterans, etc.

Agency Response: In 1990 through an extensive public process and a random survey of hunters, the bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the draw; a bonus point system was preferred by the regulated public. The Commission’s draw process is designed to provide equal opportunity to all classes of individuals and not to provide an advantage to certain classes. As a result, the Department does not believe that any class of individuals should be awarded bonus points for which others are not eligible.

Comments suggest the Commission should award conservation (volunteer) bonus points; i.e. a permanent bonus point for each genus.

Agency Response: Rulemaking to award bonus points to persons who participate in conservation projects intended to benefit wildlife and wildlife habitat has been attempted before and was not completed due to the inability to apply the rule to all persons who are eligible for bonus points. For example, a person who is retired has more time to devote to participating in conservation projects than a person who works 40 hours a week; a person over 16 years of age may more easily travel to a place where a conservation project will take place than a person under 16 years of age; a resident more easily travels to a place where a conservation project will take place than a nonresident, etc. It would also impose an administrative burden on the Department and partnering conservation organizations. For example, ensuring enough conservation projects are available to all persons who wish to obtain the permanent bonus points; tracking the time a person spends participating on a conservation project; ensuring participants are actively participating in the project in a helpful manner, etc. The Department recommends tasking a team to explore options related to this suggestion and present those options to the Commission for their consideration.

Comments suggest the Commission should add Sandhill Crane to the list of game for which a bonus point may be awarded.

Agency Response: Effective July 1, 2021, the Commission added Sandhill Crane to the list of wildlife for which a bonus point may be awarded or purchased.

Comments suggest the Commission should award permanent hunter education bonus points only when the person completed the "in person" hunter education course.

Agency Response: Due to the popularity of the Arizona Education Bonus Point, the demand for seats in the classroom course often outweighs their availability. It is not uncommon to see courses booked out for an entire year. This posed a problem, as the limited classroom capacities were preventing hunters from earning their Arizona Education Bonus Point, and thus not affording them equal opportunity in the computer draw. A new online-only course, Ethically Hunting Arizona, was developed primarily for those hunters who are looking to acquire their permanent Arizona Education Bonus Point without having to compete for limited seating in the classroom-style structure of the traditional Arizona Hunter Education course. This new online course should help to free up seating for youths 9 to 13 who must complete a hunter education course in person to hunt big game.

Comments suggest the rule does allow bonus points to remain on a person's customer record valid indefinitely.

Agency Response: The existing rule states that if a person fails to submit a Hunt Permit-tag Application for any genus for five consecutive years, they will lose their existing bonus points. This rule is intended to encourage continuous participation in the Department's computer draw and reward loyal applicants. Bonus points and loyalty bonus points may only be gained or lost through the computerized draw system. If a person fails to apply for the computer draw they cannot be entered into

the draw. If an application is not entered into the system, the system cannot award a bonus point. The Department believes it is the applicant's responsibility to ensure the application is submitted timely. While the Department has received complaints in regards to the current bonus point system, the Commission determined through an extensive public process and a random survey of hunters that the current bonus point system was preferred by the regulated public.

Comments suggest the Commission should award a permanent bonus point for each species to Arizona guide license holders at the time a guide license is issued.

Agency Response: The Commission's draw process is designed to provide equal opportunity to all classes of individuals and not to provide an advantage to certain classes. As a result, the Department does not believe that any class of individuals should be awarded bonus points for which others are not eligible and/or are obtained outside the predetermined process. The intent of the Arizona Education Bonus Point is to reward those who successfully complete an approved Arizona Hunter Education course. As mentioned in your comment, there is an expectation that those in possession of an Arizona Hunting Guide license are responsible for "knowing and exercising all that is encompassed in hunter education." The Department believes that this is a fair statement, and to exercise that knowledge appropriately, would strongly encourage all who possess an Arizona Hunting Guide license to take a current Arizona Hunter Education course so that they are fully aware of the relevant concepts shared within. The Arizona Hunter Education and new Ethically Hunting Arizona courses encompass far more than firearms safety and hunting rules/regulations; they were designed specifically for Arizona sportsmen and cover: The North American Model of Conservation, relevant wildlife diseases, encouraged use of non-lead ammunition, habitat management, modern ethics, survival skills, wildlife identification, up to date rules and regulations, and our responsibility as modern sportsmen.

Comments suggest the Commission should do away with or restructure the bonus point system.

Agency Response: The Department understands the disappointment and frustration with the amount of time it takes to draw tags for certain hunts. The bonus point system was established to reward loyal applicants while providing new applicants an opportunity to successfully participate in the computer draw; the intent has always been to allow every applicant a chance of drawing a tag, even when the odds are very low. The bonus point system has been successful in meeting its objective to improve odds for long-term participants, however, some hunts continue to see a rise in the number of applicants in the max bonus point pool due to demand outweighing the number of permits available. When a customer is drawn for any of their chosen hunts, all the accumulated points for that species are expended. The demand for many hunts often outweighs the number of tags available. By removing those who are successfully drawn from the bonus point pool, we are providing unsuccessful applicants a better opportunity to draw a tag while also preventing over-accumulation of bonus points for high demand hunts. While the Department is sensitive to your frustration and appreciates the time and effort

put into building bonus points, the Department believes the current system provides the best opportunity to all applicants.

Comments suggest the Department separate bighorn sheep maximum bonus point holders into two categories when processing the bonus point phase of the computer draw.

Agency Response: In the existing bonus point system, the species bonus point for bighorn sheep covers both Rocky Mountain and Desert bighorn species. This 'combination' of a species point is also true for turkey (Merriam's and Gould's turkey) and deer (Mule and White-tailed deer). The allocation of these permits in the computer draw is dependent on the rules that govern each species. If the Department were to regulate the allocation of these permits down to each of the covered species, we would need to create separate species bonus points for each.

R12-4-108. Management Unit Boundaries:

Comments suggest the Commission combine portions of units 20A, 19A, 19B, and 17B into metropolitan hunt unit, similar to the one in Phoenix.

Agency Response: Under A.R.S. § 17-309(A)(4), it is unlawful for a person to discharge a firearm within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident. In 2019, R12-4-303 was amended to prohibit the discharge of an arrow or bolt, pneumatic weapon .35 caliber or larger, or hybrid device while taking wildlife within one-fourth mile (440 yards) of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident. Between the cited statute and rule, hunting is essentially eliminated in these areas which makes creating a metropolitan unit in the Prescott area redundant.

R12-4-110. Posting and Access to State Land:

Comments suggest the Commission prohibit property owners from closing access to their property to prevent persons from hunting.

Under A.R.S. § 17-304(B), "State or federal lands, including those under lease, may not be posted except by consent of the Commission." While the cited statute protects access to public land, it also precludes the Commission making rules that mandate access to privately owned land. For this reason, the Department proactively seeks ways to increase voluntary access to and through private lands. In particular, the Department's Landowner Relations Program focuses on partnering with private landowners and agricultural producers to secure public recreational access to private land. This is achieved through a variety of programs, such as the Habitat Enhancement Program which helps bolster populations of game and non-game species at landscape-scale, leveraging diverse partnerships and funding sources; the Landowner Relations Program which focuses on partnering with the State's private landowners and agricultural producers to implement mutually beneficial habitat projects and secure public recreational access; the Adopt-A-Ranch Program which offer volunteer labor to perform ranch maintenance with support from the Department (volunteer groups typically visit their "adopted"

ranches once or twice a year to complete mutually beneficial projects); and the Landowner Respect Program which provides signs to landowners to inform the public of laws and etiquette for using ranch lands and, in some cases, gates, fence ladders, sign-in boxes, and kiosks to improve issues related to public access.

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags

Comments suggest the Commission should establish a waiting period of some form or another for hunt-permit tags issued by a computer draw.

Agency Response: The foundation for all hunt recommendations is science and managing wildlife for sustainable populations. Hunt opportunities are reduced when populations are in decline to ensure sustainable management of our wildlife populations. The Department understands that not being drawn for a big game hunt can be discouraging. The Department recently evaluated waiting periods of one, eight, and ten years at least two times over the last five years. The most recent analysis in 2021 determined that, except for youth hunts, implementing a waiting period would result in a projected increase in draw odds 1.1% (pronghorn) to 4.0% (late season deer) per applicant. The Commission determined implementing a waiting period would not be beneficial to persons who hunt in Arizona.

Comments suggest the Commission implement an antler restriction in place to increase the number of mature animals.

Agency Response: Antler point restrictions are another approach that is often described by hunters as a good method by which to regulate take. The idea seems straightforward and promising; if we just don't allow hunters to harvest young bucks, they will grow older and bigger and be available for harvest later. Most western states and provinces have, at one point in time, employed some type of antler point restriction attempting to increase the number of "trophy" bucks in their herds. After decades of use and many evaluations reporting disappointing results, most western states and provinces have discontinued statewide antler point restrictions. The two main reasons for abandoning widespread antler point restrictions are: (1) unacceptable accidental-illegal kill, and (2) harvest mortality was increased (focused) on the very age classes they intended to promote. Available data and experience suggest antler point restrictions result in no long-term increase in either the proportion or number of mature bucks or the total deer population. A few jurisdictions still have limited areas with antler point restrictions, due to hunter preference, not a biological need. The use of antler point restrictions in a combined strategy with general open seasons is used in at least one case to maximize hunting opportunity. Most western states and provinces have concluded that sustainable improvements in buck to doe ratios and the number of mature bucks can only be realized by reducing harvest through 1) a limited quota license system that decreases overall total buck harvest (as we do here), or by 2) setting a very short hunting season in early fall when mature bucks are less vulnerable. While antler point restrictions may increase the proportion of bucks in certain populations with low buck to doe ratios, there is no evidence they substantially increase the total number of adult (mature) bucks.

Comments suggest the Commission issue archery deer tags by way of computer draw instead of offering them for purchase over-the-counter.

Agency Response: Referred to as over-the-counter tags, these nonpermit-tags are available for purchase from Department offices and, in many cases, licensed license dealers. Species and hunts available include archery-only deer (some unit restrictions), limited opportunity elk, mountain lion, bear; archery-only javelina, and juniors-only turkey (shotgun only). The benefits of offering these tags over-the-counter include allowing a person to hunt a particular species without their having to expend any accrued bonus points for that species and an application fee is not required.

Comments suggest the Commission amend the rule to make at least two bighorn sheep permits available in any bighorn sheep hunt before allowing a permit to go to the maximum bonus point pool; and if more than two permits are available in a hunt then no more than 50% of the permits should go to the maximum bonus point pool.

Agency Response: The Department disagrees. The current maximum point holders have accumulated 34 points after applying for over 30 years. The Department offers a limited number of sheep permits (~140) and over half of those hunts (39 of 59 hunts) offer two or less permits. Implementing this suggestion would ultimately restrict the number permits made available to our maximum bonus point holders in the pass of the computer draw that is meant to prioritize them. This would result in the exclusion of hunters with the maximum bonus points from 24% of the available hunts. While some high demand hunts almost exclusively go to maximum bonus point holders in the bonus point pass of the computer draw, their exclusion would be to the contrary of the purpose of providing loyalty points to the long-invested hunters of Arizona.

R12-4-118. Hunt Permit-tag Surrender:

Comments suggest the Commission amend the rule to prohibit a person who was successful in the computer draw as part of a group application from being able to return their unused big game tag and have the points expended for that tag restored.

Agency Response: The Department believes the majority of hunters do not participate in this behavior due to the possibility of a genuine need to surrender a tag through the membership program (PointGuard) in the future. The potential loss of the ability to surrender a tag and have any expended bonus points restored during a true emergency is not worth the risk. The following requirements are intended to prevent the abuse of the membership program: A person may only surrender an original, unused hunt permit-tag obtained through a computer draw; a person may surrender an unused hunt permit-tag for a specific species only once before any bonus points accrued for that species must be expended.

R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags

Comments suggest special big game license tags be awarded only to persons who have a physical or mental condition requiring the aid of another person to assist with the harvest and/or retrieval of the big game animal.

Agency Response: The intent of R12-4-120 is to generate revenue for the purpose of habitat enhancement projects that benefit Arizona's wildlife. Placing restrictions on who may be awarded a special big game tag would reduce the revenue generated and undermine the intent of the rule. However, under the Challenged Hunter Access/Mobility Permit (CHAMP) Program (R12-4-217), the Department issue tags to hunters with severe permanent disabilities and allows the use of an assistant to track and dispatch a wounded animal, and to retrieve the animal.

R12-4-121. Tag Transfer

Comments suggest the Commission should amend the rule to provide more oversight and prevent abuse of the tag transfer program.

Agency Response: The Arizona Game and Fish Commission verifies the eligibility of organizations to receive and place donated tags, provides guidance to eligible organizations, and issues directions to the Department that are implemented by staff. Department staff and law enforcement utilize a variety of methods to ensure compliance with the rule and to clearly communicate eligibility requirements. Comments received reflect a significant level of concern regarding potential abuse of this program, and some allege specific instances of wrongdoing directly or indirectly related to transfers including the possibility of individuals or organizations obtaining such tags by fraud or misrepresentation. Such actions are a violation of this rule as written, as well as A.R.S. Title 17, and the Department can pursue them through its law enforcement capabilities. Therefore, the Department makes no recommendations at this time.

Comments suggest the Commission amend the rule to allow a person, or a deceased person's family representative, to donate their unused tag to an immediate family member.

Agency Response A.R.S. § 17-332 prohibits the transfer of permits with specified exceptions, including the transfer of a successfully drawn big game permit or tag to a minor child but not the reverse. No such exception currently exists in statute for family members other than minor children. A legislative amendment is required in order to implement this suggestion.

Comments suggest the Commission should amend the rule to allow a person who either obtained a hunt permit-tag by computer draw or over-the-counter tag to be eligible to receive a donated tag or tags unless the person has already met the annual or lifetime bag limit for that species.

Agency Response Since the receipt of this comment, updated guidance has been issued to the Department's Customer Service Representatives regarding situations of this nature. Under that guidance a qualifying individual who has previously received a tag for the same genus as a tag that would be donated to them may still receive the donated tag provided that they have not reached their

annual or lifetime bag limit for that genus and use of the tags would not create a situation where that limit would be exceeded. The Department recommends amending the rule to further clarify this scenario in rule.

Comments suggest the Commission should remove organizations that do not provide a quality hunting experience.

Agency Response: Under A.R.S. § 17-332(D), the Commission may prescribe the application process for a nonprofit organization that wants to allow a nonprofit organization to transfer tags. The Commission is not authorized to establish a criterion for the opportunities and experiences the nonprofit organization must provide. The Department posts the names and contact details of organizations qualified to receive and place donated tags on its website but does not offer reviews nor endorsements of the services offered. If it is determined that the guide or organization behaved criminally the guide license can be revoked and/or the organizations eligibility to continue receiving donated tags can be revoked once the judicial process is completed.

R12-4-124. Proof of Domicile:

Comments suggest the Commission amend the rule to establish a category of residency for persons who reside out-of-state but own property in Arizona.

Agency Response: Creating a separate or third category, nonresident with ties to the community, would be difficult to determine considering the current definitions for "resident" and "nonresident" established under statute, see A.R.S. § 17-101(14) and (17).

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

R12-4-123. Expenditure of Funds: The last rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by Governor's Regulatory Review Council (G.R.R.C.) on January 3, 2006. The Commission anticipated the rulemaking would have no impact on persons regulated by the rule because the rule was amended only to comply with Administrative Procedure Act (APA) guidelines for rulemaking language, grammar, and style.

R12-4-109. Approved Trapping Education Course Fee: The last rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the final exempt rulemaking package approved by the Commission on August 2, 2013. The trapping education course fee limitation was previously prescribed under A.R.S. § 17-333.02. The Commission anticipated the rulemaking would have no impact on persons regulated by the rule because the exempt rulemaking made no changes to the maximum trapping education

course fee already established in statute.

For the following rules, the last rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on November 3, 2015:

- **R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife:** The Commission anticipated the rulemaking would have no impact on persons regulated by the rule because the rule was amended only to comply with APA guidelines for rulemaking language, grammar, and style.
- **R12-4-117. Indian Reservations:** The Commission anticipated the rulemaking would either be less burdensome or have no significant impact on persons regulated by the rule because the rule was only amended to reflect statutory labeling changes and clarify that A.R.S. § 17-211(E) authorizes a Game Ranger or Wildlife Manager to inspect all wildlife taken or transported anywhere in this State.
- **R12-4-119. Arizona Game and Fish Department Reserve:** The Commission anticipated the rulemaking would have no impact on persons regulated by the rule because the rule was amended only to comply with APA guidelines for rulemaking language, grammar, and style.
- **R12-4-125. Public Solicitation or Event on Department Property:** The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by allowing mid-level managers to approve minor, incidental solicitations on Department properties as the sponsor could receive the approval or denial of a request more quickly and the Department's administrative burden could be reduced. The Commission anticipated amendments that required a vendor working under a sponsor to provide certificates of insurance to the Department; removed the ability for the Department to waive a requirement due to an applicant's inability to pay a deposit, an insurance premium, or a service provider; and prohibited the possession and use of unlawful drugs could impact public and private individuals or small businesses; however, the Department has a duty to protect state assets. The Commission anticipated the rules could impact small businesses looking to conduct a solicitation or special event on state property in cases where a special event is cancelled (due to costs for deposits, insurance coverage, medical support, security, and sanitary services), however, these are standard requirements that are applicable to most facility rentals. The Commission believed the rulemaking could have a favorable impact on small businesses, such as insurance agents who provide coverage, medical support, security, and sanitary services.

For the following rules, the last rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 2, 2021:

- **R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points:** The Commission anticipated the rulemaking would have no impact on persons regulated by the rule because the rulemaking only replaced the Department website Uniform Resource Location (url) with "Department's website."
- **R12-4-105. License Dealer's License:** The Commission anticipated the rulemaking could impact businesses, both large and small; however, the Commission determined the impact would not affect business revenues or payroll expenditures because the rulemaking only implemented recent changes made

to A.R.S. § 17-338, which removed the five % commission license dealers were authorized to retain as compensation for selling Game and Fish licenses to the public and allow those license dealers to collect and retain a reasonable fee as determined by the license dealer. The rulemaking also prohibited a person who is not authorized to sell licenses on behalf of the Department from selling Department-issued hunting and fishing licenses.

- **R12-4-106. Special Licenses Licensing Time-frames (Table 1. Time-Frames):** The Commission anticipated the rulemaking would have no impact on persons regulated by the rule because the rulemaking only replaced references to "aquatic wildlife stocking permit" with "aquatic wildlife stocking license" and “scientific collecting permit” with “scientific activity license.”
- **R12-4-107. Bonus Point System:** The Commission anticipated the rulemaking would benefit person regulated by the rule because the rulemaking added Sandhill Crane to the list of wildlife for which a bonus point may be purchased or accrued and clarified that a person who is 9 years of age or older may take the Arizona Hunter Education course and shall be awarded one permanent bonus point for each big game species upon the successful completion of the course. The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by establishing an Arizona Conservation Education course that satisfies the education requirement for obtaining a permanent education bonus point for persons age of 18 and older. This change was made to increase the percentage of seat availability in Arizona Hunter Education courses for those who are required to attend and have equal or greater participation by persons who are attending solely for the bonus point. The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by establishing an extended bonus point period to allow a person who was unable to apply for a hunt permit-tag before the computer draw deadline to apply for a bonus point only during a bonus-point only application timeline. The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by clarifying that any bonus point fraudulently obtained, whether purchased or *accrued*, shall be removed from the person's Department record.
- **R12-4-108. Management Unit Boundaries:** The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by updating Management Unit boundaries to conform to the Arizona Department of Transportation's Highway System and providing additional clarity.
- **R12-4-110. Posting and Access to State Land:** The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by clarifying that, although a person may close land to hunting, fishing, and trapping; a person may not deny lawful access to State land.
- **R12-4-113. Small Game Depredation Permit:** The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by requiring a person who was issued a small game depredation permit to report what species and how many individuals were removed from a location to allow the Department to gather information about any significant numbers of individuals removed that might be used as a source for translocations, a place to direct hunters, or other management actions, when desired.
- **R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool:** The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by removing

language requiring the Department to contacting an applicant by telephone thus allowing the Department to use other methods, such as email, to contact a supplemental hunter pool applicant. The Commission anticipated the rulemaking would benefit the Department by requiring a separate application and fee for each species the applicant applies for; similar to the process used by other western states. The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department through compliance with A.R.S. §§ 25-320(P) and 25-502(K) by requiring a person applying for a hunt permit-tag issued through an automated drawing system to provide their Social Security number at the time of application.

- **R12-4-116. Issuance of Limited-Entry Permit-tag:** The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by establishing limited-entry angling and hunting events. These events offer additional opportunities to resident and nonresident recreationist and provide additional revenue to the Department.
- **R12-4-118. Hunt Permit-tag Surrender:** The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by establishing a membership program through which a person could surrender an unused hunt permit-tag and have any bonus points expended for that tag restored and an additional bonus point awarded as if the person was unsuccessful in the computer draw. The rulemaking also allowed a nonprofit organization to return a donated an original, unused hunt permit-tag to the Department when the nonprofit organization cannot find a recipient for the donated hunt permit-tag. This would provide the Department with the opportunity to reissue the tag.
- **R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags:** The Commission anticipated the rulemaking would benefit the Department by requiring an organization to submit the winning bidder's license information to the Department within 60 days of the close of the raffle or auction. The rulemaking also prohibited the winning bidder from reselling the special big game license tag to another person and required the person named on the special big game license tag to possess a valid hunting license.
- **R12-4-121. Tag Transfer:** The Commission anticipated the rulemaking would benefit persons regulated by the rule and the Department by allowing a person to surrender or donate a limited-entry permit-tag and by establishing that once it is determined a nonprofit meets the statutory qualifications, the authorization to receive donated unused tags will remain in effect until revoked by the Department.
- **R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations:** The Commission anticipated the rulemaking would benefit the Department by allowing the donation of bear and mountain lion meat in compliance with A.R.S. § 17-240 and to ensure edible game meat does not go to waste.
- **R12-4-124. Proof of Domicile:** The Commission anticipated the rulemaking would benefit the Department by establishing defining “current address,” requiring a person to present a valid document that contains a current address, and clarifying rule language to make the rule more concise. The rulemaking also removed certified copies of a court order from the list of acceptable proof of domicile.

- **R12-4-126. Reward Payments:** The Commission anticipated the rulemaking would benefit the Department through compliance with A.R.S. § 17-315(B)(1), which authorizes reward payments to persons who report attendant acts of vandalism when they occurred in conjunction with a "take" violation.
- **R12-4-127. Civil Liability for Loss of Wildlife:** The Commission anticipated the rulemaking would benefit the Department by establishing a method through which damages are determined fairly and consistently.

R12-4-103. Duplicate Tags and Licenses: The last rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on August 3, 2021. The Commission anticipated the rulemaking would result in an overall benefit to persons regulated by the rule because the rulemaking only clarified that a person who validated their tag electronically for a harvested animal that was subsequently condemned and surrendered to a Department employee could apply for a duplicate tag upon submitting the condemned meat duplicate tag authorization form issued by the Department.

The following rules were recently amended which does not provide the Department with sufficient time to assess the actual economic, small business, and consumer impacts resulting from the rulemakings:

- **R12-4-102. License, Permit, Stamp, and Tag Fees:** The last rulemaking amended the rule to establish the fee for the 50% reduced-fee license to a person who has been a resident of this State for one year or more immediately before applying for the reduced-fee license and who is a bona fide Purple Heart Medal recipient. The rulemaking became effective September 26, 2022.
- **R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags:** The last rulemaking amended the rule to establish the percentage of archery deer nonpermit-tags available to nonresidents, how that percentage is determined, and provide persons regulated by the rule with the information necessary to obtain an archery deer nonpermit-tag. The percentage shall be 10% of the total number of both resident and nonresident archery deer nonpermit-tags sold, averaged over the most recent five-year period and rounded down to the nearest increment of five. The rulemaking became effective November 26, 2022.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses for Article 1 rules.

10. **If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report for Article 1 rules as follows, except as identified below:

- Permission to pursue rulemaking granted: September 23, 2019
- Notice of Rulemaking Docket Opening: 26 A.A.R. 1765, August 28, 2020
- Notice of Proposed Rulemaking: 26 A.A.R. 299, August 28, 2020
- Public Comment Period: August 28, 2020 through September 28, 2020
- G.R.R.C. approved the Notice of Final Rulemaking at the February 2, 2021 Council Meeting
- Notice of Final Rulemaking: 26 A.A.R. 283, February 26, 2021

The Department did not indicate a course of action in the previous five-year review report for the following rules:
R12-4-103. Duplicate Tags and Licenses
R12-4-109. Approved Trapping Education Course Fee
R12-4-111. Identification Number
R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife
R12-4-117. Indian Reservations
R12-4-119. Arizona Game and Fish Department Reserve
R12-4-123. Expenditure of Funds
R12-4-125. Public Solicitation or Event on Department Property

The following rules were adopted after the previous five-year review report was approved by the Governor's Regulatory Review Council on June 4, 2019:
R12-4-116. Issuance of Limited-Entry Permit-tag
R12-4-127. Civil Liability for Loss of Wildlife

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The purpose of the Arizona Game and Fish Commission (Commission), the Arizona Game and Fish Department (Department), and the Director of the Department is "to manage wildlife and wildlife habitat in this state as provided by law." Laws 2012, Ch. 283 § 3. "Control of the department is vested in the game and fish commission." A.R.S. § 17-201(A). The commission appoints the Director who is "the chief administrative officer of the game and fish department." A.R.S. § 17-211(A).

With regard to general rulemaking authority, the Commission is required to "[a]dopt rules and establish services it deems necessary to carry out the provisions and purposes of [A.R.S. Title 17, Game and Fish]."

Arizona's great abundance and diversity of native wildlife can be attributed to careful management and the important role of the conservation programs developed by the Arizona Game and Fish Department. The Department's management of both game and nongame species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our native species would be in jeopardy. Wildlife can be owned by no person and is held by the state in trust for all the people.

A.A.C. Title 12, Chapter 4, Article 1 contains twenty-six rules denominated as definitions and general provisions. The intent of the Article 1 rules is to provide greater clarity to the rules governing many aspects of hunting, access to state land, and public use of Department property for events in Arizona for residents and non-residents.

Since 2009, the Commission actively seeks to reduce regulatory burdens wherever and whenever possible. Most rules impose no costs on persons regulated by the rule and benefit persons regulated by the rule by adding additional clarity to Commission rules. For example, R12-4-102 establishes the fees for hunt permit-tags issued by computer draw; R12-4-104 establishes the process for applying for a hunt permit-tag through a computer draw; and R12-4-108 clearly describes boundaries for each Management Unit. These rules benefit hunters interested in hunting in Arizona.

The Department actively seeks to ensure its processes and programs align with current technology and circumstances, such as the removing descriptive language related to tag features to provide the Department with greater flexibility in procuring tags, implementing new tag features, and/or offering a 'paperless' tag. The ability to reprint a no-fee duplicate of a license that was purchased online without having to interact with a Department office or license dealer. Rules are also designed to update best business practices, such as removing the option to use a Social Security Number as the license identification number to better protecting privacy and remove the liability associated with having confidential information on the Department's Sportsman Database.

The Department also seeks to align the Department's programs with current circumstances, specifically the decline in those participating in hunting and fishing in the United States. As a means to encourage participation in recreational activities and generate additional revenue, the Commission established a membership program based on the bundling of services, which will keep those who enjoy hunting and fishing up-to-date on the latest hunting, angling, volunteer, and Department activities. The ability to surrender a tag and have bonus points restored is a factor important to persons regulated by the rule. The program's ability to generate the additional revenue required is dependent on the value added by the program, which is anticipated to grow beyond a tag surrender program.

The rules allow for the adoption of updated business practices and represent the most cost-effective and efficient method of fulfilling the Commission's and Department's responsibilities and impose only those requirements that are necessary to meet the Commission's objectives.

When amending Commission rules, the Department tasks a team of subject matter experts to review and make recommendations for rules. In its review, the team considers all comments from the public and agency staff that administer and enforce the rules, historical data, current processes and environment, and the Department's overall mission. The team takes a customer-focused approach, considers each recommendation from a resource perspective and determines whether the recommendation would cause undue harm to the Department's goals and objectives. The team then determines whether the request is in keeping with overarching guidance provided by the Governor, authorized by statute, in keeping with overarching guidance provided by the Commission, consistent with the Department's overall mission, is least burdensome to persons regulated by the rule, if it could be effectively implemented given agency resources, and if it is acceptable to the public.

The public, persons regulated by the rule, and the Department benefit from rules that are understandable.

The Department believes the rules impose the least burden and costs to persons regulated by the rules.

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 following rules are based on state law and federal law is not directly applicable to the rule:

- R12-4-101. Definitions
- R12-4-102. License, Permit, Stamp, and Tag Fees
- R12-4-103. Duplicate Tags and Licenses
- R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points
- R12-4-105. License Dealer's License
- R12-4-106. Special Licenses Licensing Time-frames
  Table 1. Time-Frames
- R12-4-107. Bonus Point System
- R12-4-108. Management Unit Boundaries
- R12-4-109. Approved Trapping Education Course Fee
- R12-4-110. Posting and Access to State Land
- R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife
- R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags
- R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool
- R12-4-116. Issuance of Limited-Entry Permit-tag

- R12-4-117. Indian Reservations
- R12-4-118. Hunt Permit-tag Surrender
- R12-4-119. Arizona Game and Fish Department Reserve
- R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags
- R12-4-121. Tag Transfer
- R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations
- R12-4-123. Expenditure of Funds
- R12-4-124. Proof of Domicile
- R12-4-125. Public Solicitation or Event on Department Property
- R12-4-126. Reward Payments
- R12-4-127. Civil Liability for Loss of Wildlife

The Department has determined the following rule is not more stringent than its corresponding federal laws: R12-4-113. Small Game Depredation Permit, federal regulations 50 C.F.R. 21.41 and 50 C.F.R 21.43 are applicable to the subject of the rule. 50 C.F.R. 21.41 establishes depredation permit requirements as they apply to the take, possession, and transport of migratory birds; 50 C.F.R 21.43 establishes depredation permit requirements specific to blackbirds, cowbirds, crows, grackles, and magpies.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The following rules require the issuance of a "general permit" as defined under A.R.S. § 41-1001(11):

- R12-4-105. License Dealer's License. The License Dealer's License described in the rule falls within the definition of "general permit" and is in compliance with A.R.S. § 41-1037.
- R12-4-113. Small Game Depredation Permit. The small game depredation permit described in the rule falls within the definition of "general permit" and is in compliance with A.R.S. § 41-1037.

The following rules do not require the issuance of a regulatory permit, license, or agency authorization:

- R12-4-101. Definitions
- R12-4-102. License, Permit, Stamp, and Tag Fees
- R12-4-103. Duplicate Tags and Licenses
- R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points
- R12-4-106. Special Licenses Licensing Time-frames
  Table 1. Time-Frames
- R12-4-107. Bonus Point System
- R12-4-108. Management Unit Boundaries

- R12-4-109. Approved Trapping Education Course Fee
- R12-4-110. Posting and Access to State Land
- R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife
- R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags
- R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool
- R12-4-116. Issuance of Limited-Entry Permit-tag
- R12-4-117. Indian Reservations
- R12-4-118. Hunt Permit-tag Surrender
- R12-4-119. Arizona Game and Fish Department Reserve
- R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags
- R12-4-121. Tag Transfer
- R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations
- R12-4-123. Expenditure of Funds
- R12-4-124. Proof of Domicile
- R12-4-125. Public Solicitation or Event on Department Property
- R12-4-126. Reward Payments
- R12-4-127. Civil Liability for Loss of Wildlife

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend the following rules as indicated in this report:

- R12-4-102. License, Permit, Stamp, and Tag Fees
- R12-4-103. Duplicate Tags and Licenses
- R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points
- R12-4-107. Bonus Point System
- R12-4-108. Management Unit Boundaries
- R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags
- R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool
- R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags
- R12-4-121. Tag Transfer
- R12-4-125. Public Solicitation or Event on Department Property
- R12-4-127. Civil Liability for Loss of Wildlife

The Department anticipates requesting an exception to the rulemaking moratorium prescribed under A.R.S. 41-1039(A) by December 2023 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by March 2025, provided the Commission is granted permission to pursue rulemaking.

The Department proposed no action for the following rules:

- R12-4-101. Definitions
- R12-4-105. License Dealer's License
- R12-4-106. Special Licenses Licensing Time-frames
  Table 1. Time-Frames
- R12-4-109. Approved Trapping Education Course Fee
- R12-4-110. Posting and Access to State Land
- R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife
- R12-4-113. Small Game Depredation Permit
- R12-4-116. Issuance of Limited-Entry Permit-tag
- R12-4-117. Indian Reservations
- R12-4-118. Hunt Permit-tag Surrender
- R12-4-119. Arizona Game and Fish Department Reserve
- R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations
- R12-4-123. Expenditure of Funds
- R12-4-124. Proof of Domicile
- R12-4-126. Reward Payments

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-101. Definitions

A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

"Arizona Conservation Education" means the conservation education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation.

"Arizona Hunter Education" means the hunter education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation meeting Association of Fish and Wildlife agreed upon reciprocity standards along with Arizona-specific requirements.

"Attach" means to fasten or affix a tag to a legally harvested animal. An electronic tag is considered attached once the validation code is fastened to the legally harvested animal.

"Bobcat seal" means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

"Bonus point" means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

"Bow" means a long bow, flat bow, recurve bow, or compound bow of which the bowstring is drawn and held under tension entirely by the physical power of the shooter through all points of the draw cycle until the shooter purposely acts to release the bowstring either by relaxing the tension of the toes, fingers, or mouth or by triggering the release of a hand-held release aid.

"Certificate of insurance" means an official document, issued by the sponsor's and sponsor's vendors, or subcontractors insurance carrier, providing insurance against claims for injury to persons or damage to property which may arise from, or in connection with, the solicitation or event as determined by the Department.

"Cervid" means a mammal classified as a Cervidae, which includes but is not limited to caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer; as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at www.itis.gov.

"Commission Order" means a document adopted by the Commission that does one or more of the following:

Open, close, or alter seasons,

Open areas for taking wildlife,

Set bag or possession limits for wildlife,
Set the number of permits available for limited hunts, or
Specify wildlife that may or may not be taken.

"Crossbow" means a device consisting of a bow affixed on a stock having a trigger mechanism to release the bowstring.
"Day-long" means the 24-hour period from one midnight to the following midnight.
"Department property" means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.
"Electronic tag" means a tag that is provided by the Department through an electronic device that syncs with the Department's computer systems.
"Export" means to carry, send, or transport wildlife or wildlife parts out of Arizona to another state or country.
"Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.
"Handgun" means a firearm designed and intended to be held, gripped, and fired by one or more hands, not intended to be fired from the shoulder, and that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a barrel for each single pull of the trigger.
"Hunt area" means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.
"Hunt number" means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.
"Hunt permits" means the number of hunt permit-tags made available to the public as a result of a Commission Order.
"Hunt permit-tag" means a tag for a hunt for which a Commission Order has assigned a hunt number.
"Identification number" means the number assigned to each applicant or license holder by the Department as established under R12-4-111.
"Import" means to bring, send, receive, or transport wildlife or wildlife parts into Arizona from another state or country.
"License dealer" means a business authorized to sell hunting, fishing, and other licenses as established under R12-4-105.
"Limited-entry permit-tag" means a permit made available for a limited-entry fishing or hunting season.
"Live baitfish" means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.
"Management unit" means an area established by the Commission for management purposes.
"Nonpermit-tag" means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.
"Nonprofit organization" means an organization that is recognized under Section 501© of the U.S. Internal Revenue Code.
"Person" has the meaning as provided under A.R.S. § 1-215.
"Proof of purchase," for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.
"Pursue" means to chase, tree, corner or hold wildlife at bay.
"Pursuit-only" means a person may pursue, but not kill, a bear, mountain lion, or raccoon on any management unit that is open to pursuit-only season, as defined under R12-4-318, by Commission Order.
"Pursuit-only permit" means a permit for a pursuit-only hunt for which a Commission Order does not assign a hunt number and the number of permits are not limited.
"Restricted nonpermit-tag" means a tag issued for a supplemental hunt as established under R12-4-115.
"Solicitation" means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.
"Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.
"Sponsor" means the person or persons conducting a solicitation or event.
"Stamp" means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.
"Tag" means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.
"Validation code" means the unique code provided by the Department and associated with an electronic tag.
"Waterdog" means the larval or metamorphosing stage of a salamander.
"Wildlife area" means an area established under 12 A.A.C. 4, Article 8.

B. If the following terms are used in a Commission Order, the following definitions apply:

"Antlered" means having an antler fully erupted through the skin and capable of being shed.
"Antlerless" means not having an antler, antlers, or any part of an antler erupted through the skin.
"Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.
"Buck pronghorn" means a male pronghorn.
"Adult bull bison" means a male bison of any age or any bison designated by a Department employee during an adult bull bison hunt.
"Adult cow bison" means a female bison of any age or any bison designated by a Department employee during an adult cow bison hunt.
"Bull elk" means an antlered elk.
"Designated" means the gender, age, or species of wildlife or the specifically identified wildlife the Department authorizes to be taken and possessed with a valid tag.
"Ram" means any male bighorn sheep.
"Rooster" means a male pheasant.
"Yearling bison" means any bison less than three years of age or any bison designated by a Department employee during a yearling bison hunt.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. § 17-231(A)(1)

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective October 22, 1976 (Supp. 76-5). Amended effective June 29, 1978 (Supp. 78-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-01 renumbered as Section R12-4-101 without change effective August 13, 1981 (Supp. 81-4). Amended effective April 22, 1982 (Supp. 82-2). Amended subsection (A), paragraph (10) effective April 7, 1983 (Supp. 83-2). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsection (A) effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1). Amended by final rulemaking at 27 A.A.R. 2966 (December 24, 2021), effective February 7, 2022; when amended the Commission inadvertently removed the definitions of "Arizona Conservation Education" and "Arizona Hunter Education." These definitions are included as originally published (Supp. 21-4).

R12-4-102. License, Permit, Stamp, and Tag Fees

A. A person who purchases a license, tag, stamp, or permit listed in this Section shall pay at the time of purchase all applicable fees prescribed under this Section or the fees the Director authorizes under R12-4-115.
B. A person who applies to purchase a hunt permit-tag shall submit with the application all applicable fees using acceptable forms of payment as required under R12-4-104(F) and (G).
C. As authorized under A.R.S. § 17-345, the license fees in this Section include a $3 surcharge, except Youth and High Achievement Scout licenses.
D. A person desiring a replacement of a Migratory Bird Stamp shall repurchase the stamp.

Hunting and Fishing License Fees	Resident	Nonresident
General Fishing License	$37	$55
Community Fishing License	$24	$24
General Hunting License	$37	Not available
Combination Hunting and Fishing License	$57	$160
Youth Combination Hunting and Fishing License, fee applies until the applicant's 18th birthday.	$5	$5
High Achievement Scout License, as authorized under A.R.S. §	$5	Not available

17-333(C). Fee applies until the applicant's 21st birthday.		
Short-term Combination Hunting and Fishing License	$15	$20
Youth Group Two-day Fishing License	$25	Not available

Hunt Permit-tag Fees	**Resident**	**Nonresident**
Bear	$25	$150
Bighorn Sheep	$300	$1,800
Bison		
Adult Bulls or any Bison	$1,100	$5,400
Adult Cows	$650	$3,250
Yearling	$350	$1,750
Cow or Yearling	$650	$3,250
Deer and Archery Deer	$45	$300
Youth	$25	$25
Elk	$135	$650
Youth	$50	$50
Javelina	$25	$100
Youth	$15	$15
Pheasant non-archery, non-falconry	Application fee only	Application fee only
Pronghorn	$90	$550
Raptor	Not applicable	$175
Sandhill Crane	$10	$10
Turkey and Archery Turkey	$25	$90
Youth	$10	$10

Nonpermit-tag and Restricted Nonpermit-tag Fees	**Resident**	**Nonresident**
Bear	$25	$150
Bison		
Adult Bulls or any Bison	$1,100	$5,400
Adult Cows	$650	$3,250
Yearling	$350	$1,750
Cow or Yearling	$650	$3,250
Deer	$45	$300
Youth	$25	$25
Elk	$135	$650
Youth	$50	$50
Javelina	$25	$100
Youth	$15	$15
Mountain Lion	$15	$75
Pronghorn	$90	$550
Sandhill Crane	$10	$10
Raptor	Not applicable	$175
Turkey	$25	$90

Youth	$10	$10

Stamps and Special Use Fees	**Resident**	**Nonresident**
Bobcat Seal	$3	$3
Limited-entry Permit	Application fee only	Application fee only
State Migratory Bird Stamp	$5	$5

Other License Fees	**Resident**	**Nonresident**
Challenged Hunter Access/Mobility Permit (CHAMP)	Application fee only	Application fee only
Crossbow Permit	Application fee only	Application fee only
Fur Dealer's License	$115	$115
Reduced-fee Disabled Veteran's License, available to a resident disabled veteran who receives compensation from the U.S. government for a service-connected disability. This fee shall be equal to the fee required for the resident Combination Hunting and Fishing License, reduced by 25%, and then rounded up to the nearest even dollar.	$42	Not available
Reduced-fee Purple Heart Medal License, available to a resident who is a bona fide Purple Heart Medal recipient. This fee shall be equal to the fee required for the resident Combination Hunting and Fishing License, reduced by 50%, and then rounded down to the nearest even dollar.	$28	Not available
Guide License	$300	$300
License Dealer's License	$100	$100
License Dealer's Outlet License	$25	$25
Pursuit-only Permit	$20	$100
Taxidermist License	$150	$150
Trapping License	$30	$275
Youth	$10	$10

Administrative Fees	**Resident**	**Nonresident**
Duplicate License Fee, in the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year.	$8	$8
Application Fee	$13	$15

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-333, 17-335.01, 17-342, 17-345, and 41-1005

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective March 31, 1977 (Supp. 77-2). Amended effective June 28, 1977 (Supp. 77-3). Amended effective October 20, 1977 (Supp. 77-5). Amended effective January 1, 1979 Supp. 78-6). Amended effective June 4, 1979 (Supp. 79-3). Amended effective January 1, 1980 (Supp. 79-6). Amended paragraphs (1), (7) through (11), (13), (15), (29), (30), and (32) effective January 1, 1981 (Supp. 80-5). Former Section R12-4-30 renumbered as Section R12-4-102 without change effective August 13, 1981. Amended effective August 31, 1981 (Supp. 81-4). Amended effective September 15, 1982 unless otherwise noted in subsection (D) (Supp. 82-5). Amended effective January 1, 1984 (Supp. 83-4). Amended subsections (A) and (C) effective January 1, 1985 (Supp. 84-5). Amended effective January 1, 1986 (Supp. 85-5). Amended subsection (A), paragraphs (1), (2), (8) and (9) effective January 1, 1987; Amended by adding a new subsection (A), paragraph (31) and renumbering accordingly effective July 1, 1987. Both amendments filed November 5, 1986 (Supp. 86-6). Amended subsections (A) and (C) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsections (A) and (C) filed December 30, 1988, effective January 1, 1989"; Amended subsection (C) effective April 28, 1989 (Supp.

89-2). Section R12-4-102 repealed, new Section R12-4-102 filed as adopted November 26, 1990, effective January 1, 1991 (Supp. 90-4). Amended effective September 1, 1992; filed August 7, 1992 (Supp. 92-3). Amended effective January 1, 1993; filed December 18, 1993 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective December 16, 1995 (Supp. 94-4). Amended effective January 1, 1997; filed in the Office of the Secretary of State November 14, 1995 (Supp. 95-4). Amended subsection (D), paragraph (4), and subsection (E), paragraph (10), effective October 1, 1996; filed in the Office of the Secretary of State July 12, 1996 (Supp. 96-3). Amended subsection (B), paragraph (6) and subsection (E) paragraph (4), effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 or January 1, 2001, as designated within the text of the Section (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 1157, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2823, effective August 13, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 1391, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 25 A.A.R. 1854, effective July 2, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 27 A.A.R. 400, effective July 1, 2021 (Supp. 21-1). Amended by final exempt rulemaking at 27 A.A.R. 1076, effective August 21, 2021 (Supp. 21-2). Amended by final exempt rulemaking at 27 A.A.R. 2916 (December 17, 2021), effective February 7, 2022 (Supp. 21-4).

R12-4-103. Duplicate Tags and Licenses

A. Under A.R.S. § 17-332(C), the Department and its license dealers may issue a duplicate license or tag to an applicant who:
1. Pays the applicable fee prescribed under R12-4-102, and
2. Signs an affidavit. The affidavit is furnished by the Department and is available at any Department office or license dealer.

B. The applicant shall provide the following information on the affidavit:
1. The applicant's personal information:
   a. Name;
   b. Department identification number, when applicable;
   c. Residency status and number of years of residency immediately preceding application, when applicable;
2. The original license or tag information:
   a. Type of license or tag;
   b. Place of purchase;
   c. Purchase date, when available; and
3. Disposition of the original tag for which a duplicate is being purchased:
   a. The tag was not used and is lost, destroyed, mutilated, or otherwise unusable; or
   b. The tag was attached to a harvested animal that was subsequently condemned and the carcass and all parts of the animal were surrendered to a Department employee as required under R12-4-112(B) and (C). An applicant applying for a duplicate tag under this subsection shall also submit the condemned meat duplicate tag authorization form issued by the Department.

C. In the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-331(A) and 17-332

Historical Note

Amended effective June 7, 1976 (Supp. 76-3). Amended effective October 20, 1977 (Supp. 77-5). Former Section R12-4-07 renumbered as Section R12-4-103 without change effective August 13, 1981 (Supp. 81-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 2966 (December 24, 2021), effective February 7, 2022 (Supp. 21-4).

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points

A. For the purposes of this Section, "group" means all applicants who placed their names on a single application as part of the same application.

B. A person is eligible to apply:
1. For a hunt permit-tag if the person:
   a. Is at least 10 years of age at the start of the hunt for which the person is applying;
   b. Has successfully completed a Department-sanctioned hunter education course by the start date of the hunt for which the person is applying, when the person is between 9 and 14 years of age;
   c. Has not reached the bag limit established under subsection (J) for that genus; and
   d. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.
2. For a bonus point if the person:
   a. Is at least 10 years of age by the application deadline date; and
   b. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.

C. An applicant shall apply at the times, locations, and in the manner and method established by the hunt permit-tag application schedule published by the Department and available at any Department office, on the Department's website, or a license dealer.
1. The Commission shall set application deadline dates for hunt permit-tag computer draw applications through the hunt permit-tag application schedule.
2. The Director has the authority to extend any application deadline date if a problem occurs that prevents the public from submitting a hunt permit-tag application within the deadlines set by the Commission.
3. The Commission, through the hunt permit-tag application schedule, shall designate the manner and method of submitting an application, which may require an applicant to apply online only. If the Commission requires applicants to use the online method, the Department shall accept paper applications only in the event of a Department systems failure.

D. An applicant for a hunt permit-tag or a bonus point shall complete and submit a Hunt Permit-tag Application. The application form is available from any Department office, a license dealer, or on the Department's website.

E. An applicant shall provide the following information on the Hunt Permit-tag Application:
1. The applicant's personal information:
   a. Name;
   b. Date of birth,
   c. Social security number, as required under A.R.S. §§ 25-320(P) and 25-502(K);
   d. Department identification number, when applicable;
   e. Residency status and number of years of residency immediately preceding application, when applicable;
   f. Mailing address, when applicable;
   g. Physical address;
   h. Telephone number, when available; and
   i. E-mail address, when available;
2. If the applicant possesses a valid license authorizing the take of wildlife in this state, the number of the applicant's license;
3. If the applicant does not possess a valid license at the time of the application, the applicant shall purchase a license as established under subsection (K). The applicant shall provide all of the following information on the license application portion of the Hunt Permit-tag Application:
   a. Physical description, to include the applicant's eye color, hair color, height, and weight;
   b. Residency status and number of years of residency immediately preceding application, when applicable;
   c. Type of license for which the person is applying; and
4. Certify the information provided on the application is true and accurate;
5. An applicant who is:
   a. Under the age of 10 and is submitting an application for a hunt other than big game is not required to have a license under this Chapter. The applicant shall indicate "youth" in the space provided for the license number on the Hunt Permit-tag Application.
   b. Age nine or older and is submitting an application for a big game hunt is required to purchase an appropriate license as required under this Section. The applicant shall either enter the appropriate license number in the space provided for the license number on the Hunt Permit-tag Application Form or purchase a license at the time of application, as applicable.

F. In addition to the information required under subsection (E), an applicant shall also submit all applicable fees established under R12-4-102, as follows:

1. When applying electronically:
   a. The permit application fee; and
   b. The license fee, when the applicant does not possess a valid license at the time of application. The applicant shall submit payment in U.S. currency using valid credit or debit card.
   c. If an applicant is successful in the computer draw, the Department shall charge the hunt permit-tag fee using the credit or debit card furnished by the applicant.
2. When applying manually:
   a. The fee for the applicable hunt permit-tag;
   b. The permit application fee; and
   c. The license fee if the applicant does not possess a valid license at the time of application. The applicant shall submit payment by certified check, cashier's check, or money order made payable in U.S. currency to the Arizona Game and Fish Department.

G. An applicant shall apply for a specific hunt or a bonus point by the current hunt number. If all hunts selected by the applicant are filled at the time the application is processed in the computer draw, the Department shall deem the application unsuccessful, unless the application is for a bonus point.
1. An applicant shall make all hunt choices for the same genus within one application.
2. An applicant shall not include applications for different genera of wildlife in the same envelope.

H. An applicant shall submit only one valid application per genus of wildlife for any calendar year, except:
1. If the bag limit is one per calendar year, an unsuccessful applicant may re-apply for remaining hunt permit-tags in unfilled hunt areas, as specified in the hunt permit-tag application schedule.
2. For genera that have multiple draws within a single calendar year, a person who successfully draws a hunt permit-tag during an earlier season may apply for a later season for the same genus if the person has not taken the bag limit for that genus during a preceding hunt in the same calendar year.
3. If the bag limit is more than one per calendar year, a person may apply for remaining hunt permit-tags in unfilled hunt areas as specified in the hunt permit-tag application schedule.

I. All members of a group shall apply for the same hunt numbers and in the same order of preference.
1. No more than four persons may apply as a group.
2. The Department shall not issue a hunt permit-tag to any group member unless sufficient hunt permit-tags are available for all group members.

J. A person shall not apply for a hunt permit-tag for:
1. Rocky Mountain or desert bighorn sheep if the person has met the lifetime bag limit for that sub-species.
2. Bison if the person has met the lifetime bag limit for that species.
3. Any species when the person has reached the bag limit for that species during the same calendar year for which the hunt permit-tag applies.

K. To participate in:
1. The computer draw system, an applicant shall possess an appropriate hunting license that shall be valid, either:
   a. On the last day of the application deadline for that computer draw, as established by the hunt permit-tag application schedule published by the Department, or
   b. On the last day of an extended deadline date, as authorized under subsection (C)(2).
   c. If an applicant does not possess an appropriate hunting license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application.
2. The bonus point system, an applicant shall comply with the requirements established under R12-4-107.

L. The Department shall reject as invalid a Hunt Permit-Tag Application not prepared or submitted in accordance with this Section or not prepared in a legible manner.

M. Any hunt permit-tag issued for an application that is subsequently found not to be in accordance with this Section is invalid.

N. The Department or its authorized agent shall deliver hunt permit-tags to successful applicants. The Department shall return application overpayments to the applicant designated "A" on the Hunt Permit-tag Application. The Department shall not refund:
1. A permit application fee.
2. A license fee submitted with a valid application for a hunt permit-tag or bonus point.
3. An overpayment of five dollars or less. The Department shall consider the overpayment to be a donation to the Arizona Game and Fish Fund.

O. The Department shall award a bonus point for the appropriate species to an applicant when the payment submitted is less than the required fees, but is sufficient to cover the application fee and, when applicable, license fee.

P. When the Department determines a Department error, as defined under subsection (P)(3), caused the rejection or denial of a valid application:

1. The Director may authorize either:
   a. The issuance of an additional hunt permit-tag, provided the issuance of an additional hunt permit-tag will have no significant impact on the wildlife population to be hunted and the application for the hunt permit-tag would have otherwise been successful based on its random number, or
   b. The awarding of a bonus point when a hunt permit-tag is not issued.
2. A person who is denied a hunt permit-tag or a bonus point under this subsection may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.
3. For the purposes of this subsection, "Department error" means an internal processing error that:
   a. Prevented a person from lawfully submitting an application for a hunt permit-tag,
   b. Caused a person to submit an invalid application for a hunt permit-tag,
   c. Caused the rejection of an application for a hunt permit-tag,
   d. Failed to apply an applicant's bonus points to a valid application for a hunt permit-tag, or
   e. Caused the denial of a hunt permit-tag.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 25-320(P), 25-502(K), and 25-518

Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective June 28, 1977 (Supp. 77-3). Amended effective July 24, 1978 (Supp. 78-4). Former Section R12-4-06 renumbered as Section R12-4-104 without change effective August 13, 1981. Amended subsections (N), (O), and (P) effective August 31, 1981 (Supp. 81-4). Former Section R12-4-104 repealed, new Section R12-4-104 adopted effective May 12, 1982 (Supp. 82-3). Amended subsection (D) as an emergency effective December 27, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-6). Emergency expired. Amended effective June 20, 1983 (Supp. 83-3). Amended subsection (F)(3) effective September 12, 1984. Amended subsection (F)(9) and added subsections (F)(10) and (G)(3) effective October 31, 1984 (Supp. 84-5). Amended effective May 5, 1986 (Supp. 86-3). Amended effective June 4, 1987 (Supp. 87-2). Section R12-4-104 repealed, new Section R12-4-104 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-105. License Dealer's License

A. For the purposes of this Section, unless the context otherwise requires:
"Dealer number" means the unique number assigned by the Department to a dealer outlet.
"Dealer outlet" means a specified location authorized to sell licenses under a license dealer's license.
"License" means any hunting or fishing license, permit, stamp, or tag that may be sold by a dealer or dealer outlet under this Section.
"License dealer" means a business licensed by the Department to sell licenses from one or more dealer outlets.
"License Dealer Portal" means the secure website provided by the Department for issuing licenses and permits and accessing a license dealer's account.

B. A person shall not sell or issue licenses without authorization from the Department. A license dealer's license authorizes a person to issue licenses on behalf of the Department. A person is eligible to apply for a license dealer's license, provided all of the following criteria are met:
1. The person's privilege to sell licenses for the Department has not been revoked or canceled under A.R.S. §§ 17-334, 17-338, or 17-339 within the two calendar years immediately preceding the date of application;
2. The person's credit record or assets assure the Department that the value of the licenses shall be adequately protected;
3. The person agrees to assume financial responsibility for licenses provided by the Department at the maximum value established under R12-4-102.

C. A person shall apply for a license dealer's license by submitting an application to any Department office. The application is furnished by the Department and is available at any Department office. A license dealer license applicant shall provide all of the following information on the application:
1. The principal business or corporation information:

a. Name,
b. Physical address, and
c. Telephone number;
d. If not a corporation, the applicant shall provide the information required under subsections (C)(1)(a), (b), and (c) for each owner;

2. The contact information for the person responsible for ensuring compliance with this Section:
   a. Name,
   b. Business address, and
   c. Business telephone number;
3. Whether the applicant has previously sold licenses under A.R.S. § 17-334;
4. Whether the applicant is seeking renewal of an existing license dealer's license;
5. Credit references and a statement of assets and liabilities; and
6. Dealer outlet information:
   a. Name,
   b. Physical address,
   c. Telephone number, and
   d. Name of the person responsible for ensuring compliance with this Section at each dealer outlet.

D. A license dealer may request to add dealer outlets to the license dealer's license, at any time during the license year, by submitting the application form containing the information required under subsection (C) to the Department and paying the fee established under R12-4-102.

E. An applicant who is denied a license dealer's license under this Section may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

F. The Department shall:
1. Provide to the license dealer all licenses that the license dealer will make available to the public for sale,
2. Authorize the license dealer to use the dealer's own license stock, or
3. Authorize the license dealer to issue licenses and permits online via the Department's License Dealer Portal.

G. Upon receipt of licenses provided by the Department, the license dealer shall verify the licenses received are the licenses identified on the shipment inventory provided by the Department with the shipment.
1. Within five working days from receipt of shipment, the person performing the verification shall:
   a. Clearly designate any discrepancies on the shipment inventory,
   b. Sign and date the shipping inventory, and
   c. Return the signed shipping inventory to the Department.
2. The Department shall verify any discrepancies identified by the license dealer and credit or debit the license dealer's inventory accordingly.

H. A license dealer shall maintain an inventory of licenses for sale to the public at each outlet.

I. A license dealer's license holder shall transmit to the Department all collected license or permit fees established under R12-4-102.
1. A license dealer's license holder may collect and retain a reasonable and commensurate fee for its services.
2. Each license dealer's license holder shall identify to the public the Department's license fees separately from any other costs.

J. A license dealer may request additional licenses in writing or verbally.
1. The request shall include:
   a. The name of the license dealer,
   b. The assigned dealer number,
   c. A list of the licenses needed, and
   d. The name of the person making the request.
2. Within 10 calendar days from receipt of a request, the Department shall provide the licenses requested, unless:
   a. The license dealer failed to acknowledge licenses previously provided to the license dealer, as required under subsection (G);
   b. The license dealer failed to transmit license fees, as required under subsection (J); or
   c. The license dealer is not in compliance with this Section and all applicable statutes and rules.

K. A license dealer shall transmit to the Department all license fees collected by the tenth day of each month, prescribed under A.R.S. § 17-338(A). Failure to comply with the requirements of this subsection shall result in the cancellation of the license dealer's license, as authorized under A.R.S. § 17-338(A).

L. A license dealer shall submit a monthly report to the Department by the tenth day of each month, as prescribed under A.R.S. § 17-339.
1. The monthly report form is furnished by the Department.

2. A monthly report is required regardless of whether or not activities were performed.
3. Failure to submit the monthly report in compliance with this subsection shall be cause to cancel the license dealer's license.
4. The license dealer shall include in the monthly report all of the following information for each outlet:
   a. Name of the dealer;
   b. The assigned dealer number;
   c. Reporting period;
   d. Number of sales and dollar amount of sales for reporting period, by type of license sold;
   e. Debit and credit adjustments for previous reporting periods, if any;
   f. Number of affidavits received for which a duplicate license was issued under R12-4-103;
   g. List of lost or missing licenses; and
   h. Printed name and signature of the preparer.
5. In addition to the information required under subsection (L), the license dealer shall also provide the affidavit for each duplicate license issued by the dealer during the reporting period.
   a. The affidavit is furnished by the Department and is included in the license book.
   b. A license dealer who fails to submit the affidavit for a duplicate license issued by the license dealer shall remit to the Department the actual cash value of the original license replaced.

L. The Department shall provide written notice of suspension and demand the return of all inventory within five calendar days from any license dealer who:
1. Fails to transmit monies due the Department under A.R.S. § 17-338 by the deadline established under subsection (J);
2. Issues to the Department more than one check with insufficient funds during a calendar year; or
3. Otherwise fails to comply with this Section and all applicable statutes and rules.

M. As prescribed under A.R.S. § 17-338, the actual cash value of licenses not returned to the Department is due and payable to the Department within 15 working days from the date the Department provides written notice to the license dealer. This includes, but is not limited to:
1. Licenses not returned upon termination of business by a license dealer; or
2. Licenses reported by a dealer outlet or discovered by the Department to be lost, missing, stolen, or destroyed for any reason.

N. In addition to those violations that may result in revocation, suspension, or cancellation of a license dealer's license as prescribed under A.R.S. §§ 17-334, 17-338, and 17-339, the Commission may revoke a license dealer's license if the license dealer or an employee of the license dealer is convicted of counseling, aiding, or attempting to aid any person in obtaining a fraudulent license.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-332, 17-333, 17-334, 17-338, and 17-339

Historical Note

Amended effective June 7, 1976 (Supp. 77-3). Former Section R12-4-08 renumbered as Section R12-4-105 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-106. Special Licenses Licensing Time-frames

A. For the purposes of this Section, the following definitions apply:
"Administrative review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(1).
"License" means any permit or authorization issued by the Department and listed under subsection (H).
"Overall time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(2).
"Substantive review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(3).

B. As required under A.R.S. § 41-1072 et seq., within the overall time-frames listed in the Table 1. Time-Frames, the Department shall either:
1. Grant a license to an applicant after determining the applicant meets all of the criteria required by statute and the governing rule; or
2. Deny a license to an applicant when the Department determines the applicant does not meet all of the criteria required by statute and the governing rule.

a. The Department may deny a license at any point during the review process if the information provided by the applicant demonstrates the applicant is not eligible for the license as prescribed under statute or the governing rule.
b. The Department shall issue a written denial notice when it is determined that an applicant does not meet all of the criteria for the license.
c. The written denial notice shall provide:
i. The Department's justification for the denial, and
ii. When a hearing or appeal is authorized, an explanation of the applicant's right to a hearing or appeal.

C. During the overall time-frame:
1. The applicant and the Department may agree in writing to extend the overall time-frame.
2. The substantive review time-frame shall not be extended by more than 25% of the overall time-frame.

D. An applicant may withdraw an application at any time.

E. The administrative review time-frame shall begin upon the Department's receipt of an application.
1. During the administrative review time-frame, the Department may return to the applicant, without denial, an application that is missing any of the information required under R12-4-409 and the rule governing the specific license. The Department shall issue to the applicant a written notice that identifies all missing information and indicates the applicant has 30 days in which to provide the missing information.
2. The administrative review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the notice until the date the Department receives the missing information.
3. If an applicant fails to respond to a request for missing information within 30 days, the Department shall consider the application withdrawn.

F. The substantive review time-frame shall begin when the Department determines an application is complete.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The written notice shall:
a. Identify the additional information, and
b. Indicate the applicant has 30 days in which to submit the additional information.
c. The Department and the applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information.
d. If an applicant fails to respond to a request for additional information within 30 days, the Department shall consider the application withdrawn.
2. The substantive review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the request until the date the Department receives the additional information.

G. If the last day of the time-frame period falls on a Saturday, Sunday, or an official State holiday, the Department shall consider the next business day the time-frame period's last day. All periods listed are:
1. Calendar days, and
2. Maximum time periods.

H. The Department may grant or deny a license in less time than specified in Table 1. Time-Frames.

Table 1. Time-Frames

Name of Special License	Governing Rule	Administrative Review Time-frame	Substantive Review Time-frame	Overall Time-frame
Aquatic Wildlife Stocking License	R12-4-410	10 days	170 days	180 days
Authorization for Use of Drugs on Wildlife	R12-4-309	20 days	70 days	90 days
Challenged Hunter Access/Mobility Permit	R12-4-217	1 day	29 days	30 days
Crossbow Permit	R12-4-216	1 day	29 days	30 days
Disabled Veteran's License	R12-4-202	1 day	29 days	30 days
Fishing Permits	R12-4-310	10 days	20 days	30 days
Game Bird License	R12-4-414	10 days	20 days	30 days
Guide License	R12-4-208	10 days	20 days	30 days
License Dealer's License	R12-4-105	10 days	20 days	30 days
Live Bait Dealer's License	R12-4-411	10 days	20 days	30 days

Pioneer License	R12-4-201	1 day	29 days	30 days
Private Game Farm License	R12-4-413	10 days	20 days	30 days
Scientific Activity License	R12-4-418	10 days	20 days	30 days
Small Game Depredation Permit	R12-4-113	10 days	20 days	30 days
Sport Falconry License	R12-4-422	10 days	20 days	30 days
Taxidermy Registration	R12-4-204	10 days	20 days	30 days
Watercraft Agents	R12-4-509	10 days	20 days	30 days
White Amur Stocking License	R12-4-424	10 days	20 days	30 days
Wildlife Holding License	R12-4-417	10 days	20 days	30 days
Wildlife Rehabilitation License	R12-4-423	10 days	50 days	60 days
Wildlife Service License	R12-4-421	10 days	50 days	60 days
Zoo License	R12-4-420	10 days	20 days	30 days

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 41-1072 and 41-1073

Historical Note

Editorial correction subsections (F) through (G) (Supp. 78-5). Former Section R12-4-09 renumbered as Section R12-4-106 without change effective August 13, 1981 (Supp. 81-4). Repealed effective May 27, 1992 (Supp. 92-2). New Section adopted June 10, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 1854, effective July 2, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-107. Bonus Point System

A. For the purpose of this Section, the following definitions apply:
"Bonus point hunt number" means the hunt number assigned in a Commission Order for use by an applicant who is applying for a bonus point only.
"Loyalty bonus point" means a bonus point awarded to a person who has submitted a valid application for a hunt permit-tag or a bonus point for a specific genus identified in subsection (B) at least once annually for a consecutive five-year period.

B. The bonus point system grants a person one random number entry in each computer draw for bear, bighorn sheep, bison, deer, elk, javelina, pronghorn, Sandhill crane, or turkey for each bonus point that person has accumulated under this Section.
1. Each bonus point random number entry is in addition to the entry normally granted under R12-4-104.
2. When processing a "group" application, as defined under R12-4-104, the Department shall use the average number of bonus points accumulated by all persons in the group, rounded to the nearest whole number. If the average number of bonus points is equal to or greater than .5, the total will be rounded to the next higher number.
3. The Department shall credit a bonus point under an applicant's Department identification number for the genus on the application.
4. The Department shall not transfer bonus points between persons or genera.

C. The Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application provided the following apply:
1. The application is unsuccessful in the computer draw or the application is for a bonus point only;
2. The application is not for a hunt permit-tag leftover after the computer draw and available on a first-come, first-served basis as established under R12-4-114; and
3. The applicant either provides the appropriate hunting license number on the application, or submits an application and fees for the applicable license with the Hunt Permit-tag Application Form, as applicable.

D. An applicant who purchases a bonus point only shall:
1. Submit a valid Hunt Permit-tag Application, as prescribed under R12-4-104 at the times, locations, and in the manner and method established by the schedule published by the Department and available at any Department office, on the Department's website, or a license dealer.
   a. When the application is submitted for a hunt permit-tag or bonus point, the Department shall reject any application that:

i. Indicates the bonus point only hunt number as any choice other than the first-choice,
ii. Includes any other hunt number on the application,
iii. Includes more than one Hunt Permit-tag Application per genus per computer draw, or
iv. Is submitted after the application deadline for that specific computer draw.

2. When the application is submitted for a bonus point during the extended bonus point period, the Department shall reject any application that:
   i. Includes more than one Hunt Permit-tag Application per genus, or
   ii. Is submitted after the application deadline for that extended bonus point period.
3. Include the applicable fees:
   a. Application fee, and
   b. Applicable license fee, required when the applicant does not possess a valid license at the time of application and the applicant is applying for a hunt permit-tag.

E. With the exception of the conservation education and hunter education bonus points, each accumulated bonus point is valid only for the genus designated on the Hunt Permit-tag Application.

F. With the exception of a permanent bonus point awarded for conservation education or hunter education and a loyalty bonus point which is accrued and forfeited as established under subsection (L), a person's accumulated bonus points for a genus are expended if:
1. The person is issued a hunt permit-tag for that genus in a computer draw;
2. The person fails to submit a Hunt Permit-tag Application for that genus for five consecutive years; or
3. The person purchases a surrendered tag as prescribed under R12-4-118(F)(1), (2), or (3).

G. Notwithstanding subsection (F), the Department shall restore any expended bonus points to a person who surrenders or transfers a tag in compliance with R12-4-118 or R12-4-121.

H. An applicant issued a first-come, first-served hunt permit-tag under R12-4-114(C)(2)(e) after the computer draw does not expend bonus points for that genus.

I. An applicant who is unsuccessful for a first-come, first-served hunt permit-tag made available by the Department after the computer draw is not eligible to receive a bonus point.

J. The Department shall award one permanent bonus point for each genus upon a person's first graduation from either:
1. A Department-sanctioned Arizona Hunter Education Course completed after January 1, 1980, or
2. The Department's Arizona Conservation Education Course completed after January 1, 2021.
   a. Course participants are required to provide the following information upon registration, the participants:
      i. Name;
      ii. Mailing address;
      iii. Telephone number;
      iv. E-mail address, when available;
      v. Date of birth; and
      vi. Department ID number, when applicable.
   b. The Arizona Game and Fish Department-certified Instructor shall submit the course paperwork to the Department within 10 business days of course completion. Course paperwork must be received by the Department no less than 30 days before the computer draw application deadline, as specified in the hunt permit-tag application schedule in order for the Department to assign hunter education bonus points in the next computer draw.
   c. Any person who is nine years of age or older may participate in a hunter education course or the Department's conservation education course. When the person is under 10 years of age, the hunter education completion card and certificate shall become valid on the person's 10th birthday.
   d. The Department shall not award hunter education bonus points for any of the following specialized hunter education courses:
      i. Bowhunter Education,
      ii. Trapper Education, or
      iii. Advanced Hunter Education.

K. The Department provides an applicant's total number of accumulated bonus points on the Department's application website or IVR telephone system.
1. If a person believes the total number of accumulated bonus points is incorrect, the person may request proof of compliance with this Section, from the Department, to prove Department error.
2. In the event of an error, the Department shall correct the person's record.

L. The following provisions apply to the loyalty bonus point program:
1. An applicant who submits a valid application at least once a year for a hunt permit-tag or a bonus point for a specific genus consecutively for a five-year period shall accrue a loyalty bonus point for that genus.

2. Except as established under subsection (N), once a loyalty bonus point is accrued, the applicant shall retain the loyalty bonus point provided the applicant annually submits an application, with funds sufficient to cover all application fees and applicable license fees for each applicant listed on the application, for a hunt permit-tag or a bonus point for the genus for which the loyalty bonus point was accrued.
3. An applicant who fails to apply in any calendar year for a hunt permit-tag or bonus point for the genus for which the loyalty bonus point was accrued shall forfeit the loyalty bonus point for that genus.
4. A loyalty bonus point is accrued in addition to all other bonus points.

M. A military member, military reserve member, member of the National Guard, or emergency response personnel with a public agency may request the reinstatement of any expended bonus points for a successful Hunt Permit-tag Application.
1. To request reinstatement of expended bonus points under these circumstances, an applicant shall submit all of the following information to the Arizona Game and Fish Department, Draw Section, 5000 W. Carefree Highway, Phoenix, AZ 85086:
   a. Evidence of mobilization or change in duty status, such as a letter from the public agency or official orders; or
   b. An official declaration of a state of emergency from the public agency or authority making the declaration of emergency, if applicable; and
   c. The valid, unused hunt permit-tag.
2. The Department shall deny requests post-marked after the beginning date of the hunt for which the hunt permit-tag is valid, unless the person also submits, with the request, evidence of mobilization, activation, or a change in duty status that precluded the applicant from submitting the hunt permit-tag before the beginning date of the hunt.
3. Under A.R.S. § 17-332(E), no refunds for a license or hunt permit-tag will be issued to an applicant who applies for reinstatement of bonus points under this subsection.
4. Reinstatement of bonus points under this subsection is not subject to the requirements established under R12-4-118.

N. It is unlawful for a person to purchase or accrue a bonus point by fraud or misrepresentation and any bonus point so obtained shall be removed from the person's Department record.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2) and 17-231(A)(8)

Historical Note

Former Section R12-4-03 renumbered as Section R12-4-107 without change effective August 13, 1981 (Supp. 81-4). Section R12-4-107 repealed, new Section R12-4-107 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective July 29, 1992 (Supp. 92-3). Section R12-4-107 repealed, new Section R12-4-107 adopted effective January 1, 1999; filed with the Office of the Secretary of State February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-108. Management Unit Boundaries

A. For the purpose of this Section, parentheses mean "also known as," and the following definitions shall apply:
"FH" means forest highway.
"FR" means forest road.
"Hwy" means Highway.
"I-8" means Interstate Highway 8.
"I-10" means Interstate Highway 10.
"I-15" means Interstate Highway 15.
"I-17" means Interstate Highway 17.
"I-19" means Interstate Highway 19.
"I-40" means Interstate Highway 40.
"mp" means "milepost."

B. The state is divided into units for the purpose of managing wildlife. Each unit is identified by a number, or a number and letter. For the purpose of this Section, Indian reservation land contained within any management unit is not under the jurisdiction of the Arizona Game and Fish Commission or the Arizona Game and Fish Department.

C. Management unit descriptions are as follows:
Unit 1 – Beginning at the New Mexico state line and U.S. Hwy 60; west on U.S. Hwy 60 to Vernon Junction; southerly

on the Vernon-McNary road (FR 224) to the White Mountain Apache Indian Reservation boundary; east and south along the reservation boundary to Black River; east and north along Black River to the east fork of Black River; north along the east fork to Three Forks; and continuing north and east on the Three Forks-Williams Valley Alpine Rd. (FR 249) to U.S. Hwy 180; east on U.S. Hwy 180 to the New Mexico state line; north along the state line to U.S. Hwy 60.

Unit 2A – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); north on U.S. Hwy 191 (AZ Hwy 61) to the Navajo Indian Reservation boundary; westerly along the reservation boundary to AZ Hwy 77; south on AZ Hwy 77 to Exit 292 on I-40; west on the westbound lane of I-40 to Exit 286; south on AZ Hwy 77 to U.S. Hwy 180; southeast on U.S. Hwy 180 to AZ Hwy 180A; south on AZ Hwy 180A to AZ Hwy 61; east on AZ Hwy 61 to U.S. Hwy 180 (AZ Hwy 61); east to U.S. Hwy 191 at St. Johns; except those portions that are sovereign tribal lands of the Zuni Tribe.

Unit 2B – Beginning at Springerville; east on U.S. Hwy 60 to the New Mexico state line; north along the state line to the Navajo Indian Reservation boundary; westerly along the reservation boundary to U.S. Hwy 191 (AZ Hwy 61); south on U.S. Hwy 191 (U.S. Hwy 180) to Springerville.

Unit 2C – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); west on to AZ Hwy 61 Concho; southwest on AZ Hwy 61 to U.S. Hwy 60; east on U.S. Hwy 60 to U.S. Hwy 191 (U.S. Hwy 180); north on U.S. Hwy 191 (U.S. Hwy 180) to St. Johns.

Unit 3A – Beginning at the junction of U.S. Hwy 180 and AZ Hwy 77; south on AZ Hwy 77 to AZ Hwy 377; southwesterly on AZ Hwy 377 to AZ Hwy 277; easterly on AZ Hwy 277 to Snowflake; easterly on the Snowflake-Concho Rd. to U.S. Hwy 180A; north on U.S. Hwy 180A to U.S. Hwy 180; northwesterly on U.S. Hwy 180 to AZ Hwy 77.

Unit 3B – Beginning at Snowflake; southerly along AZ Hwy 77 to U.S. Hwy 60; southwesterly along U.S. Hwy 60 to the White Mountain Apache Indian Reservation boundary; easterly along the reservation boundary to the Vernon-McNary Rd. (FR 224); northerly along the Vernon-McNary Rd. to U.S. Hwy 60; west on U.S. Hwy 60 to AZ Hwy 61; northeasterly on AZ Hwy 61 to AZ Hwy 180A; northerly on AZ Hwy 180A to Concho-Snowflake Rd.; westerly on the Concho-Snowflake Rd. to Snowflake.

Unit 3C – Beginning at Snowflake; westerly on AZ Hwy 277 to AZ Hwy 260; westerly on AZ Hwy 260 to the Sitgreaves National Forest boundary with the Tonto National Forest; easterly along the Apache-Sitgreaves National Forest boundary to U.S. Hwy 60 (AZ Hwy 77); northeasterly on U.S. Hwy 60 (AZ Hwy 77) to Showlow; northerly along AZ Hwy 77 to Snowflake.

Unit 4A – Beginning on the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest at the Mogollon Rim; north along this boundary (Leonard Canyon) to East Clear Creek; northerly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; northerly on Hipkoe Dr. to I-40; west on I-40 to mp 221.4; north to the southwest corner of the Navajo Indian Reservation boundary; east along the Navajo Indian Reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd.; westerly and southerly along the Woods Canyon Lake Rd. to the Mogollon Rim; westerly along the Mogollon Rim to the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest.

Unit 4B – Beginning at AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest; northeasterly on AZ Hwy 260 to AZ Hwy 277; northeasterly on AZ Hwy 277 to Hwy 377; northeasterly on AZ Hwy 377 to AZ Hwy 77; northeasterly on AZ Hwy 77 to I-40 Exit 286; northeasterly along the westbound lane of I-40 to Exit 292; north on AZ Hwy 77 to the Navajo Indian Reservation boundary; west along the reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd. (FH 151); westerly and southerly along the Woods Canyon Lake Rd. (FH 151) to the Mogollon Rim; easterly along the Mogollon Rim to the intersection of AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest.

Unit 5A – Beginning at the junction of the Sitgreaves National Forest boundary with the Coconino National Forest boundary at the Mogollon Rim; northerly along this boundary (Leonard Canyon) to East Clear Creek; northeasterly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; north on Hipkoe Dr. to I-40; west on I-40 to the Meteor Crater Rd. (Exit 233); southerly on the Meteor Crater-Chavez Pass-Jack's Canyon Rd. (FR 69) to AZ Hwy 87; southwesterly along AZ Hwy 87 to the Coconino-Tonto National Forest boundary; easterly along the Coconino-Tonto National Forest boundary (Mogollon Rim) to the Sitgreaves National Forest boundary with the Coconino National Forest.

Unit 5B -- Beginning at Lake Mary-Clint's Well Rd. (FH3) and Walnut Canyon (mp 337.5 on FH3); southeasterly on FH3 to AZ Hwy 87; northeasterly on AZ Hwy 87 to FR 69; westerly and northerly on FR 69 to I-40 (Exit 233); west on I-40 to Walnut Canyon (mp 210.2); southwesterly along the bottom of Walnut Canyon

National Monument; southwesterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; southwesterly along the bottom of Walnut Canyon to FH3 (mp 337.5).

Unit 6A - Beginning at the junction of AZ Hwy 89A and FR 237; southwesterly on AZ Hwy 89A to the Verde River; southeasterly along the Verde River to the confluence with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary; easterly along this boundary to AZ Hwy 87; northeasterly on AZ Hwy 87 to Lake Mary-Clint's Well Rd. (FH3); northwesterly on FH3 to FR 132; southwesterly on FR 132 to FR 296; southwesterly on FR 296 to FR 296A; southwesterly on FR 296A to FR 132; northwesterly on FR 132 to FR 235; westerly on FR 235 to Priest Draw; southwesterly along the bottom of Priest Draw to FR 235; westerly on FR 235 to FR 235A; westerly on FR 235A to FR 235; southerly on FR 235 to FR 235K; northwesterly on FR 235K to FR 700; northerly on FR 700 to Mountainaire Rd.; west on Mountainaire Rd. to FR 237; westerly on FR 237 to AZ Hwy 89A except those portions that are sovereign tribal lands of the Yavapai-Apache Nation.

Unit 6B – Beginning at mp 188.5 on I-40 at a point just north of the east boundary of Camp Navajo; south along the eastern boundary of Camp Navajo to the southeastern corner of Camp Navajo; southeast approximately 1/3 mile through the forest to the forest road in section 33; southeast on the forest road to FR 231 (Woody Mountain Rd.); easterly on FR 231 to FR 533; southerly on FR 533 to AZ Hwy 89A; southerly on AZ Hwy 89A to the Verde River; northerly along the Verde River to Sycamore Creek; northeasterly along Sycamore Creek and Volunteer Canyon to the southwest corner of the Camp Navajo boundary; northerly along the western boundary of Camp Navajo to the northwest corner of Camp Navajo; continuing north to I-40 (mp 180.0); easterly along I-40 to mp 188.5.

Unit 7 – Beginning at the junction of AZ Hwy 64 and I-40 (in Williams); easterly on I-40 to FR 171 (mp 184.4 on I-40); northerly on FR 171 to the Transwestern Gas Pipeline; easterly along the Transwestern Gas Pipeline to FR 420 (Schultz Pass Rd.); northeasterly on FR 420 to U.S. Hwy 89; across U.S. Hwy 89 to FR 545; east on FR 545 to the Sunset Crater National Monument; easterly along the southern boundary of the Sunset Crater National Monument to FR 545; east on FR 545 to the 345 KV transmission lines 1 and 2; southeasterly along the power lines to I-40 (mp 212 on I-40); east on I-40 to mp 221.4; north to the southwest corner of the Navajo Indian Reservation boundary; northerly and westerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; west on U.S. Hwy 180 to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 8 – Beginning at the junction of I-40 and AZ Hwy 89 (in Ash Fork, Exit 146); south on AZ Hwy 89 to the Verde River; easterly along the Verde River to Sycamore Creek; northerly along Sycamore Creek to Volunteer Canyon; northeasterly along Volunteer Canyon to the west boundary of Camp Navajo; north along the boundary to a point directly north of I-40; west on I-40 to AZ Hwy 89.

Unit 9 – Beginning where Cataract Creek enters the Havasupai Reservation; easterly and northerly along the Havasupai Reservation boundary to Grand Canyon National Park; easterly along the Grand Canyon National Park boundary to the Navajo Indian Reservation boundary; southerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; westerly along U.S. Hwy 180 to AZ Hwy 64; south along AZ Hwy 64 to Airpark Rd.; west and north along Airpark Rd. to the Valle-Cataract Creek Rd.; westerly along the Valle-Cataract Creek Rd. to Cataract Creek at Island Tank; northwesterly along Cataract Creek to the Havasupai Reservation Boundary.

Unit 10 – Beginning at the junction of AZ Hwy 64 and I-40; westerly on I-40 to Crookton Rd. (AZ Hwy 66, Exit 139); westerly on AZ Hwy 66 to the Hualapai Indian Reservation boundary; northeasterly along the reservation boundary to Grand Canyon National Park; east along the park boundary to the Havasupai Indian Reservation; easterly and southerly along the reservation boundary to where Cataract Creek enters the reservation; southeasterly along Cataract Creek in Cataract Canyon to Island Tank; easterly on the Cataract Creek-Valle Rd. to Airpark Rd.; south and east along Airpark Rd. to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 11M – Beginning at the junction of Lake MaryClint's Well Rd (FH3) and Walnut Canyon (mp 337.5 on FH3); northeasterly along the bottom of Walnut Canyon to the Walnut Canyon National Monument boundary; northeasterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; northeasterly along the bottom of Walnut Canyon to I-40 (mp 210.2); east on I-40 to the 345 KV transmission lines 1&2 (mp 212 on I-40); north and northeasterly along the power line to FR 545 (Sunset Crater Rd); west along FR 545 to the Sunset Crater National Monument boundary; westerly along the southern boundary of the Sunset Crater National monument to FR 545; west on FR 545 to U.S. Hwy 89; across U.S. Hwy 89 to FR 420 (Schultz Pass Rd); southwesterly on FR 420 to the Transwestern Gas Pipeline; westerly along the Transwestern Gas Pipeline to FR 171; south on FR 171 to I-40 (mp 184.4 on I-40); east on I-40 to a point just north of the eastern boundary of the Navajo Army Depot (mp 188.5 on I-40); south along the eastern boundary of the Navajo Army Depot to the southeast corner of the Depot; southeast approximately 1/3 mile to forest road in section 33; southeasterly along that forest road to FR 231 (Woody Mountain Rd); easterly on FR 231 to FR 533; southerly on FR 533 to U.S. Hwy 89A; southerly on U.S. Hwy 89A to FR 237; northeasterly on FR 237 to Mountainaire Rd; easterly on Mountainaire Rd to

FR 700; southerly on FR 700 to FR 235K; southeasterly on FR 235K to FR 235; northerly on FR 235 to FR 235A; easterly on FR 235A to FR 235; easterly on FR 235 to Priest Draw; northeasterly along the bottom of Priest Draw to FR 235; easterly on FR 235 to FR 132; southeasterly on FR 132 to FR 296A; northeasterly on FR 296A to FR 296; northeasterly on FR 296 to FR 132; northeasterly on FR 132 to FH 3; southeasterly on FH 3 to the south rim of Walnut Canyon (mp 337.5 on FH3).

Unit 12A – Beginning at the confluence of the Colorado River and South Canyon; southerly and westerly along the Colorado River to Kanab Creek; northerly along Kanab Creek to Snake Gulch; northerly, easterly, and southerly around the Kaibab National Forest boundary to South Canyon; northeasterly along South Canyon to the Colorado River.

Unit 12B – Beginning at U.S. Hwy 89A and the Kaibab National Forest boundary near mp 566; southerly and easterly along the forest boundary to Grand Canyon National Park; northeasterly along the park boundary to Glen Canyon National Recreation area; easterly along the recreation area boundary to the Colorado River; northeasterly along the Colorado River to the Arizona-Utah state line; westerly along the state line to Kanab Creek; southerly along Kanab Creek to the Kaibab National Forest boundary; northerly, easterly, and southerly along this boundary to U.S. Hwy 89A near mp 566; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13A – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; easterly along the Colorado River to Kanab Creek; northerly along Kanab Creek to the Utah state line; west along the Utah state line to the western edge of the Hurricane Rim; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13B – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; westerly along the Colorado River to the Nevada state line; north along the Nevada state line to the Utah state line; east along the Utah state line to the western edge of the Hurricane Rim.

Unit 15A – Beginning at Pearce Ferry on the Colorado River; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to the Hualapai Indian Reservation; west and north along the west boundary of the reservation to the Colorado River; westerly along the Colorado River to Pearce Ferry; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 15B – Beginning at Kingman on I-40 (Exit 48); northwesterly on U.S. Hwy 93 to Hoover Dam; north and east along the Colorado River to Pearce Ferry; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to Hackberry Rd.; southerly on the Hackberry Rd. to I-40; west on I-40 to Kingman (Exit 48).

Unit 15C – Beginning at Hoover Dam; southerly along the Colorado River to AZ Hwy 68 and Davis Dam; easterly on AZ Hwy 68 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to Hoover Dam.

Unit 15D – Beginning at AZ Hwy 68 and Davis Dam; southerly along the Colorado River to I-40; east and north on I-40 to Kingman (Exit 48); northwest on U.S. Hwy 93 to AZ Hwy 68; west on AZ Hwy 68 to Davis Dam; except those portions that are sovereign tribal lands of the Fort Mohave Indian Tribe.

Unit 16A – Beginning at Kingman on I-40 (Exit 48); south and west on I-40 to U.S. Hwy 95 (Exit 9); southerly on U.S. Hwy 95 to the Bill Williams River; easterly along the Bill Williams and Santa Maria rivers to U.S. Hwy 93; north on U.S. Hwy 93 to I-40 (Exit 71); west on I-40 to Kingman (Exit 48).

Unit 16B – Beginning at I-40 on the Colorado River; southerly along the Arizona-California state line to the Bill Williams River; east along the Bill Williams River to U.S. Hwy 95; north on U.S. Hwy 95 to I-40 (Exit 9); west on I-40 to the Colorado River.

Unit 17A – Beginning at the junction of the Williamson Valley Rd. (County Road 5) and the Camp Wood Rd. (FR 21); westerly on the Camp Wood Rd. to the west boundary of the Prescott National Forest; north along the forest boundary to the Baca Grant; east, north and west around the grant to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); southerly on Williamson Valley Rd. (County Rd. 5, FR 6) to the Camp Wood Rd.

Unit 17B – Beginning at the junction of Iron Springs Rd. (County Rd. 10) and Williamson Valley Rd. (County Road 5) in Prescott; westerly on the Prescott-Skull Valley-Hillside-Bagdad Rd. to Bagdad; northeast on the Bagdad-Camp Wood Rd. (FR 21) to the Williamson Valley Rd. (County Rd. 5, FR 6); south on the Williamson Valley Rd. (County

Rd. 5, FR 6) to the Iron Springs Rd.

Unit 18A – Beginning at Seligman; westerly on AZ Hwy 66 to the Hualapai Indian Reservation; southwest and west along the reservation boundary to AZ Hwy 66; southwest on AZ Hwy 66 to the Hackberry Rd.; south on the Hackberry Rd. to I-40; west along I-40 to U.S. Hwy 93; south on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big Sandy River; northerly along the Big Sandy River to Trout Creek; northeast along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the power line to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); northerly on the Williamson Valley Rd. (County Rd. 5, FR 6) to Seligman and AZ Hwy 66; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 18B – Beginning at Bagdad; southeast on AZ Hwy 96 to the Santa Maria River; southwest along the Santa Maria River to U.S. Hwy 93; northerly on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big Sandy River; northerly along the Big Sandy River to Trout Creek; northeasterly along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the power line to the west boundary of the Prescott National Forest; south along the forest boundary to the Baca Grant; east, south and west along the forest boundary; south along the west boundary of the Prescott National Forest; to the Camp Wood-Bagdad Rd.; southwesterly on the Camp Wood-Bagdad Rd. to Bagdad; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 19A – Beginning at AZ Hwy 69 and AZ Hwy 89 (in Prescott); northerly on AZ Hwy 89 to the Verde River; easterly along the Verde River to I-17; southwesterly on the southbound lane of I-17 to AZ Hwy 69; northwesterly on AZ Hwy 69 to AZ Hwy 89; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe and the Yavapai-Apache Nation.

Unit 19B – Beginning at the intersection of AZ Hwy 89 and AZ Hwy 69, west on Gurley St. to Grove Ave.; north on the Grove Ave. to Miller Valley Rd.; northwest on the Miller Valley Rd. to Iron Springs Rd.; northwest on the Iron Springs Rd. to the junction of Williamson Valley Rd. and Iron Springs Rd.; northerly on the Williamson Valley-Prescott-Seligman Rd. (FR 6, Williamson Valley Rd.) to AZ Hwy 66 at Seligman; east on Crookton Rd. (AZ Hwy 66) to I-40 (Exit 139); east on I-40 to AZ Hwy 89; south on AZ Hwy 89 to the junction with AZ Hwy 69; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20A – Beginning at the intersection of AZ Hwy 89 and AZ Hwy 69; west on Gurley St. to Grove Ave.; north on the Grove Ave. to Miller Valley Rd., northwest on the Miller Valley Rd. to Iron Springs Rd., west and south on Iron Springs Rd. (County Road 10) to Kirkland; south and east on AZ Hwy 96 to Kirkland Junction (U.S. Hwy 89); southeasterly along Wagoner Rd. (County Road 60) to Wagoner (mp 17); from Wagoner easterly along County Road 60 (FR 362) to intersection of FR 52; easterly along FR 52 to intersection of FR 259; easterly along FR 259 to Crown King Rd. (County Road 59) at Crown King; continue easterly to the intersection of Antelope Creek Rd. cutoff (County Road 179S); northeasterly along Antelope Creek Rd. cutoff to intersection of Antelope Creek Rd. (County Road 179); northeasterly on Antelope Creek Rd. to Cordes; east on Bloody Basin Rd. (County Road 73) to I-17 (Exit 259); north on the southbound lane of I-17 to AZ Hwy 69; northwest on AZ Hwy 69 to junction of AZ Hwy 89 at Prescott; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20B – Beginning at the Hassayampa River and U.S. Hwy 60/93 (at Wickenburg), northeasterly along the Hassayampa River to Wagoner (County Road 60, mp 17); from Wagoner easterly along County Road 60 (FR 362) to intersection of FR 52; easterly along FR 52 to intersection of FR 259; easterly along FR 259 to Crown King Rd. (County Road 59) at Crown King; continue easterly to intersection of Antelope Creek Rd. cutoff (County Road 179S); northeasterly along Antelope Creek Rd. cutoff to intersection of Antelope Creek Rd. (County Road 179); northeasterly on Antelope Creek Rd. to Cordes; east on Bloody Basin Rd. (County Road 73) to I-17 (Exit 259); south on the southbound lane of I-17 to New River Road (Exit 232); west on New River Road to SR 74; west on AZ Hwy 74 to junction of U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Hassayampa River (at Wickenburg).

Unit 20C – Beginning at U.S. Hwy 60/93 and the Santa Maria River; northeasterly along the Santa Maria River to AZ Hwy 96; easterly on AZ Hwy 96 to Kirkland Junction (AZ. Hwy 89); south along AZ Hwy 89 to Wagoner Rd.; southeasterly along Wagoner Rd. (County Road 60) to Wagoner (mp 17); from Wagoner southwesterly along the Hassayampa River to U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Santa Maria River.

Unit 21 – Beginning on I-17 at the Verde River; southerly on the southbound lane of I-17 to the New River Road (Exit 232); east on New River Road to Fig Springs Road; northeasterly on Fig Springs Road to Mingus Rd.; Mingus Rd. to the Tonto National Forest boundary; southeasterly along this boundary to the Verde River; north along the Verde River to I-17.

Unit 22 – Beginning at the junction of the Salt and Verde Rivers; north along the Verde River to the confluence with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary along the Mogollon Rim; easterly along this boundary to Tonto Creek; southerly along the east fork of Tonto Creek to the

spring box, north of the Tonto Creek Hatchery, and continuing southerly along Tonto Creek to the Salt River; westerly along the Salt River to the Verde River; except those portions that are sovereign tribal lands of the Tonto Apache Tribe and the Fort McDowell Yavapai Nation.

Unit 23 – Beginning at the confluence of Tonto Creek and the Salt River; northerly along Tonto Creek to the spring box, north of the Tonto Creek Hatchery, on Tonto Creek; northeasterly along the east fork of Tonto Creek to the Tonto-Sitgreaves National Forest boundary along the Mogollon Rim; east along this boundary to the White Mountain Apache Indian Reservation boundary; southerly along the reservation boundary to the Salt River; westerly along the Salt River to Tonto Creek.

Unit 24A – Beginning on AZ Hwy 177 in Superior; southeasterly on AZ Hwy 177 to the Gila River; northeasterly along the Gila River to the San Carlos Indian Reservation boundary; easterly, westerly and northerly along the reservation boundary to the Salt River; southwesterly along the Salt River to AZ Hwy 288; southerly on AZ Hwys 288 and 188 to U.S. Hwy 60; southwesterly on U.S. Hwy 60 to AZ Hwy 177.

Unit 24B – Beginning on U.S. Hwy 60 in Superior; northeasterly on U.S. Hwy 60 to AZ Hwy 188; northerly on AZ Hwys 188 and 288 to the Salt River; westerly along the Salt River to the Tonto National Forest boundary near Granite Reef Dam; southeasterly along Forest boundary to Forest Route 77 (Peralta Rd.); southwesterly on Forest Route 77 (Peralta Rd.) to U.S. Hwy 60; easterly on U.S. Hwy 60 to Superior.

Unit 25M – Beginning at the junction of 51st Ave. and I-10; west on I-10 to AZ Loop 303, northeasterly on AZ Loop 303 to I-17; north on I-17 to Carefree Hwy; east on Carefree Hwy to Cave Creek Rd.; northeasterly on Cave Creek Rd. to the Tonto National Forest boundary; easterly and southerly along the Tonto National Forest boundary to Fort McDowell Yavapai Nation boundary; northeasterly along the Fort McDowell Yavapai Nation boundary to the Verde River; southerly along the Verde River to the Salt River; southwesterly along the Salt River to the Tonto National Forest boundary; southerly along the Tonto National Forest boundary to Bush Hwy/Power Rd.; southerly on Bush Hwy/Power Rd. to AZ Loop 202; easterly, southerly, and westerly on AZ Loop 202 to the intersection of Pecos Rd. at I-10; west on Pecos Rd. to the Gila River Indian Community boundary; northwesterly along the Gila River Indian Community boundary to 51st Ave; northerly on 51st Ave to I-10; except those portions that are sovereign tribal lands.

Unit 26M – Beginning at the junction of I-17 and New River Rd. (Exit 232); southwesterly on New River Rd. to AZ Hwy 74; westerly on AZ Hwy 74 to U.S. Hwy 93; southeasterly on U.S. Hwy 93 to the Beardsley Canal; southwesterly on the Beardsley Canal to Indian School Rd.; west on Indian School Rd. to Jackrabbit Trail; south on Jackrabbit Trail to I-10 (Exit 121); west on I-10 to Oglesby Rd. (Exit 112); south on Oglesby Rd. to AZ Hwy 85; south on AZ Hwy 85 to the Gila River; northeasterly along the Gila River to the Gila River Indian Community boundary; southeasterly along the Gila River Indian Community boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the Stanfield-Cocklebur Rd. to the Tohono O'odham Nation boundary; easterly along the Tohono O'odham Nation boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeasterly on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287 north of Coolidge; east on AZ Hwy 287 to AZ Hwy 79; north on AZ Hwy 79 to U.S. Hwy 60; northwesterly on U.S. Highway 60 to Peralta Rd.; northeasterly along Peralta Rd. to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to the Salt River; northeasterly along the Salt River to the Verde River; northerly along the Verde River to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to Mingus Rd.; Mingus Rd. to Fig Springs Rd.; southwesterly on Fig Springs Rd. to New River Rd.; west on New River Rd. to I-17 (Exit 232); except Unit 25M and those portions that are sovereign tribal lands.

Unit 27 – Beginning at the New Mexico state line and AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; north on U.S. Hwy 191 to Lower Eagle Creek Rd. (Pump Station Rd.); west on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; north along Eagle Creek to the San Carlos Apache Indian Reservation boundary; north along the San Carlos Apache Indian Reservation boundary to Black River; northeast along Black River to the East Fork of Black River; northeast along the East Fork of Black River to Three Forks-Williams Valley-Alpine Rd. (FR 249); easterly along Three Forks-Williams Valley-Alpine Rd. to U.S. Hwy 180; southeast on U.S. Hwy 180 to the New Mexico state line; south along the New Mexico state line to AZ Hwy 78.

Unit 28 – Beginning at I-10 and the New Mexico state line; north along the state line to AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; northwest on U.S. Hwy 191 to Clifton; westerly on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; northerly along Eagle Creek to the San Carlos Indian Reservation boundary; southerly and west along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to I-10 Exit 352; easterly on I-10 to the New Mexico state line.

Unit 29 – Beginning on I-10 at the New Mexico state line; westerly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186; southeast on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek-Kuykendall cutoff road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.;

easterly on the Rucker Canyon Rd. to Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line; north along the state line to I-10.

Unit 30A – Beginning at the junction of the New Mexico state line and U.S. Hwy 80; south along the state line to the U.S.-Mexico border; west along the border to U.S. Hwy 191; northerly on U.S. Hwy 191 to I-10 Exit 331; northeasterly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186; southeasterly on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek - Kuykendall cutoff road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.; easterly on Rucker Canyon Rd. to the Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line.

Unit 30B – Beginning at U.S. Hwy 191 and the U.S.-Mexico border; west along the border to the San Pedro River; north along the San Pedro River to I-10; northeasterly on I-10 to U.S. Hwy 191; southerly on U.S. Hwy 191 to the U.S.-Mexico border.

Unit 31 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the Bonita-Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; northerly along AZ Hwy 77 to the Gila River; northeast along the Gila River to the San Carlos Indian Reservation boundary; south then east and north along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to the 352 exit on I-10; southwest on I-10 to Exit 340.

Unit 32 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the Bonita-Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; southerly along AZ Hwy 77 to the San Pedro River; southerly along the San Pedro River to I-10; northeast on I-10 to Willcox Exit 340.

Unit 33 – Beginning at Tangerine Rd. and AZ Hwy 77; north and northeast on AZ Hwy 77 to the San Pedro River; southeast along the San Pedro River to I-10 at Benson; west on I-10 to Marsh Station Rd. (Exit 289); northwest on the Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary; then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.

Unit 34A – Beginning in Nogales at I-19 and Compound St.; northeast on Grand Avenue to AZ Hwy 82; northeast on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to the Sahuarita Rd. alignment; west along the Sahuarita Rd. alignment to I-19 Exit 75; south on I-19 to Grand Avenue (U.S. Hwy 89).

Unit 34B – Beginning at AZ Hwy 83 and I-10 Exit 281; easterly on I-10 to the San Pedro River; south along the San Pedro River to AZ Hwy 82; westerly on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to I-10 Exit 281. Unit 35A – Beginning on the U.S.-Mexico border at the San Pedro River; west along the border to Lochiel Rd.; north on Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on the FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; northeasterly on the Elgin-Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; easterly on AZ Hwy 82 to the San Pedro River; south along the San Pedro River to the U.S.-Mexico border.

Unit 35B – Beginning at Grand Avenue Hwy 89 at the U.S.-Mexico border in Nogales; east along the U.S.-Mexico border to Lochiel Rd.; north on the Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; north on the Elgin Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; southwest on AZ Hwy 82 to Grand Avenue; southwest on Grand Avenue to the U.S.-Mexico border.

Unit 36A – Beginning at the junction of Sandario Rd. and AZ Hwy 86; southwesterly on AZ Hwy 86 to AZ Hwy 286; southerly on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca northeasterly on the Arivaca Rd. to I-19; north on I-19 to the southern boundary of the San Xavier Indian Reservation boundary; westerly and northerly along the reservation boundary to the Sandario road alignment; north on Sandario Rd. to AZ Hwy 86.

Unit 36B – Beginning at I-19 and Compound St.; southeasterly on Compound St. to Sonoita Ave.; north on Sonoita Ave. to Crawford St.; southeasterly on Crawford St. to Grand Avenue in Nogales; southwest on Grand Avenue to the U.S.-Mexico border; west along the U.S.-Mexico border to AZ Hwy 286; north on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca

northeasterly on the Arivaca Rd. to I-19; south on I-19 to Grand Avenue.

Unit 36C – Beginning at the junction of AZ Hwy 86 and AZ Hwy 286; southerly on AZ Hwy 286 to the U.S.-Mexico border; westerly along the border to the east boundary of the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; easterly on AZ Hwy 86 to AZ Hwy 286.

Unit 37A – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit 242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to AZ Hwy 86; southwest on AZ Hwy 86 to the Tohono O'odham Nation boundary; north, east, and west along this boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeast on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287; east on AZ Hwy 287 to AZ Hwy 79 at Florence; southeast on AZ Hwy 79 to its junction with AZ Hwy 77; south on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 37B – Beginning at the junction of AZ Hwy 79 and AZ Hwy 77; northwest on AZ Hwy 79 to U.S. Hwy 60; east on U.S. Hwy 60 to AZ Hwy 177; southeast on AZ Hwy 177 to AZ Hwy 77; southeast and southwest on AZ Hwy 77 to AZ Hwy 79.

Unit 38M – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit 242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to the San Xavier Indian Reservation boundary; south and east along the reservation boundary to I-19; south on I-19 to Sahuarita Rd. (Exit 75); east on Sahuarita Rd. to AZ Hwy 83; north on AZ Hwy 83 to I-10 (Exit 281); east on I-10 to Marsh Station Rd. (Exit 289); northwest on Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus, then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary, then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 39 – Beginning at AZ Hwy 85 and the Gila River; east along the Gila River to the western boundary of the Gila River Indian Community; southeasterly along this boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the Stanfield-Cocklebur Rd. to I-8; westerly on I-8 to Exit 87; northerly on the Agua Caliente Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; southerly on AZ Hwy 85 to the Gila River; except those portions that are sovereign tribal lands of the Tohono O'odham Nation and the Ak-Chin Indian Community.

Unit 40A – Beginning at Ajo; southeasterly on AZ Hwy 85 to Why; southeasterly on AZ Hwy 86 to the Tohono O'odham (Papago) Indian Reservation; northerly and easterly along the reservation boundary to the Cocklebur-Stanfield Rd.; north on the Cocklebur-Stanfield Rd. to I-8; westerly on I-8 to AZ Hwy 85; southerly on AZ Hwy 85 to Ajo.

Unit 40B – Beginning at Gila Bend; westerly on I-8 to the Colorado River; southerly along the Colorado River to the Mexican border at San Luis; southeasterly along the border to the Cabeza Prieta National Wildlife Refuge; northerly, easterly and southerly around the refuge boundary to the Mexican border; southeast along the border to the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; northwesterly on AZ Hwy 86 to AZ Hwy 85; north on AZ Hwy 85 to Gila Bend; except those portions that are sovereign tribal lands of the Cocopah Tribe.

Unit 41 – Beginning at I-8 and U.S. Hwy 95 (in Yuma); easterly on I-8 to exit 87; northerly on the Agua Caliente Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; northerly on AZ Hwy 85 to Oglesby Rd.; north on Oglesby Rd. to I-10; westerly on I-10 to Exit 45; southerly on Vicksburg-Kofa National Wildlife Refuge Rd. to the Refuge boundary; easterly, southerly, westerly, and northerly along the boundary to the Castle Dome Rd.; southwesterly on the Castle Dome Rd. to U.S. Hwy 95; southerly on U.S. Hwy 95 to I-8.

Unit 42 – Beginning at the junction of the Beardsley Canal and U.S. Hwy 93 (AZ 89, U.S. 60); northwesterly on U.S. Hwy 93 to AZ Hwy 71; southwesterly on AZ Hwy 71 to U.S. Hwy 60; westerly on U.S. Hwy 60 to Aguila; south on the Eagle Eye Rd. to the Salome-Hassayampa Rd.; southeasterly on the Salome-Hassayampa Rd. to I-10 (Exit 81); easterly on I-10 to Jackrabbit Trail (Exit 121); north along Jackrabbit Trail to the Indian School road; east along Indian School Rd. to the Beardsley Canal; northeasterly along the Beardsley Canal to U.S. Hwy 93.

Unit 43A – Beginning at U.S. Hwy 95 and the Bill Williams River; west along the Bill Williams River to the Arizona-California state line; southerly to the south end of Cibola Lake; northerly and easterly on the Cibola Lake Rd. to U.S. Hwy 95; south on U.S. Hwy 95 to the Stone Cabin-King Valley Rd. (King Rd.); east along the Stone Cabin-King Valley Rd. (King Rd.) to the west boundary of the Kofa National Wildlife Refuge; northerly along the refuge boundary to the Crystal Hill Rd. (Blevens Rd.); northwesterly on the Crystal Hill Rd. (Blevens Rd.) to U.S.

Hwy 95; northerly on U.S. Hwy 95 to the Bill Williams River; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 43B – Beginning at the south end of Cibola Lake; southerly along the Arizona-California state line to I-8; southeasterly on I-8 to U.S. Hwy 95; easterly and northerly on U.S. Hwy 95 to the Castle Dome road; northeast on the Castle Dome Rd. to the Kofa National Wildlife Refuge boundary; north along the refuge boundary to the Stone Cabin-King Valley Rd. (King Rd.); west along the Stone Cabin-King Valley Rd. (King Rd.) to U.S. Hwy 95; north on U.S. Hwy 95 to the Cibola Lake Rd.; west and south on the Cibola Lake Rd. to the south end of Cibola Lake; except those portions that are sovereign tribal lands of the Quechan Tribe.

Unit 44A – Beginning at U.S. Hwy 95 and the Bill Williams River; south along U.S. Hwy 95 to AZ Hwy 72; southeasterly on AZ Hwy 72 to Vicksburg; south on the Vicksburg-Kofa National Wildlife Refuge Rd. to I-10; easterly on I-10 to the Salome-Hassayampa Rd. (Exit 81); northwesterly on the Salome-Hassayampa Rd. to Eagle Eye Rd.; northeasterly on Eagle Eye Rd. to Aguila; east on U.S. Hwy 60 to AZ Hwy 71; northeasterly on AZ Hwy 71 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to the Santa Maria River; westerly along the Santa Maria and Bill Williams rivers to U.S. Hwy 95; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 44B – Beginning at Quartzsite; south on U.S. Hwy 95 to the Crystal Hill Rd. (Blevens Rd.); east on the Crystal Hill Rd. (Blevens Rd.) to the Kofa National Wildlife Refuge; north and east along the refuge boundary to the Vicksburg-Kofa National Wildlife Refuge Rd.; north on the Vicksburg-Kofa National Wildlife Refuge Rd. to AZ Hwy 72; northwest on AZ Hwy 72 to U.S. Hwy 95; south on U.S. Hwy 95 to Quartzsite.

Unit 45A – Beginning at the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge boundary; east on the Stone Cabin-King Valley Rd. (King Rd.) to O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north boundary of the Kofa National Wildlife Refuge; west and south on the boundary line to Stone Cabin-King Valley Rd. (King Rd.).

Unit 45B – Beginning at O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north Kofa National Wildlife Refuge boundary; east to the east refuge boundary; south and west along the Kofa National Wildlife Refuge boundary to the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E); north and west on the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E) to O-O Junction.

Unit 45C – Beginning at the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge; south, east, and north along the refuge boundary to the Stone Cabin-King Valley Rd. (King Rd.); north and west on the Stone Cabin-King Valley Rd. (King Rd.) to the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge boundary.

Unit 46A – That portion of the Cabeza Prieta National Wildlife Refuge east of the Yuma-Pima County line.

Unit 46B – That portion of the Cabeza Prieta National Wildlife Refuge west of the Yuma-Pima County line.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(B)(2) 17-234, 17-241, 17-452, 17-453, 17-454, and 17-455

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective March 5, 1976 (Supp. 76-2). Amended effective May 17, 1977 (Supp. 77-3). Amended effective September 7, 1978 (Supp. 78-5). Amended effective June 4, 1979 (Supp. 79-3). Former Section R12-4-10 renumbered as Section R12-4-108 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective February 4, 1993 (Supp. 93-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 865, effective July 1, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-109. Approved Trapping Education Course Fee

Under A.R.S. § 17-333.02(A), the provider of an approved educational course of instruction in responsible trapping and environmental ethics may collect a fee from each participant that:

1. Is reasonable and commensurate for the course, and
2. Does not exceed $25.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. § 17-333.02

Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Editorial correction paragraph (14) (Supp. 78-5). Former Section R12-4-11 renumbered as Section R12-4-109 without change effective August 13, 1981 (Supp. 81-4). Amended by adding paragraphs (2) and (3) and renumbering former paragraphs (2) through (17) as paragraphs (4) through (19) effective May 12, 1982 (Supp. 82-3). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 211, effective May 1, 2000 (Supp. 99-4). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

R12-4-110. Posting and Access to State Land

A. For the purpose of this Section:
"Corrals," "feed lots," or "holding pens" mean completely fenced areas used to contain livestock for purposes other than grazing.
"Existing road" means any maintained or unmaintained road, way, highway, trail, or path that has been used for motorized vehicular travel, and clearly shows or has a history of established vehicle use, and is not currently closed by the Commission.
"State lands" means all land owned or held in trust by the state that is managed by the State Land Department and lands that are owned or managed by the Game and Fish Commission.

B. In addition to the prohibition against posting proscribed under A.R.S. § 17-304, a person shall not lock a gate, construct a fence, place an obstacle, or otherwise commit an act that denies legally available access to or use of any existing road upon state lands by persons lawfully taking or retrieving wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing.
1. A person in violation of this Section shall take immediate corrective action to remove any lock, fence, or other obstacle unlawfully preventing access to state lands.
2. If immediate corrective action is not taken, a representative of the Department may remove any unlawful posting and remove any lock, fence, or other obstacle that unlawfully prevents access to state lands.
3. In addition, the Department may take appropriate legal action to recover expenses incurred in the removal of any unlawful posting or obstacle that prevented access to state land.

C. The provisions of this Section do not allow any person to trespass upon private land to gain access to any state land.

D. A person may post state lands as closed to hunting, fishing, or trapping without further action by the Commission when the state land is within one-quarter mile of any:
1. Occupied residence, cabin, lodge, or other building; or
2. Corrals, feed lots, or holding pens containing concentrations of livestock other than for grazing purposes.
3. Subsection (D) does not authorize any person to deny lawful access to state land in any way.

E. The Commission may grant permission to lock, tear down, or remove a gate or close a road or trail that provides legally available access to state lands for persons lawfully taking wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing if access to such lands is provided by a reasonable alternate route.
1. Under R12-4-610, the Director may grant a permit to a state land lessee to temporarily lock a gate or close an existing road that provides access to state lands if the taking of wildlife will cause unreasonable interference during a critical livestock or commercial operation. This permit shall not exceed 30 days.
2. Applications for permits for more than 30 days shall be submitted to the Commission for approval.
3. If a permit is issued to temporarily close a road or gate, a copy of the permit shall be posted at the point of the closure during the period of the closure.

F. A person may post state lands other than those referenced under subsection (D) as closed to hunting, fishing, or trapping, provided the person has obtained a permit from the Commission authorizing the closure. A person possessing a permit authorizing the closure of state lands shall post signs in compliance with A.R.S. 17-304(C). The Commission may permit the closure of state land when it is necessary:
1. Because the taking of wildlife constitutes an unusual hazard to permitted users;
2. To prevent unreasonable destruction of plant life or habitat; or
3. For proper resource conservation, use, or protection, including but not limited to high fire danger, excessive interference with mineral development, developed agricultural land, or timber or livestock operations.

G. A person shall submit an application for posting state land to prohibit hunting, fishing, or trapping under subsection (F), or to close an existing road under subsection (E), as required under R12-4-610. If an application to close state land to hunting, fishing, or trapping is made by a person other than the state land lessee, the Department shall provide notice to

the lessee and the State Land Commissioner before the Commission considers the application. The state land lessee or the State Land Commissioner shall file any objections with the Department, in writing, within 30 days after receipt of notice, after which the matter shall be submitted to the Commission for determination.

H. A person may use a vehicle on or off a road to pick up lawfully taken big game.

I. The closing of state land to hunting, fishing, or trapping shall not restrict any other permitted use of the land.

J. State trust land may be posted with signs that read "State Land No Trespassing," but such posting shall not prohibit access to such land by any person lawfully taking or retrieving wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing.

K. When hunting, fishing, or trapping on state land, a license holder shall not:

1. Break or remove any lock or cut any fence to gain access to state land;
2. Open and not immediately close a gate;
3. Intentionally or wantonly destroy, deface, injure, remove, or disturb any building, sign, equipment, marker, or other property;
4. Harvest or remove any vegetative or mineral resources or object of archaeological, historic, or scientific interest;
5. Appropriate, mutilate, deface, or destroy any natural feature, object of natural beauty, antiquity, or other public or private property;
6. Dig, remove, or destroy any tree or shrub;
7. Gather or collect renewable or non-renewable resources for the purpose of sale or barter unless specifically permitted or authorized by law;
8. Frighten or chase domestic livestock or wildlife, or endanger the lives or safety of others when using a motorized vehicle or other means; or
9. Operate a motor vehicle off road or on any road closed to the public by the Commission or landowner, except to retrieve a lawfully taken big game.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(B)(2) and 17-304

Historical Note

Adopted effective June 1, 1977 (Supp. 77-3). Editorial correction subsection (F) (Supp. 78-5). Former Section R12-4-13 renumbered as Section R12-4-110 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-111. Repealed

Historical Note

Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-05 renumbered as Section R12-4-111 without change effective August 13, 1981 (Supp. 81-4). Section R12-4-111 repealed effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). New Section adopted effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Repealed by final rulemaking at 27 A.A.R. 1368 (September 3, 2021), effective January 1, 2022 (Supp. 21-4).

R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife

A. A person who lawfully takes and possesses wildlife believed to be diseased, injured, or chemically-immobilized may request an inspection of the wildlife carcass provided:

1. The wildlife was lawfully taken and possessed under a valid hunt permit- or nonpermit-tag, and
2. The person who took the wildlife did not create the condition.

B. The Department, after inspection, may condemn the carcass if it is determined the wildlife is unfit for human consumption. The Department shall condemn chemically-immobilized wildlife only when the wildlife was taken during the immobilizing drug's established withdrawal period.

C. The person shall surrender the entire condemned wildlife carcass and any parts thereof to the Department.

1. Upon surrender of the condemned wildlife, the Department shall provide to the person written authorization allowing the person to purchase a duplicate hunt permit- or nonpermit-tag.
2. The person may purchase a duplicate tag from any Department office or license dealer where the permit-tag is available.

D. If the duplicate tag is issued by a license dealer, the license dealer shall forward the written authorization to the Department with the report required under R12-4-105(K).

Authorizing Statute
General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(8), and 17-250(A)(3)
Historical Note
Former Section R12-4-04 renumbered as Section R12-4-112 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-113. Small Game Depredation Permit

A. The Department shall issue a small game depredation permit authorizing the take of small game and the allowable methods of take only after the Department has determined all other remedies prescribed under A.R.S. § 17-239(A), (B), and (C) have been exhausted and the take of the small game is necessary to alleviate the property damage. A small game depredation permit is:
1. A complimentary permit.
2. Not valid for the take of migratory birds unless the permit holder:
   a. Obtains and possesses a federal special purpose permit under 50 CFR 21.41, revised October 1, 2014, which is incorporated by reference; or
   b. Is exempt from permitting requirements under 50 CFR 21.43, revised October 1, 2014, which is incorporated by reference.
   c. For subsections (A)(2)(a) and (b), the incorporated material is available at any Department office, online at www.gpoaccess.gov, or it may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.

B. A person desiring a small game depredation permit shall submit to the Department an application requesting the permit. The application form is furnished by the Department and is available at any Department office and on the Department's website. The person shall provide all of the following information on the form:
1. Full name or, when submitted by a municipality, the name of the agency and agency contact;
2. Mailing address;
3. Telephone number or, when submitted by a municipality, agency contact number;
4. E-mail address, when available, or, when submitted by a municipality, agency contact e-mail address;
5. Description of property damage suffered;
6. Species of wildlife causing the property damage; and
7. Area the permit would be valid for.

C. Within 30 days of completion of the activities authorized by the small game depredation permit, the permit holder shall submit a report to the Department providing all of the following:
1. The number of individuals removed;
2. The location the individuals were removed from;
3. The date of the removal; and
4. The method of removal.

Authorizing Statute
General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102 and 17-239
Historical Note
Adopted effective August 5, 1976 (Supp. 76-4). Former Section R12-4-12 renumbered as Section R12-4-113 without change effective August 13, 1981 (Supp. 81-4). Amended as an emergency effective September 20, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-5). Amended effective May 5, 1986 (Supp. 86-3). Section R12-4-113 repealed, new Section R12-4-113 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags

A. The Department provides numbered tags for sale to the public. The Department shall ensure each tag:
1. Includes a transportation and shipping permit as prescribed under A.R.S. §§ 17-332 and 17-371, and
2. Clearly identifies the wildlife for which the tag is valid.

B. If the Commission establishes a big game season for which a hunt number is not assigned, the Department or its

authorized agent, or both, shall sell nonpermit-tags.

1. A person purchasing a nonpermit-tag shall provide all of the following information to a Department office or license dealer at the time of purchase; the applicant's:
   a. Name,
   b. Mailing address, and
   c. Department identification number.
2. An applicant shall not obtain nonpermit-tags in excess of the bag limit established by Commission Order when it established the season for which the nonpermit-tags are valid.

C. If the number of hunt permits for a species in a particular hunt area must be limited, a Commission Order establishes a hunt number for that hunt area and a hunt permit-tag is required to take the species in that hunt area.

1. A person applying for a hunt permit-tag shall submit an application as described under R12-4-104.
2. The Department shall determine whether a hunt permit-tag will be issued to an applicant as follows:
   a. The Department shall reserve a maximum of 20% of the hunt permit-tags for each hunt number, except as established under subsection (C)(2)(b), for bear, deer, elk, javelina, pronghorn, Sandhill crane, and turkey and reserve a maximum of 20% of the hunt permit-tags for all hunt numbers combined statewide for bighorn sheep and bison to issue to persons who have bonus points and shall issue the hunt permit-tags as established under subsection (C)(2)(c).
   b. For bear, deer, elk, javelina, pronghorn, Sandhill crane, and turkey, the Department shall reserve one hunt permit-tag for any hunt number with fewer than five, but more than one, hunt permit-tags and shall issue the tag as established under subsection (C)(2)(c). When this occurs, the Department shall adjust the number of available hunt permit-tags in order to ensure the total number of hunt permit-tags available does not exceed the 20% maximum specified in subsection (C)(2)(a).
   c. The Department shall issue the reserved hunt permit-tags for hunt numbers that eligible applicants designate as their first or second choices. The Department shall issue the reserved hunt permit-tags by random selection:
      i. First, to eligible applicants with the highest number of bonus points for that genus;
      ii. Next, if there are reserved hunt permit-tags remaining, to eligible applicants with the next highest number of bonus points for that genus; and
      iii. If there are still tags remaining, to the next eligible applicants with the next highest number of bonus points; continuing in the same manner until all of the reserved tags have been issued or until there are no more applicants for that hunt number who have bonus points.
   d. The Department shall ensure that all unreserved hunt permit-tags are issued by random selection:
      i. First, to hunt numbers designated by eligible applicants as their first or second choices; and
      ii. Next, to hunt numbers designated by eligible applicants as their third, fourth, or fifth choices.
   e. Before each of the three passes listed under (C)(2)(c)(i), (ii), and (iii), each application is processed through the Department's random number generator program. A random number is assigned to each application; an additional random number is assigned to each application for each group bonus point, including the Education and Loyalty bonus points. Only the lowest random number generated for an application is used in the computer draw process. A new random number is generated for each application for each pass of the computer draw.
   f. If the bag limit is more than one per calendar year, or if there are unissued hunt permit-tags remaining after the random computer draw, the Department shall ensure these hunt permit-tags are available on a first-come, first-served basis as specified in the annual hunt permit-tag application schedule.

D. A person may purchase hunt permit-tags equal to the bag limit for a genus.

1. A person shall not exceed the established bag limit for that genus.
2. A person shall not apply for any additional hunt-permit-tags if the person has reached the bag limit for that genus during the same calendar year.
3. A person who surrenders a tag in compliance with R12-4-118 is eligible to apply for another hunt permit-tag for the same genus during the same calendar year, provided the person has not reached the bag limit for that genus.

E. The Department shall make available to nonresidents:

1. For bighorn sheep and bison, no more than one hunt permit-tag or 10% of the total hunt permit-tags, whichever is greater, for bighorn sheep or bison in any computer draw. The Department shall not make available more than 50% nor more than two bighorn sheep or bison hunt permit-tags of the total in any hunt number.
2. For antlered deer, bull elk, pronghorn, Sandhill crane, or turkey, no more than 10%, rounded down to the next lowest number, of the total hunt permit-tags in any hunt number. If a hunt number for antlered deer, bull elk, pronghorn, Sandhill crane, or turkey has 10 or fewer hunt permit-tags, no more than one hunt permit-tag will be made available unless the hunt number has only one hunt permit-tag, then that tag shall only be available to a resident.

F. The Commission may, at a public meeting, increase the number of hunt permit-tags issued to nonresidents in a computer draw when necessary to meet management objectives.

G. The Department shall not issue under subsection (C)(2)(c), more than half of the hunt permit-tags made available to nonresidents under subsection (E).

H. A nonresident cap established under this Section applies only to hunt permit-tags issued by computer draw under subsections (C)(2)(c) and (d).

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-331(A), 17-332(A), and 17-371

Historical Note

Adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 1183, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool

A. For the purposes of this Section, the following definitions apply:

"Companion tag" means a restricted nonpermit-tag valid for a supplemental hunt prescribed by Commission Order that exactly matches the season dates and open areas of another big game hunt, for which a hunt number is assigned and hunt permit-tags are issued through the computer draw.

"Emergency season" means a season established for reasons constituting an immediate threat to the health, safety or management of wildlife or its habitat, or public health or safety.

"Management objectives" means goals, recommendations, or guidelines contained in Department or Commission-approved wildlife management plans, which include hunt guidelines, operational plans, or hunt recommendations.

"Hunter pool" means all persons who have submitted an application for a supplemental hunt.

"Restricted nonpermit-tag" means a permit limited to a season for a supplemental hunt established by the Commission for the following purposes:

Take of depredating wildlife as authorized under A.R.S. § 17-239;

Take of wildlife under an Emergency Season; or

Take of wildlife under a population management hunt if the Commission has prescribed nonpermit-tags by Commission Order for the purpose of meeting management objectives because regular seasons are not, have not been, or will not be sufficient or effective to achieve management objectives.

B. The Commission shall, by Commission Order, open a season or seasons and prescribe a maximum number of restricted nonpermit-tags to be made available under this Section.

C. The Department shall implement a population management hunt under the open season or seasons established under subsection (B) if the Department determines the:

1. Regular seasons have not met or will not meet management objectives;
2. Take of wildlife is necessary to meet management objectives; and
3. Issuance of a specific number of restricted nonpermit-tags is likely to meet management objectives.

D. To implement a population management hunt established by Commission Order, the Department shall:

1. Select season dates, within the range of dates listed in the Commission Order;
2. Select specific hunt areas, within the range of hunt areas listed in the Commission Order;
3. Select the legal wildlife that may be taken from the list of legal wildlife identified in the Commission Order;
4. Determine the number of restricted nonpermit-tags that will be issued from the maximum number of tags authorized in the Commission Order.
   a. The Department shall not issue more restricted nonpermit-tags than the maximum number prescribed by Commission Order.
   b. A restricted nonpermit-tag is valid only for the supplemental hunt for which it is issued.

E. The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to a supplemental hunt.

F. If the Department anticipates the normal fee structure will not generate adequate participation, then the Department may reduce restricted nonpermit-tag fees up to 75%, as authorized under A.R.S. § 17-239(D).

G. A supplemental hunt application submitted in accordance with this Section does not invalidate any other application submitted by the person for a hunt permit-tag.

1. The Department shall not accept a group application, as defined under R12-4-104, for a restricted nonpermit-tag.
2. An applicant shall not apply for or obtain a restricted nonpermit-tag to take wildlife in excess of the bag limit

established by Commission Order.

3. The issuance of a restricted nonpermit-tag does not authorize a person to exceed the bag limit established by Commission Order.

H. To participate in a supplemental hunt, a person shall:

1. Obtain a restricted nonpermit-tag as prescribed under this Section, and
2. Possess a valid hunting license. If the applicant does not possess a valid license or the license will expire before the supplemental hunt, the applicant shall purchase an appropriate license.

I. The Department or its authorized agent shall maintain a hunter pool for supplemental hunts other than companion tag hunts.

1. The Department shall purge and renew the hunter pool on an annual basis.
2. An applicant for a restricted nonpermit-tag under this subsection shall submit a hunt permit-tag application to the Department for each desired species. The application is available at any Department office, an authorized agent, or on the Department's website. The applicant shall provide all of the following information on the application:
   a. The applicant's:
      i. Name;
      ii. Department identification number, when applicable;
      iii. Mailing address;
      iv. Number of years of residency immediately preceding application;
      v. Date of birth;
      vi. Social Security Number, as required under A.R.S. §§ 25-320(P) and 25-502(K); and
      vii. Daytime and evening telephone numbers,
   b. The species that the applicant would like to hunt, if selected, and
   c. The applicant's hunting license number.
3. In addition to the requirements established under subsection (I)(2), at the time of application the applicant shall submit the application fee required under R12-4-102. A separate application and application fee is required for each species the applicant submits an application for.
4. When issuing a restricted nonpermit-tag, the Department or its authorized agent shall randomly select applicants from the hunter pool.
   a. The Department or its authorized agent shall attempt to contact each randomly-selected applicant at least three times within a 24-hour period.
   b. If an applicant cannot be contacted or is unable to participate in the supplemental hunt, the Department or its authorized agent shall return the application to the hunter pool and draw another application.
   c. In compliance with subsection (D)(4), the Department or its authorized agent shall select no more applications after the number of restricted nonpermit-tags establish by Commission Order are issued.
5. The Department shall reserve a restricted nonpermit-tag for an applicant only for the period specified by the Department when contact is made with the applicant. If an applicant fails to purchase the nonpermit-tag within the specified period, the Department or its authorized agent shall:
   a. Remove the person's application from the hunter pool, and
   b. Offer that restricted nonpermit-tag to another person whose application is drawn from the hunter pool as established under this Section.
6. A person who participates in a supplemental hunt through the hunter pool shall be removed from the supplemental hunter pool for the genus for which the person participated. A hunter pool applicant who is selected and who wishes to participate in a supplemental hunt shall submit the following to the Department to obtain a restricted nonpermit-tag:
   a. The fee for the tag as established under R12-4-102 or subsection (F) if the fee has been reduced, and
   b. The applicant's hunting license number. The applicant shall possess an appropriate license that is valid at the time of the supplemental hunt. The applicant shall purchase a license at the time of application when:
      i. The applicant does not possess a valid license, or
      ii. The applicant's license will expire before the supplemental hunt.
7. A person who participates in a supplemental hunt shall not reapply for the hunter pool for that genus until the hunter pool is renewed.

J. The Department shall only make a companion tag available to a person who possesses a matching hunt permit-tag and not a person from the hunter pool. Authorization to issue a companion tag occurs when the Commission establishes a hunt in Commission Order under subsection (B).

1. The requirements of subsection (D) are not applicable to a companion tag issued under this subsection.
2. To obtain a companion tag under this subsection, an applicant shall submit a hunt permit-tag application to the Department. The application is available at any Department office and on the Department's website. The applicant

shall provide all of the following information on the application, the applicant's:
a. Name,
b. Mailing address,
c. Department identification number, and
d. Hunt permit-tag number, to include the hunt number and permit number, corresponding with the season dates and open areas of the supplemental hunt.

3. In addition to the requirements established under subsection (J)(2), at the time of application the applicant shall:
a. Provide verification that the applicant lawfully obtained the hunt permit-tag for the hunt described under this subsection by presenting the hunt permit-tag to a Department office for verification, and
b. Submit all applicable fees required under R12-4-102.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-239, 17-331(A), and 17-332(A)

Historical Note

Adopted effective June 13, 1977 (Supp. 77-3). Former Section R12-4-14 renumbered as Section R12-4-115 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-115 renumbered as Section R12-4-607 without change effective December 22, 1987 (Supp. 87-4). New Section R12-4-115 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-116. Issuance of Limited-Entry Permit-tag

A. For the purposes of this Section, limited-entry permit-tags may be for terrestrial or aquatics species, or specific areas for terrestrial or aquatic species.

B. The Commission may, by Commission Order, open a limited-entry season or seasons and prescribe a maximum number of limited-entry permit-tags to be made available under this Section.

C. The Department may implement limited-entry permit-tags under the open season or seasons established in subsection (B) if the Department determines:
1. A season for a specific terrestrial or aquatic wildlife species, or specific area of the state, is in high demand;
2. Issuance of a specific number of limited-entry permit-tags will not adversely affect management objectives for a species or area;
3. Surrendered hunt permit-tags, already approved by Commission Order, are available from hunts with high demand.

D. To implement a limited-entry season established by Commission Order, the Department shall:
1. Select season dates, within the range of dates listed in the Commission Order;
2. Select specific areas, within the range of areas listed in the Commission Order;
3. Select the legal wildlife that may be taken from the list of legal wildlife identified in the Commission Order;
4. Determine the number of limited-entry permit-tags that will be issued from the maximum number authorized in the Commission Order.
a. The Department shall not issue more limited-entry permit-tags than the maximum number prescribed by Commission Order.
b. A limited-entry permit-tag is valid only for the limited-entry season for which it is issued.

E. The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to limited-entry seasons.

F. A limited-entry permit-tag application submitted in accordance with this Section does not invalidate any other application submitted by the person for a hunt permit-tag.

G. The Department shall not accept a group application, as defined under R12-4-104, for a limited-entry season.

H. To participate in a limited-entry season, a person shall:
1. Obtain a limited-entry permit-tag as prescribed under this Section, and
2. Possess a valid hunting, fishing or combination license at the time the limited-entry permit-tag is awarded. If the applicant does not possess a valid license or the license will expire before the limited-entry season, the applicant shall purchase an appropriate license. A valid hunting, fishing or combination license is not required at the time of application.

I. A limited-entry permit-tag is valid only for the person named on the permit-tag, for the season dates on the permit-tag, and the species for which the permit-tag is issued.
1. Possession of a limited-entry permit-tag shall not invalidate any other hunt permit-tag for that species.

2. Big game taken under the authority of this limited-entry permit-tag shall not count towards the established bag limit for that species.

J. The Department shall maintain the applications submitted for limited-entry permit-tags.

1. An applicant for a limited-entry season under this subsection shall submit a limited-entry permit-tag application to the Department for each limited-entry season established. The application is available at any Department office and on the Department's website. The applicant shall provide all of the following information on the application:
   a. The applicant's personal information:
      i. Name,
      ii. Date of birth,
      iii. Social security number, as required under A.R.S. §§ 25-320(P) and 25-502(K), when applicable;
      iv. Department identification number, when applicable;
      v. Residency status and number of years of residency immediately preceding application, when applicable;
      vi. Mailing address, when applicable;
      vii. Physical address;
      viii. Telephone number, when available; and
      ix. Email address, when available;
   b. The limited-entry season the applicant would like to participate in, and
   c. Certify the information provided on the application is true and accurate.
2. In addition to the requirements established under subsection (J)(1), at the time of application the applicant shall submit the application fee required under R12-4-102. A separate application and application fee are required for each limited-entry season an applicant submits an application.
3. When issuing a limited-entry permit-tag for a terrestrial or aquatic wildlife species, the Department shall randomly select applicants for each designated limited-entry season.
4. When issuing a limited-entry permit-tag for a particular water, the Department shall randomly select applicants for each date limited-entry permit-tags are available until no more are available for that date.
5. In compliance with subsection (D)(4), the Department shall select no more applications after the number of limited-entry permits establish by Commission Order are issued.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-231(A)(7) and 17-315(B)(1)

Historical Note

Adopted effective January 10, 1979 (Supp. 79-1). Former Section R12-4-15 renumbered as Section R12-4-116 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 18, 1985 (Supp. 85-6). Section R12-4-116 repealed, new Section R12-4-116 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). R12-4-116 renumbered to R12-4-126; new Section R12-4-116 made by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-117. Indian Reservations

A state license, permit, or tag is not required to hunt or fish on any Indian reservation in this State. Wildlife lawfully taken on an Indian reservation may be transported or processed anywhere in the State if it can be identified as to species and legality as provided in A.R.S. § 17-309(A)(19). All wildlife transported anywhere in this State is subject to inspection under the provisions of A.R.S. § 17-211(E)(4).

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-231(A)(7) and 17-315(B)(1)

Historical Note

Former Section R12-4-02 renumbered as Section R12-4-117 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-117 repealed, new Section R12-4-117 adopted effective April 10, 1984 (Supp. 84-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-118. Hunt Permit-tag Surrender

A. The Commission authorizes the Department to implement a tag surrender program if the Director finds:

1. The Department has the administrative capacity to implement the program;
2. There is public interest in such a program; or

3. The tag surrender program is likely to meet the Department's revenue objectives.

B. The tag surrender program is limited to a person who has a valid and active membership in a Department membership program.
1. The Department may establish a membership program that offers a person various products and services.
2. The Department may establish different membership levels based on the type of products and services offered and set prices for each level.
   a. The lowest membership level may include the option to surrender one hunt permit-tag during the membership period.
   b. A higher membership level may include the option to surrender more than one hunt permit-tag during the membership period.
3. The Department may establish terms and conditions for the membership program in addition to the following:
   a. Products and services to be included with each membership level.
   b. Membership enrollment is available online only and requires a person to create a portal account.
   c. Membership is not transferable.
   d. No refund shall be made for the purchase of a membership, unless an internal processing error resulted in the collection of erroneous fees.

C. The tag surrender program is restricted to the surrender of an original, unused hunt permit-tag obtained through a computer draw.
1. A person must have a valid and active membership in the Department's membership program with at least one unredeemed tag surrender that was valid:
   a. On the application deadline date for the computer draw in which the hunt permit-tag being surrendered was drawn, and
   b. At the time of tag surrender.
2. A person who chooses to surrender an original, unused hunt permit-tag shall do so prior to the close of business the day before the hunt begins for which the tag is valid.
3. A person may surrender an unused hunt permit-tag for a specific species only once before any bonus points accrued for that species must be expended.

D. A person who wants to surrender an original, unused hunt permit-tag or an authorized nonprofit organization that wants to return a donated original, unused hunt permit-tag shall comply with all of the following conditions:
1. Submit a completed application form to any Department office. The application form is available at any Department office and on the Department's website. The applicant shall provide all of the following information on the application form:
   a. The applicant's:
      i. Name,
      ii. Mailing address,
      iii. Department identification number,
      iv. Membership number,
   b. Applicable hunt number,
   c. Applicable hunt permit-tag number, and
   d. Any other information required by the Department.
2. A person shall surrender the original, unused hunt permit-tag as required under subsection (C) in the manner described by the Department as indicated on the application form.

E. Upon receipt of an original, unused hunt permit-tag surrendered in compliance with this Section, the Department shall:
1. Restore the person's bonus points that were expended for the surrendered tag, and
2. Award the bonus point the person would have accrued had the person been unsuccessful in the computer draw for the surrendered tag.
3. Not refund any fees the person paid for the surrendered tag, as prohibited under A.R.S. § 17-332(E).

F. The Department may, at its sole discretion, re-issue or destroy the surrendered original, unused hunt permit-tag. When re-issuing a tag, the Department may use any of the following methods in no order of preference:
1. Re-issuing the surrendered tag, beginning with the highest membership level in the Department's membership program, to a person who has a valid and active membership in that membership level and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
2. Re-issuing the surrendered tag to a person who has a valid and active membership in any tier of the Department's membership program with a tag surrender option and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
3. Re-issuing the surrendered tag to an eligible person who would have been next to receive a tag for that hunt number,

as evidenced by the random numbers assigned during the Department's computer draw process; or

4. Offering the surrendered tag through the first-come, first-served process.

G. For subsections (F)(1), (2), and (3); if the Department cannot contact a person qualified to receive a tag or the person declines to purchase the surrendered tag, the Department shall make a reasonable attempt to contact and offer the surrendered tag to the next person qualified to receive a tag for that hunt number based on the assigned random number during the Department's computer draw process. This process will continue until the surrendered tag is either purchased or the number of persons qualified is exhausted. For the purposes of subsections (G) and (H), the term "qualified" means a person who satisfies the conditions for re-issuing a surrendered tag as provided under the selected re-issuing method.

H. When the re-issuance of a surrendered tag involves a group application and one or more members of the group is qualified under the particular method for re-issuing the surrendered tag, the Department shall offer the surrendered tag first to the applicant designated "A" if qualified to receive a surrendered tag.

1. If applicant "A" chooses not to purchase the surrendered tag or is not qualified, the Department shall offer the surrendered tag to the applicant designated "B" if qualified to receive a surrendered tag.
2. This process shall continue with applicants "C" and then "D" until the surrendered tag is either purchased or all qualified members of the group application choose not to purchase the surrendered tag.

I. A person who receives a surrendered tag shall submit the applicable tag fee as established under R12-4-102 and provide their valid hunting license number.

1. A person receiving the surrendered tag as established under subsections (F)(1), (2), and (3) shall expend all bonus points accrued for that genus, except any accrued Education and loyalty bonus points.
2. The applicant shall possess a valid hunting license at the time of purchasing the surrendered tag and at the time of the hunt for which the surrendered tag is valid. If the person does not possess a valid license at the time the surrendered tag is offered, the applicant shall purchase a license in compliance with R12-4-104.
3. The issuance of a surrendered tag does not authorize a person to exceed the bag limit established by Commission Order.
4. It is unlawful for a person to purchase a surrendered tag when the person has reached the bag limit for that genus during the same calendar year.

J. A person is not eligible to petition the Commission under R12-4-611 for reinstatement of any expended bonus points, except as authorized under R12-4-107(M).

K. For the purposes of this Section and R12-4-121, "valid and active membership" means a paid and unexpired membership in any level of the Department's membership program.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(8), and 41-2752

Historical Note

Adopted effective April 8, 1983 (Supp. 83-2). Section R12-4-118 repealed effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). New Section made by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-119. Arizona Game and Fish Department Reserve

A. The Commission shall establish an Arizona Game and Fish Department Reserve under A.R.S. § 17-214, consisting of commissioned reserve officers and noncommissioned reserve volunteers.

B. Commissioned reserve officers shall:

1. Meet and maintain the minimum qualifications and training requirements necessary for peace officer certification by the Arizona Peace Officer Standards and Training Board as prescribed under 13 A.A.C. 4, and
2. Assist with wildlife enforcement patrols, boating enforcement patrols, off-highway vehicle enforcement patrols, special investigations, and other enforcement and related non-enforcement duties as the Director designates.

C. Noncommissioned reserve volunteers shall:

1. Meet qualifications that the Director determines are related to the services to be performed by the volunteer and the success or safety of the program mission, and
2. Perform any non-enforcement duties designated by the Director for the purposes of conservation and education to maximize paid staff time.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(1) and 17-214

Historical Note

Adopted effective September 29, 1983 (Supp. 83-5). Section R12-4-119 repealed, new Section R12-4-119 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 8 A.A.R. 1702, effective

March 11, 2002 (Supp. 02-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags

A. An incorporated nonprofit organization that is tax exempt under section 501(c) seeking special big game license-tags as authorized under A.R.S. § 17-346 shall submit a proposal to the Director of the Arizona Game and Fish Department from March 1 through May 31 preceding the year when the tags may be legally used. The proposal shall include all of the following information for each member of the organization coordinating the proposal:

1. The name of the organization making the proposal and the:
   a. Name;
   b. Mailing address;
   c. E-mail address, when available; and
   d. Telephone number;
2. Organization's previous involvement with wildlife management;
3. Organization's conservation objectives;
4. Number of special big game license-tags and the species requested;
5. Purpose to be served by the issuance of these tags;
6. Method or methods by which the tags will be marketed and sold;
7. Proposed fund raising plan;
8. Estimated amount of money to be raised and the rationale for that estimate;
9. Any special needs or particulars relevant to the marketing of the tags;
10. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;
11. Statement that the person or organization submitting the proposal agrees to the conditions established under A.R.S. § 17-346 and this Section;
12. Printed name and signature of the president and secretary-treasurer of the organization or their equivalent; and
13. Date of signing.

B. The Director shall return to the organization any proposal that does not comply with the requirements established under A.R.S. § 17-346 and this Section. Because proposals are reviewed for compliance after the May 31 deadline, an organization that receives a returned proposal cannot resubmit a corrected proposal, but may submit a proposal that complies with the requirements established under A.R.S. § 17-346 and this Section the following year.

C. The Director shall submit all timely and valid proposals to the Commission for consideration.

1. In selecting an organization, the Commission shall consider the:
   a. Written proposal;
   b. Proposed uses for tag proceeds;
   c. Qualifications of the organization as a fund raiser;
   d. Proposed fund raising plan;
   e. Organization's previous involvement with wildlife management; and
   f. Organization's conservation objectives.
2. The Commission may accept any proposal in whole or in part and may reject any proposal if it is in the best interest of wildlife to do so.
3. Commission approval and issuance of any special big game license-tag is contingent upon compliance with this Section.

D. A successful organization shall agree in writing to all of the following:

1. To underwrite all promotional and administrative costs to sell and transfer each special big game license-tag;
2. To transfer all proceeds to the Department within 90 days of the date that the organization sells or awards the tag;
3. To sell and transfer each special big game license-tag as described in the proposal; and
4. To provide the Department with the name, address, and physical description of each person to whom a special big game license-tag is to be issued within 60 days of the sale.

E. The Department and the successful organization shall coordinate on:

1. The specific projects or purposes identified in the proposal;
2. The arrangements for the deposit of the proceeds, the accounting procedures, and final audit; and
3. The dates when the wildlife project or purpose will be accomplished.

F. The Department shall dedicate all proceeds generated by the sale or transfer of a special big game license-tag to the management of the species for which the tag was issued.

1. A special license-tag shall not be issued until the Department receives all proceeds from the sale of license-tags.

2. The Department shall not refund proceeds.

G. A special big game license-tag is valid only for the person named on the tag, for the season dates on the tag, and for the species for which the tag was issued.
1. A hunting license is required for the tag to be valid.
2. Possession of a special big game license-tag shall not invalidate any other big game tag or application for any other big game tag.
3. Wildlife taken under the authority of a special big game license-tag shall not count towards the established bag limit for that species.

H. A person who wins the special big game license-tag through auction or raffle is prohibited from selling the special big game license-tag to another person.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(A)(8), 17-331(A), 17-332(A), and 17-346

Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Amended effective April 7, 1987 (Supp. 87-2). Correction, balance of language in subsection (I) is deleted as certified effective April 7, 1987 (Supp. 87-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-121. Tag Transfer

A. For the purposes of this Section:
"Authorized nonprofit organization" means a nonprofit organization approved by the Department to receive donated unused tags.
"Unused tag" means a hunt permit-tag, limited-entry permit-tag, nonpermit-tag, or special license tag that has not been attached to any wildlife.

B. A parent, grandparent, or guardian issued a hunt permit-tag, limited-entry permit-tag, nonpermit-tag, or special license tag may transfer the unused tag to the parent's, grandparent's, or guardian's minor child or grandchild.
1. A parent, grandparent, or guardian issued a tag may transfer the unused tag to a minor child or grandchild at any time prior to the end of the season for which the unused tag was issued.
2. A parent, grandparent, or guardian may transfer the unused tag by providing all of the following documentation in person at any Department office:
   a. Proof of ownership of the unused tag to be transferred,
   b. The unused tag, and
   c. The minor's valid hunting license.
3. If a parent, grandparent, or legal guardian is deceased, the personal representative of the person's estate may transfer an unused tag to an eligible minor. The person acting as the personal representative shall present:
   a. The deceased person's death certificate, and
   b. Proof of the person's authority to act as the personal representative of the deceased person's estate.
4. To be eligible to receive an unused tag from a parent, grandparent, or legal guardian, the minor child shall meet the criteria established under subsection (D).
5. A minor child or grandchild receiving an unused tag from a parent, grandparent, or legal guardian shall be accompanied into the field by any grandparent, parent, or legal guardian of the minor child.

C. A person issued a tag or the person's legal representative may donate the unused tag to a an authorized nonprofit organization for use by a minor child with a life threatening medical condition or permanent physical disability or a veteran of the Armed Forces of the United States with a service-connected disability.
1. The person or legal representative who donates the unused tag shall provide the authorized nonprofit organization with a written statement indicating the unused tag is voluntarily donated to the organization.
2. An authorized nonprofit organization receiving a donated tag under this subsection may transfer the unused tag to an eligible minor child or veteran by contacting any Department office.
   a. To obtain a transfer, the nonprofit organization shall:
      i. Provide proof of donation of the unused tag to be transferred;
      ii. Provide the unused tag;
      iii. Provide proof of the minor child's or veteran's valid hunting license.
   b. To be eligible to receive a donated unused tag from an authorized nonprofit organization, a minor child shall meet the criteria established under subsection (D).
3. A person who donates an original, unused hunt permit-tag issued in a computer drawing to an authorized nonprofit

organization may submit a request to the Department for the reinstatement of the bonus points expended for that unused tag, provided all of the following conditions are met:

a. The person has a valid and active membership in the Department's membership program with at least one unredeemed tag surrender on the application deadline date, for the computer draw in which the hunt permit-tag being surrendered was drawn, and at the time of tag surrender.
b. The person submits a completed application form as described under R12-4-118;
c. The person provides acceptable proof to the Department that the tag was transferred to an authorized nonprofit organization; and
d. The person submits the request to the Department:
    i. No later than 60 days after the date on which the tag was donated to an authorized nonprofit organization; and
    ii. No less than 30 days prior to the computer draw application deadline for that genus, as specified in the hunt permit-tag application schedule.

D. To receive an unused tag authorized under subsections (B) or (C), an eligible minor child shall meet the following criteria:

1. Possess a valid hunting license,
2. Has not reached the applicable annual or lifetime bag limit for that genus, and
3. Is 10 to 17 years of age on the date of the transfer. A minor child under the age of 14 shall have satisfactorily completed a Department-sanctioned hunter education course before the beginning date of the hunt.

E. To receive an unused tag authorized under subsection (C), an eligible veteran of the Armed Forces of the United States with a service-connected disability shall meet the following criteria:

1. Possess a valid hunting license, and
2. Has not reached the applicable annual or lifetime bag limit for that genus.

F. A nonprofit organization is eligible to apply for authorization to receive a donated unused tag, provided the nonprofit organization:

1. Is qualified under section 501(c)(3) of the United States Internal Revenue Code, and
2. Affords opportunities and experiences to:
    a. Children with life-threatening medical conditions or physical disabilities, or
    b. Veterans with service-connected disabilities.
3. This authorization shall remain in effect unless revoked by the Department for noncompliance with the requirements established under A.R.S. § 17-332 or this Section.
4. A nonprofit organization shall apply for authorization by submitting an application to any Department office. The application form is furnished by the Department and is available at any Department office. A nonprofit organization shall provide all of the following information on the application:
    a. Nonprofit organization's information:
        i. Name,
        ii. Physical address,
        iii. Telephone number;
    b. Contact information for the person responsible for ensuring compliance with this Section:
        i. Name,
        ii. Address,
        iii. Telephone number;
    c. Signature of the president and secretary-treasurer of the organization or their equivalents; and
    d. Date of signing.
5. In addition to the application, a nonprofit organization shall provide all of the following:
    a. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;
    b. Document identifying the organization's mission;
    c. A letter stating how the organization will participate in the Big Game Tag Transfer program; and
    d. A statement that the person or organization submitting the application agrees to the conditions established under A.R.S. § 17-332 and this Section.
6. An applicant who is denied authorization to receive donated tags under this Section may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(A)(8), 17-331(A), 17-332(A), and 17-346

Historical Note

Adopted effective October 10, 1986, filed September 25, 1986 (Supp. 86-5). Rule expired one year from effective date of October 10, 1986. Rule readopted without change for one year effective January 22, 1988, filed January 7, 1988 (Supp. 88-1). Rule expired effective January 22, 1989 (Supp. 89-1). New Section R12-4-121 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Repealed effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). New Section made by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1195, effective June 30, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations

A. Under A.R.S. § 17-240 and this Section, the Department may donate the following wildlife, except that the Department shall not donate any portion of wildlife killed in a collision with a motor vehicle or wildlife that died subsequent to immobilization by any chemical agent:
1. Big game;
2. Upland game birds;
3. Migratory game birds;
4. Game fish.

B. The Director shall not authorize an employee to handle game meat for the purpose of this Section until the employee has satisfactorily completed a course designed to give the employee the expertise necessary to protect game meat recipients from diseased or unwholesome meat products. A Department employee shall complete a course that is either conducted or approved by the State Veterinarian. The employee shall provide a copy of a certificate that demonstrates satisfactory completion of the course to the Director.

C. Only an employee authorized by the Director shall determine if game meat is safe and appropriate for donation. An authorized Department employee shall inspect and field dress each donated carcass before transporting it. The Department shall not retain the game meat in storage for more than 48 continuous hours before transporting it, and shall reinspect the game meat for wholesomeness before final delivery to the recipient.

D. Final processing and storage is the responsibility of the recipient.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102, 17-211(E)(4), 17-233, 17-239(D), and 17-240(A)

Historical Note

Adopted effective August 6, 1991 (Supp. 91-3). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-123. Expenditure of Funds

A. The Director may expend funds available through appropriations, licenses, gifts, or other sources, in compliance with applicable laws and rules, and:
1. For purposes designated by lawful Commission agreements and Department guidelines;
2. In agreement with budgets approved by the Commission;
3. In agreement with budgets appropriated by the legislature;
4. With regard to a gift, for purposes designated by the donor, the Director shall expend undesignated donations for a public purpose in furtherance of the Department's responsibilities and duties.

B. The Director shall ensure that the Department implements internal management controls to comply with subsection (A) and to deter unlawful use or expenditure of funds.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-231(A)(6) and 17-231(A)(8)

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1).

R12-4-124. Proof of Domicile

A. An applicant may be required to present acceptable proof of domicile in Arizona to the Department upon request. For the purposes of this rule, "current address" means the address an applicant inhabits at the time of application for any license, permit, stamp, or tag offered by the Department.

B. Acceptable proof of domicile establishes a person's true, fixed, and permanent home and principal residence. Acceptable proof to aid in establishing a person's domicile in Arizona may include, but is not limited to, one or more of the following lawfully obtained documents:
1. Arizona Driver's License displaying a current address;
2. Arizona Resident State Income Tax Return filing;
3. Arizona school records containing satisfactory proof of identity and relationship of the parent or guardian to the minor child, when applicable;
4. Arizona Voter Registration Card displaying a current address;
5. Selective Service Registration Acknowledgement Card displaying a current address in Arizona;
6. Social Security Administration document indicating an address in Arizona; or
7. Current document or order issued by the U.S. military to an active-duty military service member identifying Arizona as state of legal residence or duty station.

C. In the event one of the documents listed under subsection (B) alone is not sufficient proof of domicile, additional documents may be required.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. § 17-101

Historical Note

New Section made by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 21-1).

R12-4-125. Public Solicitation or Event on Department Property

A. All Department buildings, properties, and wildlife areas are designated non-public forums and are closed to all solicitations and events unless permitted by the Department.

B. A solicitation or event on Department property shall not:
1. Conflict with the Department's mission; or
2. Constitute partisan political activity, the activity of a political campaign, or influence in any way an election or the results thereof.

C. A request for permission to conduct a solicitation or event on Department property shall be directed to the responsible Regional Supervisor or Branch Chief who shall initially determine whether an application is required for the solicitation or event.

D. If it is determined that an application is required, the person may apply for a solicitation or event permit by submitting a completed solicitation or event application to any Department office or Department Headquarters, Director's Office, at 5000 W. Carefree Hwy, Phoenix, AZ 85086. The application form is furnished by the Department and available at all Department offices.
1. An applicant shall submit an application:
   a. Not more than six months prior to the solicitation or event; and
   b. Not less than 14 days prior to the desired date of the solicitation or event for solicitations other than the posting of advertising, handbills, leaflets, circulars, posters, or other printed materials; or
   c. Not less than 10 days prior to the desired date of the solicitation or event for solicitations involving only the posting of advertising, handbills, leaflets, circulars, posters, or other printed materials.
2. An applicant shall provide all of the following information on the application:
   a. Sponsor's name, address, and telephone number;
   b. Sponsor's e-mail address, when available;
   c. Contact person's name and telephone number, when the sponsor is an organization;
   d. Proposed date of the solicitation or event;
   e. Specific, proposed location for the solicitation or event;
   f. Starting and approximate concluding times;
   g. General description of the solicitation or event's purpose;
   h. Anticipated number of attendees, when applicable;
   i. Amount of fees to be charged to attendees, when applicable;
   j. Detailed description of any activity that will occur at the solicitation or event, including a detailed map of the solicitation or event and any equipment that will be used, e.g., tents, tables, etc.;
   k. Copies of any solicitation materials to be distributed to the public or to be posted on Department property;
   l. Copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control, required when the applicant intends to sell alcohol at the solicitation or event; and
   m. The contact person's signature and date. The person's signature on the application certifies that the sponsor:

i. Assumes risk of injury to persons or property;
ii. Agrees to hold harmless the state of Arizona, its officials, Departments, employees, and agents against all claims arising from the use of Department facilities;
iii. Assumes responsibility for any damages or clean-up costs due to the solicitation or event, solicitation or event cleanup, or solicitation or event damage repair; and
iv. Agrees to surrender the premises in a clean and orderly condition.

E. The Department may take any of the following actions to the extent necessary and in the best interest of the State:
1. Require the sponsor to furnish all necessary labor, material, and equipment for the solicitation or event;
2. Require the sponsor to post a deposit against damage and cleanup expense;
3. Require indemnification of the state of Arizona, its Departments, agencies, officers, and employees;
4. Require the sponsor to carry adequate insurance and provide certificates of insurance to the Department not less than ten business days before the solicitation or event. A certificate of insurance for a solicitation or event shall name the state of Arizona, its Departments, agencies, boards, commissions, officers, agents, and employees as additional insureds;
5. Require the sponsor to enter into written agreements with any vendors and subcontractors and require vendors and subcontractors to provide certificates of insurance to the Department not less than ten business days before the solicitation or event. A certificate of insurance for a solicitation or event shall name the state of Arizona, its Departments, agencies, boards, commissions, officers, agents, and employees as additional insureds;
6. Require the sponsor to provide medical support, security, and sanitary services, including public restrooms; and
7. Impose additional conditions not otherwise specified under this Section on the conduct of the solicitation or event.

F. The Department may consider the following criteria when determining whether any of the actions in subsection (E) are necessary and in the best interest of the state:
1. Previous experience with similar solicitations or events;
2. Deposits required for similar solicitations or events in Arizona;
3. Risk data; and
4. Medical, sanitary, and security services required for similar solicitations or events in Arizona and the cost of those services .

G. The Department shall designate the hours of use for Department property.

H. The Department shall inspect the solicitation or event site at the conclusion of activities and document any damage or cleanup costs incurred because of the solicitation or event. The sponsor shall be responsible for any cleanup or damage costs associated with the solicitation or event.

I. The sponsor shall not allow, without the express written permission of the Department, the possession, use, or consumption of alcoholic beverages at the solicitation or event site. When the Department provides written permission for the possession, use, or consumption of alcoholic beverages at the solicitation or event site, the sponsor shall provide to the Department:
1. A copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control to the sponsor and vendor, required when the applicant intends to sell alcohol at the solicitation or event; and
2. A liquor liability rider, included with the insurance certificate required under subsection (E)(4).

J. The sponsor shall not allow unlawful possession or use of drugs at the solicitation or event site.

K. The Department shall deny an application for any of the following reasons:
1. The solicitation or event interferes with the work of an employee or the daily business of the Department;
2. The solicitation or event conflicts with the time, place, manner, or duration of other approved or pending solicitations or events;
3. The content of the solicitation or event conflicts with or is unrelated to the Department's activities or its mission;
4. The solicitation or event presents a risk of injury or illness to persons or risk of damage to property;
5. The sponsor cannot demonstrate adequate compliance with applicable local, state, or federal laws, ordinances, codes, or regulations, or
6. The sponsor has not complied with the requirements of the application process or this Section.

L. At all times, the Department reserves the right to immediately remove or cause to be removed all obstructions or other hazards of the solicitation or event that could damage state property, inhibit egress, or poses a safety risk. The Department also reserves the right to immediately remove or cause to be removed any person damaging state property, inhibiting egress, or posing a threat to public health and safety.

M. The Department may revoke approval of a solicitation or event due to emergency circumstances or for failure to comply with this Section.

N. The Department shall send written notice of the denial or revocation of an approved permit. The notice shall contain the reason for the denial or revocation.

O. A sponsor:

1. Is liable to the Department for damage to Department property and any expense arising out of the sponsor's use of Department property.
2. Shall post solicitation material only in designated posting areas.
3. Shall ensure that a solicitation or event on Department property causes the minimum infringement of use to the public and government operation.
4. Shall modify or terminate a solicitation or event, upon request by the Department, if the Department determines that the solicitation or event unacceptably infringes on the Department's operations or causes an unacceptable risk of liability exposure to the State.

P. When conducting an event on Department property, a sponsor shall:
1. Park or direct vehicles in designated parking areas.
2. Obey all posted requirements and restrictions.
3. Designate one person to act as a monitor for every 50 persons anticipated to attend the solicitation or event. The monitor shall act as a contact person for the Department for the purposes of the solicitation or event.
4. Ensure that all safety standards, guidelines, and requirements are followed.
5. Implement additional safety requirements upon request by the Department.
6. Ensure all obstructions and hazards are eliminated.
7. Ensure trash and waste is properly disposed of throughout the solicitation or event.

Q. The Department shall revoke or terminate the solicitation or event if a sponsor fails to comply with a Department request or any one of the following minimum safety requirements:
1. All solicitation or event activities shall comply with all applicable federal, state, and local laws, ordinances, codes, statues, rules, and regulations.
2. The layout of the solicitation or event shall ensure that emergency vehicles will have access at all times.
3. The Department may conduct periodic safety checks throughout the solicitation or event.

R. This Section does not apply to government agencies.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(1), 17-231(B)(13), 17-231(B)(14), and 41-275

Historical Note

New Section made by emergency rulemaking at 10 A.A.R. 4777, effective November 4, 2004 for 180 days (Supp. 04-4). Emergency expired (Supp. 05-2). New Section renumbered from R12-4-804 and amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

R12-4-126. Reward Payments

A. Subject to the restrictions prescribed under A.R.S. § 17-315, a person may claim a reward from the Department when the person provides information that leads to an arrest through the Operation Game Thief Program. The person who reports the unlawful activity will then become eligible to receive a reward as established under subsections (C) and (D), provided funds are available in the Wildlife Theft Prevention Fund and:
1. The person who reported the violation provides the Operation Game Thief control number issued by Department law enforcement personnel, as established under subsection (B);
2. The information provided relates to a violation of any provisions of A.R.S. Title 17, A.A.C. Title 12, Chapter 4, or federal wildlife laws enforced by and under the jurisdiction of the Department, but not on Indian Reservations;
3. The person did not first provide information during a criminal investigation or judicial proceeding; and
4. The person who reports the violation is not:
   a. The person who committed the violation;
   b. A peace officer, including wildlife managers and game rangers;
   c. A Department employee; or
   d. An immediate family member of a Department employee.

B. The Department shall inform the person providing information regarding a wildlife violation of the procedure for claiming a reward if the information results in an arrest. The Department shall also provide the person with the control number assigned to the reported violation.

C. Reward payments for information that results in an arrest for the reported violation are as follows:
1. For cases that involve eagles, bear, bighorn sheep, bison, deer, elk, javelina, mountain lion, pronghorn, turkey, or endangered or threatened wildlife as defined under R12-4-401, $500, to be increased by an additional amount of at least $50, but not to exceed $500, when vandalism impacting recreational access or wildlife habitat is also involved;
2. For cases that involve wildlife that are not listed under subsection (C)(1), a minimum of $50, not to exceed $150, to be increased by an additional amount of at least $50, but not to exceed $500, when vandalism impacting recreational access or wildlife habitat is also involved; and

3. For cases that involve any wildlife and damage to wildlife habitat, an additional $1,000 may be made available based on:
   a. The value of the information;
   b. The unusual value of the wildlife;
   c. The number of individuals taken;
   d. Whether or not the person who committed the unlawful act was arrested for commercialization of wildlife; and
   e. Whether or not the person who committed the unlawful act is a repeat offender.

D. If more than one person independently provides information or evidence that leads to an arrest for a violation, the Department may divide the reward payment among the persons who provided the information if the total amount of the reward payment does not exceed the maximum amount of a monetary reward established under subsections (C) or (E);

E. Notwithstanding subsection (C), the Department may offer and pay a reward up to the minimum civil damage value of the wildlife unlawfully taken, wounded or killed, or unlawfully possessed as prescribed under A.R.S. § 17-314, if the Department believes that an enhanced reward offer is merited due to the specific circumstances of the case.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(7) and 17-315(B)(1)

Historical Note

New Section R12-4-126 renumbered from R12-4-116 and amended by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 20-1).

R12-4-127. Civil Liability for Loss of Wildlife

A. In order to compensate the state for the value of lost or injured wildlife, the Commission may, pursuant to A.R.S. § 17-314, impose a civil penalty against any person for unlawfully taking, wounding, killing or possessing wildlife. Any civil penalties so imposed shall be equal to or greater than the applicable statutory-minimum sums found in A.R.S. § 17-314(A). The Commission may impose a civil penalty above the statutory-minimum sums where it has determined that the value of the lost or injured wildlife exceeds the statutory-minimum sums.

B. The Commission shall annually establish the value of lost or injured wildlife using objective and measurable economic criteria. When doing so, the Commission may consider objective economic criteria recommended by the Department or any other person.

C. The Department shall recommend the value of lost or injured wildlife to the Commission by aggregating the following objective and measurable economic factors:

1. The average dollar amount spent by an individual hunter in pursuit of the same species. This amount shall be calculated using information from the most recent National Survey of Fishing, Hunting and Wildlife-Associated Recreation conducted by the U.S. Fish and Wildlife Service and measures hunting and fishing expenditures, in combination with hunter harvest data gathered by the Department. This information shall be available on the Department's website.
2. The average dollar amount spent by an individual in an effort to view wildlife. This amount shall be calculated using information from the most recent National Survey of Fishing, Hunting and Wildlife-Associated Recreation conducted by the U.S. Fish and Wildlife Service and measures wildlife viewing expenditures, in combination with hunter harvest data gathered by the Department. This information shall be available on the Department's website.
3. The average body weight in pounds of meat for the unlawfully taken or possessed species multiplied by the average price per pound of ground meat for that same species or a similar species. Average body weight in pounds of meat shall be calculated using the average body weight for the wildlife taken, minus 30% of the average weight to account for the weight of the head, hide, offal, and bone.
4. When new data is not available, the Department may use Consumer Price Index (CPI) calculations to update the above factors in terms of U.S. dollars.

D. The most recent wildlife values established by the Commission shall be available on the Department's website.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(1), 17-231(B)(13), 17-231(B)(14), and 17-314

Historical Note

New Section made by final rulemaking at 27 A.A.R. 283, effective July 1, 2021 (Supp. 20-1).

17-102. Wildlife as state property; exceptions

Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.

17-211. Director; selection; removal; powers and duties; employees

A. The commission shall appoint a director of the Arizona game and fish department, who shall be the chief administrative officer of the game and fish department. The director shall receive compensation as determined pursuant to section 38-611. The director shall be selected on the basis of administrative ability and general knowledge of wildlife management. The director shall act as secretary to the commission, and shall serve at the pleasure of the commission. The director shall not hold any other office, and shall devote the entire time to the duties of office.

B. The commission shall prepare an examination for the post of director to comply with the requirements of this title. The examination shall be conducted at the offices of the commission at the capital to establish an active list of eligible applicants. The director shall be selected from those scoring satisfactory grades and having other qualities deemed advisable by the commission. The commission may call for additional examinations from time to time for selection of a new list of eligible applicants to fill a vacancy.

C. Subject to title 41, chapter 4, article 4, the director may appoint employees necessary to carry out the purposes of this title, when funds for the payment of their salaries are appropriated. Department employees shall be located in different sections of the state where their services are most needed. Compensation for persons appointed shall be as determined pursuant to section 38-611.

D. The director shall:

1. Have general supervision and control of all activities, functions and employees of the department.

2. Enforce all provisions of this title, including all commission rules.

3. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management and wildfire prevention and suppression as provided by section 37-1302, subsection B.

E. Game rangers and wildlife managers may, in addition to other duties:

1. Execute all warrants issued for a violation of this title.

2. Execute subpoenas issued in any matter arising under this title.

3. Search without warrant any aircraft, boat, vehicle, box, game bag or other package where there is sufficient cause to believe that wildlife or parts of wildlife are possessed in violation of law.

4. Inspect all wildlife taken or transported and seize all wildlife taken or possessed in violation of law, or showing evidence of illegal taking.

5. Seize as evidence devices used illegally in taking wildlife and hold them subject to the provisions of section 17-240.

6. Generally exercise the powers of peace officers with primary duties the enforcement of this title.

7. Seize devices that cannot be lawfully used for the taking of wildlife and are being so used and hold and dispose of them pursuant to section 17-240.

17-214. Arizona game and fish department reserve; members; powers and duties; compensation

A. The commission may establish a volunteer organization known as the Arizona game and fish department reserve and prescribe the qualifications for membership. Members of the reserve serve at the pleasure of the director who has general supervision and control of all reserve activities.

B. The reserve shall assist the department as an auxiliary body and perform such duties in the areas of education, conservation and enforcement as the commission prescribes by rule or regulation. The director may designate qualified reservists as peace officers in the same manner and with the same powers as game rangers and wildlife managers. Such reservists are not entitled to participate in the public safety personnel retirement system pursuant to title 38, chapter 5, article 4.

C. Members of the reserve are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2. Members of the reserve are deemed to be employees of this state for the purpose of coverage under Arizona workers' compensation pursuant to title 23, chapter 6.

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.

2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.

3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.

4. Be responsible for the enforcement of laws for the protection of wildlife.

5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.

6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.

7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.

8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.

9. 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 commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.

2. Establish game management units or refuges for the preservation and management of wildlife.

3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.

4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.

5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.

6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.

7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.

8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.

9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.

10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.

11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.

12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.

13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

17-234. Open or closed seasons; bag limits; possession limits

The commission shall by order open, close or alter seasons and establish bag and possession limits for wildlife, but a commission order to open a season shall be issued not less than ten days prior to such opening date. The order may apply statewide or to any portion of the state. Closed season shall be in effect unless opened by commission order.

17-239. Wildlife depredations; investigations; corrective measures; disposal; reports; judicial review

A. Any person suffering property damage from wildlife may exercise all reasonable measures to alleviate the damage, except that reasonable measures shall not include injuring or killing game mammals, game birds or wildlife protected by federal law or regulation unless authorized under subsection D of this section. A person may not retain or sell any portion of an animal taken pursuant to this subsection except as provided in section 3-2403.

B. Any person suffering such property damage, after resorting to the relief as is provided in subsection A of this section, may file a written report with the director, advising the director of the damage suffered, and the species of animals causing the damage, and the director shall immediately order an investigation and report by an employee trained in the handling of wild animal depredation.

C. The department shall provide technical advice and assist in the necessary anti-depredation measures recommended in the report, including trapping, capturing and relocating animals.

D. If harvest of animals is found to be necessary to relieve damage, the commission may establish special seasons or special bag limits, and either set reduced fees or waive any or all license fees required by this title, to crop that wildlife. If the commission determines that this cropping by hunters is impractical, it may issue a special permit for taking that wildlife to the landowner, lessee, livestock operator or municipality suffering damage, provided that the edible portions, or other portions as prescribed by the commission, of all the wildlife taken by the person suffering damage are turned over to an agent of the department for delivery to a public institution or charitable organization.

E. Except as provided in section 41-1092.08, subsection H, in the event any person suffering property damage from wildlife is dissatisfied with the final decision of the commission, the person may seek judicial review pursuant to title 12, chapter 7, article 6.

17-240. Disposition of wildlife; devices; unlawful devices; notice of intention to destroy; waiting period; destruction; jurisdiction of recovery actions; disposition of unclaimed property

A. Wildlife seized under this title may be disposed of in such manner as the commission or the court may prescribe, except that the edible portions shall be given to public institutions or charitable organizations. In consultation with the department of health services and the chief veterinary meat inspector, the commission shall adopt rules for the handling, transportation, processing and storing of game meat given to public institutions and charitable organizations.

B. Devices, excepting firearms, which cannot be used lawfully for the taking of wildlife and being so used at the time seized may be destroyed. Notice of intention to destroy such devices as prescribed in this section must be sent by registered mail to the last known address of the person from whom seized if known and posted in three conspicuous places within the county wherein seized, two of said notices being posted in the customary place for posting public notices about the county courthouse of said county. Such device shall be held by the department for thirty days after such posting and mailing, and if no action is commenced to recover possession of such device within such time, the same shall be summarily destroyed by the department, or if such device shall be held by the court in any such action to have been used for the taking of wildlife, then such device shall be summarily destroyed by the department immediately after the decision of the court has become final. The justice court shall have jurisdiction of any such actions or proceedings commenced to recover the possession of such devices.

C. Devices other than those referred to in subsection B, including firearms seized under this title shall, after final disposition of the case, be returned to the person from whom the device was seized. If the person from whom the device was seized cannot be located or ascertained, the device seized shall be retained by the department at least ninety days after final disposition of the case, and all devices so held by the department may be:

1. Sold annually.

2. Destroyed only if considered a prohibited or defaced weapon, as defined in section 13-3101, except that any seized firearm registered in the national firearms registry and transfer records of the United States treasury department or has been classified as a curio or relic by the United States treasury department shall not be destroyed.

D. If no complaint is filed pursuant to this title, the device shall be returned to the person from whom seized within thirty days from the date seized.

E. A complete report of all wildlife and devices seized by the department showing a description of the items, the person from whom it was seized, if known, and a record of the disposition shall be kept by the department. The money derived from the sale of any devices shall be deposited in the game and fish fund.

17-241. Acquisition and disposition of lands and waters; retention of rights; disposition of proceeds

A. The commission, in the name of the state, with the approval of the governor may:

1. Acquire by purchase, lease, exchange, gift or condemnation lands for use as fish hatcheries, game farms, firing ranges, reservoir sites or rights of way to fishing waters.

2. Acquire by purchase, lease, exchange or gift lands or waters for use as fish hatcheries, game farms, shooting areas, firing ranges or other purposes necessary to carry out the provisions of this title.

3. Acquire by condemnation waters for use as fish hatcheries. The acquisition of land acquired by condemnation shall be limited to a maximum of one hundred sixty acres unless first approved by the legislature.

B. The commission may, with approval of the governor and state land commissioner, lease, sublease, exchange, or sell, in the name of the state, any land acquired by gift, purchase, lease, exchange, or other method.

C. Notwithstanding any other provision of law, the sale or transfer of any lands under the provisions of this section shall be subject to a reservation to the state of all mineral rights and may be subject to the right of entry thereon by the public for hunting and fishing purposes.

D. Money derived from a sale or lease shall be deposited in the game and fish fund.

17-250. Wildlife diseases; order of director; violation; classification; rule making exemption

A. If a wildlife disease is suspected or documented in freeranging or captive wildlife, the director may issue orders that are necessary to minimize or eliminate the threat from the disease. The director may also order or direct an employee of the department to:

1. After notification of and in coordination with the state veterinarian, establish quarantines and the boundary of the quarantine.

2. Destroy wildlife as necessary to prevent the spread of any infectious, contagious or communicable disease.

3. Control the movement of wildlife, wildlife carcasses or wildlife parts that may be directly related to spreading or disseminating diseases that pose a health threat to animals or humans.

4. Require any individual who has taken wildlife, who is in possession of wildlife or who maintains wildlife under a license issued by the department to submit the wildlife or parts for disease testing.

B. On finding there is reason to believe an infectious, contagious or communicable disease is present, the director may require an employee of the department to enter any place where wildlife may be located and take custody of the wildlife for purposes of disease testing. If search warrants are required by law, the director shall apply for and obtain warrants for entry to carry out the requirements of this subsection.

C. A person who violates any lawful order issued under this section is guilty of a class 2 misdemeanor.

D. An order issued under this section is exempt from title 41, chapter 6, article 3, except that the director shall promptly file a copy of the order with the secretary of state for publication in the Arizona administrative register pursuant to section 41-1013.

17-304. Prohibition by landowner on hunting, fishing, trapping or guiding; trespassing; posting; requirements

A. Landowners or lessees of private land who desire to prohibit hunting, fishing, trapping or guiding on their lands without their permission shall post such lands closed to hunting, fishing, trapping or guiding using notices or signboards.

B. State or federal lands, including those under lease, may not be posted except by consent of the commission.

C. The notices or signboards shall meet all of the following criteria:

1. Be at least eight inches by eleven inches with plainly legible wording in capital and bold-faced lettering at least one inch high.

2. Contain the words "no trespassing", "no hunting", "no trapping", "no fishing" or "no guiding" either as a single phrase or in any combination.

3. Be conspicuously placed on a structure or post at all points of vehicular access, at all property or fence corners and at intervals of not more than one-quarter mile along the property boundary, except that a post with one hundred square inches or more of orange paint may serve as the interval notices between property or fence corners and points of vehicular access. The orange paint shall be clearly visible and shall cover the entire aboveground surface of the post facing outward and on both lateral sides from the closed area.

D. The entry of any person for the taking of wildlife is not grounds for an action for criminal trespassing pursuant to section 13-1502 unless either:

1. The land has been posted pursuant to this section and the notices and signboards also contain the words "no trespassing".

2. The person knowingly remains unlawfully on any real property after a reasonable request to leave by a law enforcement officer acting at the request of the owner, the owner or any other person having lawful control over the property or the person knowingly disregards reasonable notice prohibiting entry to any real property.

17-309. Violations; classification

A. Unless otherwise prescribed by this title, it is unlawful for a person to:

1. Violate any provision of this title or any rule adopted pursuant to this title.

2. Take, possess, transport, release, buy, sell or offer or expose for sale wildlife except as expressly permitted by this title.

3. Destroy, injure or molest livestock, growing crops, personal property, notices or signboards, or other improvements while hunting, trapping or fishing.

4. Discharge a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident.

5. Take a game bird, game mammal or game fish and knowingly permit an edible portion thereof to go to waste, except as provided in section 17-302.

6. Take big game, except bear or mountain lion, with the aid of dogs.

7. Make more than one use of a shipping permit or coupon issued by the commission.

8. Obtain a license or take wildlife during the period for which the person's license has been revoked or suspended or the person has been denied a license.

9. Litter hunting and fishing areas while taking wildlife.

10. Take wildlife during the closed season.

11. Take wildlife in an area closed to the taking of that wildlife.

12. Take wildlife with an unlawful device.

13. Take wildlife by an unlawful method.

14. Take wildlife in excess of the bag limit.

15. Possess wildlife in excess of the possession limit.

16. Possess or transport any wildlife or parts of the wildlife that was unlawfully taken.

17. Possess or transport the carcass of big game without a valid tag being attached.

18. Use the edible parts of any game mammal or any part of any game bird or nongame bird as bait.

19. Possess or transport the carcass or parts of a carcass of any wildlife that cannot be identified as to species and legality.

20. Take game animals, game birds and game fish with an explosive compound, poison or any other deleterious substances.

21. Import into this state or export from this state the carcass or parts of a carcass of any wildlife unlawfully taken or possessed.

B. Unless a different or other penalty or punishment is specifically prescribed, a person who violates any provision of this title, or who violates or fails to comply with a lawful order or rule of the commission, is guilty

of a class 2 misdemeanor.

C. A person who knowingly takes any big game during a closed season or who knowingly possesses, transports or buys any big game that was unlawfully taken during a closed season is guilty of a class 1 misdemeanor.

D. A person is guilty of a class 6 felony who knowingly:

1. Barters, sells or offers for sale any big game or parts of big game taken unlawfully.

2. Barters, sells or offers for sale any wildlife or parts of wildlife unlawfully taken during a closed season.

3. Barters, sells or offers for sale any wildlife or parts of wildlife imported or purchased in violation of this title or a lawful rule of the commission.

4. Assists another person for monetary gain with the unlawful taking of big game.

5. Takes or possesses wildlife while under permanent revocation under section 17-340, subsection B, paragraph 3.

E. A peace officer who knowingly fails to enforce a lawful rule of the commission or this title is guilty of a class 2 misdemeanor.

17-314. Illegally taking, wounding, killing or possessing wildlife; civil penalty; enforcement

A. The commission may impose a civil penalty against any person for unlawfully taking, wounding, killing or possessing any of the following wildlife, or part thereof, to recover the following minimum sums:

1. For each turkey or javelina $ 500.00

2. For each bear, mountain lion, pronghorn (antelope)

or deer $1,500.00

3. For each elk or eagle, other than

endangered species $2,500.00

4. For each predatory, fur-bearing or nongame animal $ 250.00

5. For each small game or aquatic wildlife animal $ 50.00

6. For each bighorn sheep, bison (buffalo)

or endangered species animal $8,000.00

B. The commission may bring a civil action in the name of this state to enforce the civil penalty. The civil penalty, or a verdict or judgment to enforce the civil penalty, shall not be less than the sum fixed in this section. The minimum sum that the commission may recover from a person pursuant to this section may be doubled for a second violation, verdict or judgment and tripled for a third violation, verdict or judgment. The action to enforce the civil penalty may be joined with an action for possession and recovery had for the possession as well as the civil penalty.

C. The pendency or determination of an action to enforce the civil penalty or for payment of the civil penalty or a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

D. All monies recovered pursuant to this section shall be deposited in the wildlife theft prevention fund established by section 17-315.

17-315. Wildlife theft prevention fund; authorized expenditures

A. The wildlife theft prevention fund is established consisting of:

1. Monies received from civil penalties pursuant to section 17-314.

2. Money received from donations to the fund.

3. Monies appropriated by the legislature for the purposes provided in this article.

4. Monies received as fines, forfeitures and penalties collected for violations of this title.

B. Monies in the wildlife theft prevention fund shall be expended only for the following purposes:

1. The financing of reward payments to persons, other than peace officers, game and fish department personnel and members of their immediate families, responsible for information leading to the arrest of any person for unlawfully taking, wounding or killing, possessing, transporting or selling wildlife and attendant acts of vandalism. The commission shall establish the schedule of rewards to be paid for information received and payment shall be made from monies available for this purpose.

2. The financing of a statewide telephone reporting system under the name of "operation game thief", which shall be established by the director under the guidance of the commission.

3. The promotion of the public recognition and awareness of the wildlife theft prevention program.

4. Investigations of the unlawful taking, possession or use of wildlife.

5. Investigations of fraud related to licenses, permits, tags or stamps.

C. The wildlife theft prevention fund shall be expended in conformity with the laws governing state financial operations. Balances remaining at the end of the fiscal year are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

17-331. License or proof of purchase required; violation of child support order

A. Except as provided by this title, rules prescribed by the commission or commission order, a person shall not take any wildlife in this state without a valid license or a commission approved proof of purchase. The person shall carry the license or proof of purchase and produce it on request to any game ranger, wildlife manager or peace officer.

B. A certificate of noncompliance with a child support order issued pursuant to section 25-518 invalidates any license or proof of purchase issued to the support obligor for taking wildlife in this state and prohibits the support obligor from applying for any additional licenses issued by an automated drawing system under this title.

C. On receipt of a certificate of compliance with a child support order from the court pursuant to section 25-518 and without further action:

1. Any license or proof of purchase issued to the support obligor for taking wildlife that was previously invalidated by a certificate of noncompliance and that has not otherwise expired shall be reinstated.

2. Any ineligibility to apply for any license issued by an automated drawing system shall be removed.

17-332. Form and content of license; duplicate licenses; transfer of license prohibited; exceptions; refunds; period of validity; definitions

A. Licenses and license materials shall be prepared by the department and may be furnished and charged to dealers that are authorized to issue licenses. Each license shall be issued in the name of the department and signed in a manner provided by rule adopted by the commission. With each license authorizing the taking of big game, the department shall provide such tags as the commission may prescribe, which the licensee shall attach to the big game animal in the manner prescribed by the commission. The commission may limit the number or use of licenses that are issued to nonresidents or permits that are issued to nonresidents and that are not issued in a random drawing. The commission shall limit the number of big game permits issued to nonresidents in a random drawing to ten percent or fewer of the total hunt permits, but in extraordinary circumstances, at a public meeting the commission may increase the number of permits issued to nonresidents in a random drawing if, on separate roll call votes, the members of the commission unanimously:

1. Support the finding of a specifically described extraordinary circumstance.

2. Adopt the increased number of nonresident permits for the hunt.

B. The commission shall issue with each license a shipping permit entitling the holder of the license to a shipment of game or fish as provided by article 4 of this chapter.

C. It is unlawful, except as provided by the commission, for any person to apply for or obtain in any one license year more than one original license permitting the taking of big game. A duplicate license or tag may be issued by the department or by a license dealer if the person requesting such a license or tag furnishes the information deemed necessary by the commission.

D. A license or permit is not transferable and may not be used by anyone except the person to whom the license or permit was issued, except that:

1. The commission may prescribe the manner and conditions of transferring and using permits and tags under this paragraph, including an application process for a qualified organization, to allow a person to transfer the person's big game permit or tag to a qualified organization for use by:

(a) A minor child who has a life-threatening medical condition or a permanent physical disability.

(b) A minor child whose parent was killed in action while serving in the armed forces of the United States.

(c) A minor child whose parent was killed in the course and scope of employment as a peace officer.

(d) A minor child whose parent was killed in the course and scope of employment as a professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department.

(e) A veteran of the armed forces of the United States who has a service-connected disability.

2. A parent, grandparent or legal guardian may allow the parent's, grandparent's or guardian's minor child or minor grandchild to use the parent's, grandparent's or guardian's big game permit or tag to take big game pursuant to the following requirements:

(a) The parent, grandparent or guardian must transfer the permit or tag to the minor child in a manner prescribed by the commission.

(b) The minor child must possess a valid hunting license.

(c) Any big game that is taken counts toward the minor child's bag limit.

E. A minor child who uses a big game permit or tag pursuant to subsection D of this section and is under fourteen years of age must satisfactorily complete the Arizona hunter education course or another comparable hunter education course that is approved by the director.

F. Refunds may not be made for the purchase of a license or permit, except that the commission may prescribe a manner of refunding the cost of a big game permit or tag to the following individuals:

1. An active duty member of the armed forces of the United States who is ordered to leave this state during the time period in which the big game permit or tag is valid for the taking of wildlife.

2. A peace officer who is assigned to special duty during the time period in which the big game permit or tag is valid for the taking of wildlife.

3. A professional firefighter who is a member of a state, federal, tribal, city, town, county, district or private fire department and who is assigned to special duty during the time period in which the big game permit or tag is valid for the taking of wildlife.

G. Licenses are valid for a license year as prescribed in rule by the commission. Lifetime licenses and benefactor licenses are valid for the lifetime of the licensee.

H. For the purposes of this section:

1. "Disability" means a permanent physical impairment that substantially limits one or more major life activities and that requires the assistance of another person or a mechanical device for physical mobility.

2. "Qualified organization" means a nonprofit organization that is qualified under section 501(c)(3) of the United States internal revenue code and that affords opportunities and experiences to minor children with life threatening medical conditions or with physical disabilities, minor children whose parents were killed in action while serving in the armed forces of the United States or in the course and scope of employment as peace officers or professional firefighters or to veterans with disabilities.

17-333. License classifications; fees; reduced fee and complimentary licenses; annual report; review

A. The commission shall prescribe by rule license classifications that are valid for the taking or handling of wildlife, fees for licenses, permits, tags and stamps and application fees.

B. The commission may temporarily reduce or waive any fee prescribed by rule under this title on the recommendation of the director.

C. The commission may reduce the fees for licenses and issue complimentary licenses, including the following:

1. A complimentary license to a pioneer who is at least seventy years of age and who has been a resident of this state for twenty-five or more consecutive years immediately before applying for the license. The pioneer license is valid for the licensee's lifetime, and the commission may not require renewal of the license.

2. A complimentary license to a veteran of the armed forces of the United States who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a permanent service-connected disability rated as one hundred percent disabling.

3. A license for a reduced fee of up to twenty-five percent less than the full license fee to a veteran of the United States armed forces who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a service-connected disability.

4. A license for a reduced fee that is one-half of the full license fee to a person who has been a resident of this state for one year or more immediately before applying for the license and who submits satisfactory proof to the department that the person is a veteran and a bona fide purple heart medal recipient.

5. A youth license for a reduced fee to a resident of this state who is either:

(a) A member of the boy scouts of America and who has attained the rank of eagle scout.

(b) A member of the girl scouts of the USA and who has received the gold award.

D. All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the game and fish fund established by section 17-261.

E. On or before December 31 of each year, the commission shall submit an annual report to the president of the senate, the speaker of the house of representatives, the chairperson of the senate natural resources, energy and water committee and the chairperson of the house of representatives energy, environment and natural resources committee, or their successor committees, that includes information relating to license classifications, fees for licenses, permits, tags and stamps and any other fees that the commission prescribes by rule. The joint legislative audit committee may assign a committee of reference to hold a public hearing and review the annual report submitted by the commission.

17-333.02. Trapping license; education; exemption

A. A person applying for a trapping license must successfully complete a trapping education course conducted or approved by the department before being issued a trapping license. The department shall conduct or approve an educational course of instruction in responsible trapping and environmental ethics. The course shall include instruction on the history of trapping, trapping ethics, trapping laws, techniques in safely releasing nontarget animals, trapping equipment, wildlife management, proper catch handling, trapper health and safety and considerations and ethics intended to avoid conflicts with other public land users. A person must pass a written examination to successfully complete the course. The department shall not approve a trapping education course conducted by any person, agency, corporation or other organization for which a fee is charged greater than an amount the commission determines per person.

B. A person who is born before January 1, 1967 or who has completed, from and after December 31, 1987 and before March 1, 1993, the voluntary trapper education course on responsible trapping conducted in cooperation with the Arizona game and fish department is exempt from subsection A of this section.

17-334. Sale of licenses

Hunting, fishing and other licenses shall be issued by such person as may be designated license dealers by the commission. The commission may suspend or revoke a dealer's license for failure to comply with rules specified by commission order.

17-335.01. Lifetime license and benefactor license

A. For the purposes of this title, the commission may prescribe by rule a lifetime license and a benefactor license and privileges associated with the taking and handling of fish and wildlife in this state pursuant to section 17-333. All monies derived from the sale of lifetime licenses and benefactor licenses shall be deposited, pursuant to sections 35-146 and 35-147, in the wildlife endowment fund established by section 17-271.

B. A lifetime license, benefactor license and trout stamp may be denied or suspended pursuant to, and for the offenses described in, section 17-340.

C. A lifetime license, benefactor license and trout stamp remain valid if the licensee subsequently resides outside this state, but the licensee must pay the nonresident fee to purchase any additional privileges, including stamps, permits and tags required to hunt and fish in this state. Limits set by the commission on issuing nonresident stamps, permits or tags do not apply to stamps, permits or tags sold to a lifetime licensee.

17-338. Remission of fees from sale of licenses and permits; violation; classification

A. License dealers shall transmit to the department all license and permit fees collected and furnish such information as the commission prescribes by rule. The failure to transmit these fees within thirty days after the deadline the commission prescribes by rule is cause to cancel a license dealer's license. The knowing failure to transmit all collected license and permit fees within thirty days is a class 2 misdemeanor.

B. A license dealer may collect and retain a reasonable fee as determined by the license dealer in addition to the fee charged to issue the license or permit.

17-339. Reports and returns by license dealers; noncompliance; classification

A. Each license dealer shall by January 10, or on demand of the commission or department, return to the department:

1. All duplicate stubs, unused licenses, permits and big game tags.

2. All due and unremitted license and permit fees collected.

3. A full and complete report of the licenses, permits and big game tags returned.

B. The failure to make such return within thirty days shall automatically cancel the license dealer's license, and intentional failure to comply with the provisions of this section is a class 1 misdemeanor. Any license dealer who makes a false or fraudulent return or report or who fails to submit returns, reports or all due and unremitted fees as required under this section with the intent of defrauding the department is guilty of a class 6 felony.

17-342. Colorado river special use permit

A. A person taking fish or amphibians for purposes other than for profit from or while on a boat or other floating device on all waters of the Colorado river south of the Nevada-Arizona boundary shall have in his possession a valid angling or fishing license issued by either the state of Arizona or the state of California. In addition to one of the above described licenses, such person shall have in his possession a valid California or Arizona-Colorado river special use permit, as provided by sections 17-343 and 17-344, which shall be obtained on payment of a fee to be fixed by the commission at not to exceed four dollars. Such a permit shall not be required to take fish or amphibians from canals, drains or ditches used to carry water from the Colorado river for irrigation or domestic purposes.

B. A person having in his possession a valid Arizona fishing license must have a California-Colorado river special use permit to legally fish the waters described in subsection A of this section. A person having in his possession a valid California angling license must have an Arizona-Colorado river special use permit to legally fish the waters described in subsection A of this section. Such special use permit when accompanied by the proper license will allow the holder to fish in any portion of such waters and permit him to enter the waters from any point.

C. Shore line fishing does not require a Colorado river special use permit as long as the fisherman remains on the shore of the state from which he holds a valid license and does not embark on the water.

17-345. Surcharges; purposes

In addition to any other fees, the commission may impose and collect:

1. A surcharge on a license, permit, tag and stamp as the commission prescribes by rule. Monies collected pursuant to this paragraph shall be segregated from other fees and deposited in the conservation development fund.

2. Surcharges on Arizona-Colorado river special use permits, California-Colorado river special use permits and Nevada-Colorado river special use permits issued in this state as provided by sections 17-342, 17-343 and 17-344. The amount of the surcharges shall be determined by the commission. A surcharge under this paragraph is to be used solely for the purpose of the lower Colorado river multispecies conservation program under section 48-3713.03. Any monies collected pursuant to this paragraph shall be segregated from other revenues and deposited, pursuant to sections 35-146 and 35-147, in a fund designated as the Colorado river special use permit clearing account. Each month, on notification by the department, the state treasurer shall pay all of the monies in the clearing account to an account designated by a multi-county county water conservation district established under title 48, chapter 22 to be used solely for the lower Colorado river multispecies conservation program and for no other purpose.

17-346. Special big game license tags

In addition to any license tags issued under section 17-333, the commission may issue special big game license tags in the name of an incorporated nonprofit organization that is dedicated to wildlife conservation. No more than three special big game license tags may be issued for each species of big game in a license year. Notwithstanding section 17-332, subsection D, an organization that receives special big game license tags issued under this section may sell and transfer them if all proceeds of the sale are used in this state for wildlife management.

17-371. Transportation, possession and sale of wildlife and wildlife parts

A. A person may transport in his possession his legally taken wildlife, or may authorize the transportation of his legally taken big game, provided such big game or any part thereof has attached thereto a valid transportation permit issued by the department. Such wildlife shall be transported in such manner that it may be inspected by authorized persons upon demand until the wildlife is packaged or stored. Species of wildlife, other than game species, may be transported in any manner unless otherwise specified by the commission. A person possessing a valid license may transport lawfully taken wildlife other than big game given to him but in no event shall any person possess more than one bag or possession limit.

B. A holder of a resident license shall not transport from a point within to a point without the state any big game species or parts thereof without first having obtained a special permit issued by the department or its authorized agent.

C. Migratory birds may be possessed and transported in accordance with the migratory bird treaty act (40 Stat. 755; 16 United States Code sections 703 through 711) and regulations under that act.

D. A holder of a sport falconry license may transport one or more raptors that the person lawfully possesses under terms and conditions prescribed by the commission. Regardless of whether a person holds a sport falconry license and as provided by section 17-236, subsection C, the person may transport for sport falconry purposes one or more raptors that are not listed pursuant to the migratory bird treaty act.

E. Heads, horns, antlers, hides, feet or skin of wildlife lawfully taken, or the treated or mounted specimens thereof, may be possessed, sold and transported at any time, except that migratory birds may be possessed and transported only in accordance with federal regulations.

17-452. Restrictions on motor vehicle use; recommendations; agreements; rules

A. When the commission determines that the operation of motor vehicles within a certain area, except private land, is or may be damaging to wildlife reproduction, wildlife management or wildlife habitat of such area, the commission, with the concurrence of the land management agency involved and after a public hearing, may order such area closed to motor vehicles for not more than five years from the date of such closure, provided that all roads in such area shall remain open unless specifically closed.

B. The commission may also recommend that particular areas of land be set aside or made available for the use of recreational vehicles.

C. The commission may enter into agreements with landowners and agencies controlling areas that the commission has made recommendations on pursuant to subsection B. Any such agreement shall stipulate the restrictions, prohibitions and permitted uses of motor vehicles in such area and the duties of the commission and such landowner or agency relating to the enforcement of the terms of such agreement.

D. The commission shall adopt rules pursuant to title 41, chapter 6 to carry out the provisions of this section.

17-453. Notices of restrictions; posting; publication

A. For all areas specified under agreements pursuant to section 17-452, the commission shall cause notices of the restrictions, prohibitions or permitted uses of such area to be posted, prior to the effective date of such restrictions, prohibitions or permitted uses, on the main traveled roads and highways entering such area and such locations that the commission deems appropriate.

B. In addition to the posted notices required by subsection A of this section, the commission shall cause a notice of such restrictions, prohibitions or permitted uses, together with a description of the area, to be published three times in a newspaper of general circulation in the state prior to the effective date of such restrictions, prohibitions or permitted uses.

17-454. Prohibition against vehicle travel

No person shall drive a motor operated vehicle cross-country on public or private lands where such cross-country driving is prohibited by rule or regulation or, in the case of private lands, by proper posting.

17-455. Exceptions

A. The restrictions, prohibitions or permitted uses established pursuant to section 17-452 shall not apply to:

1. Public employees acting in the scope of their employment.

2. Valid licensees and permittees of state agencies and land management agencies. Holders of such licenses and permits shall be limited to the specific purposes and areas of travel for which such licenses or permits were issued or granted.

3. Necessary travel within or across restricted or prohibited land by employees and agents of public utilities, subject to Arizona corporation commission (or any successor agency) or federal power commission regulation, of suppliers of water or power acting as agents of the federal government, and employees or agents of mining companies exercising rights pursuant to any state or federal mining law or regulation. Other persons who are regularly engaged in prospecting or mineral exploration shall upon application be issued vehicular access permits by the director.

4. A licensed hunter who enters an area solely to pick up a big game animal which he has legally killed.

B. Emergency situations, such as fire or other disasters, or when otherwise necessary to protect life or property shall not require a permit.

C. Parking and camping shall be allowed along open roads in closed areas, except that no vehicle shall be parked or operated at a distance greater than three hundred feet from such roads.

25-320. Child support; factors; methods of payment; additional enforcement provisions; definitions

A. In a proceeding for dissolution of marriage, legal separation, maintenance or child support, the court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for support of the child, without regard to marital misconduct.

B. If child support has not been ordered by a child support order and if the court deems child support appropriate, the court shall direct, using a retroactive application of the child support guidelines to the date of filing a dissolution of marriage, legal separation, maintenance or child support proceeding, the amount that the parents shall pay for the past support of the child and the manner in which payment shall be paid, taking into account any amount of temporary or voluntary support that has been paid. Retroactive child support is enforceable in any manner provided by law.

C. If the parties lived apart before the date of the filing for dissolution of marriage, legal separation, maintenance or child support and if child support has not been ordered by a child support order, the court may order child support retroactively to the date of separation, but not more than three years before the date of the filing for dissolution of marriage, legal separation, maintenance or child support. The court must first consider all relevant circumstances, including the conduct or motivation of the parties in that filing and the diligence with which service of process was attempted on the obligor spouse or was frustrated by the obligor spouse. If the court determines that child support is appropriate, the court shall direct, using a retroactive application of the child support guidelines, the amount that the parents must pay for the past support of the child and the manner in which payments must be paid, taking into account any amount of temporary or voluntary support that has been paid.

D. The supreme court shall establish guidelines for determining the amount of child support. The amount resulting from the application of these guidelines is the amount of child support ordered unless a written finding is made, based on criteria approved by the supreme court, that application of the guidelines would be inappropriate or unjust in a particular case. The supreme court shall review the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. The supreme court shall base the guidelines and criteria for deviation from them on all relevant factors, considered together and weighed in conjunction with each other, including:

1. The financial resources and needs of the child.

2. The financial resources and needs of the custodial parent.

3. The standard of living the child would have enjoyed if the child lived in an intact home with both parents to the extent it is economically feasible considering the resources of each parent and each parent's need to maintain a home and to provide support for the child when the child is with that parent.

4. The physical and emotional condition of the child, and the child's educational needs.

5. The financial resources and needs of the noncustodial parent.

6. The medical support plan for the child. The plan should include the child's medical support needs, the availability of medical insurance or services provided by the Arizona health care cost containment system and whether a cash medical support order is necessary.

7. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

8. The duration of parenting time and related expenses.

E. Even if a child is over the age of majority when a petition is filed or at the time of the final decree, the court may order support to continue past the age of majority if all of the following are true:

1. The court has considered the factors prescribed in subsection D of this section.

2. The child has severe mental or physical disabilities as demonstrated by the fact that the child is unable to live independently and be self-supporting.

3. The child's disability began before the child reached the age of majority.

F. If a child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided during the period in which the child is actually attending high school or the equivalency program but only until the child reaches nineteen years of age unless the court enters an order pursuant to subsection E of this section. Notwithstanding any other law, a parent paying support for a child over the age of majority pursuant to this section is entitled to obtain all records related to the attendance of the child in the high school or equivalency program.

G. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, the person obligated to pay support shall make any subsequent support payments and handling fees only by cash, money order, cashier's check, traveler's check or certified check. If a person required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that person may pay support by personal check if these payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee.

H. Subsection G of this section does not apply to payments made by means of an assignment.

I. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments for the period prescribed in section 25-503 due to the failure of the person to whom the support has been ordered to be paid to notify the clerk or support payment clearinghouse of a change in address, the clerk or support payment clearinghouse shall not deliver further payments and shall return the payments to the obligor consistent with the requirements of section 25-503.

J. An order for child support shall assign responsibility for providing medical insurance for the child who is the subject of the support order to one of the parents and shall assign responsibility for the payment of any medical costs of the child that are not covered by insurance according to the child support guidelines. Each parent shall provide information to the court regarding the availability of medical insurance for the child that is accessible and available at a reasonable cost. In title IV-D cases, the parent responsible pursuant to court order for providing medical insurance for the child shall notify the child support enforcement agency in the department of economic security if medical insurance has been obtained or if the child is no longer covered under an insurance plan.

K. If the court finds that neither parent has the ability to obtain medical insurance for the child that is accessible and available at a reasonable cost, the court shall:

1. In a title IV-D case, in accordance with established title IV-D criteria, establish a reasonable monthly cash medical support order to be paid by the obligor. If medical assistance is being provided to a child under title XIX of the social security act, cash medical support is assigned to the state pursuant to section 46-407. On verification that the obligor has obtained private insurance, the cash medical support order terminates by operation of law on the first day of the month after the policy's effective date or on the date the court, or the department in a title IV-D case, is notified that insurance has been obtained, whichever is later. If the private insurance terminates, the cash medical support order automatically resumes by operation of law on the first day of the month following the termination date of the policy.

2. Order one parent to provide medical insurance when it becomes accessible and available at a reasonable cost.

3. Order that medical costs in excess of the cash medical support amount shall be paid by each parent according to the percentage assigned for payment of uninsured costs.

L. In a title IV-D case, if the court orders the noncustodial parent to obtain medical insurance the court shall also set an alternative cash medical support order to be paid by that parent if the child is not covered under an insurance plan within ninety days after entry of the order or if the child is no longer covered by insurance. The court shall not order the custodial parent to pay cash medical support.

M. In title IV-D cases the superior court shall accept for filing any documents that are received through electronic transmission if the electronically reproduced document states that the copy used for the electronic transmission was certified before it was electronically transmitted.

N. The court shall presume, in the absence of contrary testimony, that a parent is capable of full-time employment at least at the applicable state or federal adult minimum wage, whichever is higher. This presumption does not apply to noncustodial parents who are under eighteen years of age and who are attending high school.

O. An order for support shall provide for an assignment pursuant to sections 25-504 and 25-323.

P. Each licensing board or agency that issues professional, recreational or occupational licenses or certificates shall record on the application the social security number of the applicant and shall enter this information in its database in order to aid the department of economic security in locating parents or their assets or to enforce child support orders. This subsection does not apply to a license that is issued pursuant to title 17 and that is not issued by an automated drawing system. If a licensing board or agency allows an applicant to use a number other than the social security number on the face of the license or certificate while the licensing board or agency keeps the social security number on file, the licensing board or agency shall advise an applicant of this fact.

Q. The factors prescribed pursuant to subsection D of this section are stated for direction to the supreme court. Except pursuant to subsection E of this section and sections 25-501 and 25-809, the superior court shall not consider the factors when making child support orders, independent of the child support guidelines.

R. For the purposes of this section:

1. "Accessible" means that insurance is available in the geographic region where the child resides.

2. "Child support guidelines" means the child support guidelines that are adopted by the state supreme court pursuant to 42 United States Code sections 651 through 669B.

3. "Date of separation" means the date the married parents ceased to cohabit.

4. "Reasonable cost" means an amount that does not exceed the higher of five per cent of the gross income of the obligated parent or an income-based numeric standard that is prescribed in the child support guidelines.

5. "Support" has the same meaning prescribed in section 25-500.

6. "Support payments" means the amount of money ordered by the court to be paid for the support of the minor child or children.

25-502. Jurisdiction, venue and procedure; additional enforcement provisions

A. The superior court has original jurisdiction in proceedings brought by the department, its agents, a person having physical custody of a child or a party to the case to establish, enforce or modify the duties of support as prescribed in this chapter. All such proceedings are civil actions except as provided in section 25-511. Proceedings to enforce the duties of support as prescribed in this chapter may be originated in the county of residence of the respondent or the petitioner or of the child or children who are the subject of the action.

B. A proceeding to establish support must originate in the county where the child resides or, if the child resides out of state, the county of this state where the party filing the petition to establish support resides, if either of the following applies:

1. An action does not exist under this title.

2. Paternity was established without a court order pursuant to section 36-334.

C. A person or the department or its agent must file a petition to establish or modify a child support order in the superior court in the county of the last order issued under this title if an order exists in this state. If a person wishes the case transferred to the county of this state where the child resides or, if the child resides out of state, the county of this state where the party requesting the transfer resides, the person must file a request for transfer with the clerk of the superior court that issued the last order.

D. A request for transfer pursuant to subsection C of this section must include a petition or motion regarding support, a statement of payments in default, if applicable, and the transmittal fee prescribed in section 12-284. The responding party may object to the transfer by filing an objection and affidavit within twenty days after service of the request to transfer.

E. If the clerk does not receive an objection and affidavit pursuant to subsection D of this section, the clerk shall issue the transfer order and transfer the proceeding and all related court files to the other county within thirty days after service of the request to transfer. If the clerk receives an objection and affidavit within the time prescribed in subsection D of this section, the clerk shall notify all parties of the date of the hearing at least ten days before the hearing date. The court may hear evidence relevant only to the issue of the transfer. If after that hearing the court orders the transfer, the clerk shall transfer the proceeding and court files within ten days after the order. The county to which the transfer is made retains the court files and venue for all purposes and the transferring county shall not retain a copy of those files.

F. The county to which a transfer is made pursuant to subsection D or E of this section shall proceed as if the proceeding was brought in that county originally. A judgment from that county has the same effect and may be enforced or modified as a judgment from the original county.

G. The party who petitioned for transfer must pay the postadjudication fee prescribed in section 12-284 to the county to which the proceeding was transferred within ten days after the date the clerk of the court mails the notice of the requirement to pay the postadjudication fee. If the party does not pay the fee by that date, the transfer order is automatically nullified and the court clerk shall return the proceeding and all related court files to the original county.

H. Except as provided in section 25-510, in title IV-D cases the superior court shall accept for filing any documents that are received through electronic transmission if the electronically reproduced document states that the copy used for the electronic transmission was certified before it was electronically transmitted.

I. On filing of the petition and, if applicable, after a transfer is completed, the court shall issue an order requiring the responding party to appear at the time and place set for the hearing on the petition. Service of the order and a copy of the petition shall be as provided in the Arizona rules of family law procedure. If the responding party receives notice of a hearing but fails to appear, the court may issue a child support arrest warrant as provided in article 5 of this chapter and shall require that the responding party pay at the time of arrest an amount set by the

court to secure the responding party's release from custody pending an appearance at the next scheduled hearing. The court also may find the party to be in contempt of court pursuant to section 12-864.01 and set an amount to be paid to purge the contempt. Any purge amount set by the court shall supersede the amount required to be set to secure the responding party's release, and the responding party shall pay only the purge amount as a condition of release from custody. Any amounts paid under this section shall be deposited with the clerk of the court or the support payment clearinghouse and credited first to the responding party's current child support obligation and then to arrearages. The court may grant a default judgment for arrearages on a prima facie showing of the amount due.

J. The department or its agent or a parent, guardian or custodian may file with the clerk of the superior court a request to establish child support. The request must include a proposed order, the worksheet for child support and a notice of the right to request a hearing within twenty days after service in this state or within thirty days after service outside this state. The request, proposed order, worksheet and notice shall be served pursuant to the Arizona rules of family law procedure on all parties, and in a title IV-D case, on the department or its agent. In a title IV-D case, the department or its agent may serve all parties by certified mail, return receipt requested. If a party does not request a hearing within the time prescribed by this subsection, the court shall review the proposed order and worksheet and enter an appropriate order or set the matter for a hearing. In a title IV-D case, the department or its agent shall enforce the order.

K. Each licensing board or agency that issues professional, recreational or occupational licenses or certificates shall record on the application the social security number of the applicant and shall enter this information in its database in order to aid the department of economic security in locating parents or their assets or to enforce child support orders. This subsection does not apply to a license that is issued pursuant to title 17 and that is not issued by an automated drawing system. If a licensing board or agency allows an applicant to use a number other than the social security number on the face of the license or certificate while the licensing board or agency keeps the social security number on file, the licensing board or agency shall advise an applicant of this fact.

25-518. Child support arrearage; license suspension; hearing

A. If a court finds from the evidence presented at a hearing to enforce a child support order that the obligor has wilfully failed to pay child support, continues after notice pursuant to section 25-517, subsection A to wilfully fail to pay child support and is at least six months in arrears, the court shall do either of the following:

1. Send a certificate of noncompliance to the board or agency ordering the suspension or denial of a driver license or recreational license.

2. Send a certificate of noncompliance to the department of transportation that the noncommercial driver license of the obligor be restricted to travel as described in section 28-144.

B. To be eligible for a restricted license pursuant to subsection A, paragraph 2 of this section, the obligor must do all of the following:

1. Be employed for at least thirty hours per week.

2. Have a place of employment or attend a school that is located more than one mile from the obligor's place of residence.

3. Show that the employment or educational endeavor can reasonably be expected to contribute to bringing the obligor into compliance with the support order in a timely manner.

4. Enter into a payment plan with the department of economic security to pay the child support arrearage. If the court finds that the obligor is not in compliance with the agreement at any time, the obligor is subject to license suspension pursuant to this section.

C. If the obligor has complied with the support order since the suspension or denial, the obligor may petition the court for a hearing. If the obligor establishes at the review hearing that the obligor is in compliance with the support order or a court ordered plan for payment of arrearages, the court shall send a certificate of compliance to the board or agency. Except for licenses issued under title 17, the obligor may then apply for license reinstatement and shall pay all applicable fees.

D. In a title IV-D case, the department or its agent may file with the clerk of the superior court an affidavit indicating that the obligor is in compliance with the support order or the child support obligation. Within five business days after the affidavit is filed, the clerk shall send a notice of compliance to the obligor by first class mail. The clerk shall send a copy of the notice of compliance to the department and the licensing board or agency.

E. Except for licenses issued under title 17, the board or agency shall suspend or deny the license of the licensee within thirty days after receiving the notice of noncompliance from the court. The board or agency shall not lift the suspension until the board or agency receives a certificate of compliance from the court. Notwithstanding section 41-1064, subsection C and section 41-1092.11, subsection B, the board or agency is not required to conduct a hearing. The board or agency shall notify the department in writing or by any other means prescribed by the department of all suspensions within ten days after the suspension. The information shall include the name, address, date of birth and social security number of the licensee and the license category.

F. A certificate of noncompliance without further action invalidates a license to take wildlife in this state and prohibits the obligor from applying for a license issued by an automated drawing system under title 17. The court shall send a copy of the certificate of noncompliance to the department of economic security, and the department of economic security shall notify the Arizona game and fish department of all obligors against whom a notice of noncompliance has been issued and who have applied for a license issued by an automated drawing system.

G. Notwithstanding this section, the title IV-D agency or its agent may send a certificate of noncompliance to a board or agency to order it to suspend an obligor's professional or occupational license if the obligor:

1. Has wilfully failed to pay child support, continues after notice pursuant to section 25-517, subsection E to wilfully fail to pay child support and is at least six months in arrears.

2. Requested an administrative review and the determination confirms that the obligor is required to pay child support and has wilfully failed to pay and that either the obligor did not request a hearing on the determination or the determination was upheld after a hearing.

3. Failed to respond to the notice pursuant to section 25-517, subsection E.

H. If the obligor has paid all arrearages or if the obligor has entered into a written agreement with the title IV-D agency or its agent, the title IV-D agency shall issue a notice of compliance to the licensing board or agency.

41-1005. Exemptions

A. This chapter does not apply to any:

1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.

2. Order or rule of the Arizona game and fish commission that does the following:

(a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.

(b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.

(c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.

(d) Limits the number or use of licenses or permits that are issued to nonresidents pursuant to section 17-332.

3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.

4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.

5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.

6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.

7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.

8. Form whose contents or substantive requirements are prescribed by rule or statute and instructions for the execution or use of the form.

9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.

10. Fees prescribed by section 6-125.

11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.

12. Fees established under section 3-1086.

13. Fees established under sections 41-4010 and 41-4042.

14. Rule or other matter relating to agency contracts.

15. Fees established under section 32-2067 or 32-2132.

16. Rules made pursuant to section 5-111, subsection A.

17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.

18. Fees or charges established under section 41-511.05.

19. Emergency medical services protocols except as provided in section 36-2205, subsection B.

20. Fee schedules established pursuant to section 36-3409.

21. Procedures of the state transportation board as prescribed in section 28-7048.

22. Rules made by the state department of corrections.

23. Fees prescribed pursuant to section 32-1527.

24. Rules made by the department of economic security pursuant to section 46-805.

25. Schedule of fees prescribed by section 23-908.

26. Procedure that is established pursuant to title 23, chapter 6, article 6.

27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.

28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.

29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.

30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.

31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.

32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.

33. Rules made by the Arizona department of agriculture to adopt, implement and administer the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252) as provided by title 3, chapter 3, article 4.1.

34. Calculations that are performed by the department of economic security and that are associated with the adjustment of the sliding fee scale and formula for determining child care assistance pursuant to section 46-805.

35. Rules made by the Arizona department of agriculture to implement and administer the livestock operator fire and flood assistance grant program established by section 3-109.03.

B. Notwithstanding subsection A, paragraph 21 of this section, if the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.

C. Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall:

1. Prepare a notice and follow formatting guidelines prescribed by the secretary of state.

2. Prepare the rulemaking exemption notices pursuant to chapter 6.2 of this title.

3. File a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.

D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.

E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.

F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment. The state board of education shall consider the fiscal impact of any proposed rule pursuant to this subsection.

G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board for charter schools, except that the board shall adopt policies or rules for the board and the charter schools sponsored by the board that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any policy or rule, the board shall provide at least two opportunities for public comment. The state board for charter schools shall consider the fiscal impact of any proposed rule pursuant to this subsection.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.

2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency 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.

3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

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.

41-2752. State competition with private enterprise prohibited; exceptions; definition

A. A state agency shall not engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services to the public that are also offered by private enterprise unless specifically authorized by law other than administrative law and executive orders.

B. A state agency shall not offer or provide goods or services to the public for or through another state agency or a local agency, including by intergovernmental or interagency agreement, in violation of this section or section 41-2753.

C. The restrictions on activities that compete with private enterprise contained in this section do not apply to:

1. The development, operation and management of state parks, historical monuments and hiking or equestrian trails.

2. Correctional industries established and operated by the state department of corrections if the prices charged for products sold by the correctional industries are not less than the actual cost of producing and marketing the product plus a reasonable allowance for overhead and administrative costs.

3. The office of tourism.

4. The Arizona highways magazine, operated by the department of transportation.

5. Printing and distributing information to the public if the agency is otherwise authorized to do so, and printing or copying public records or other material relating to the public agency's public business and recovering through fees and charges the costs of such printing, copying and distributing.

6. The department of public safety.

7. The construction, maintenance and operation of state transportation facilities.

8. The development, distribution, maintenance, support, licensing, leasing or sale of computer software by the department of transportation.

9. Agreements executed by the Arizona health care cost containment system administration with other states to design, develop, install and operate information technology systems and related services or other administrative services pursuant to section 36-2925.

10. Agreements executed by the department of economic security with other states to design, develop, install and operate support collection technology systems and related services. The department shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this paragraph in the public assistance collections fund established by section 46-295.

11. Educational, vocational, treatment, training or work programs of the department of juvenile corrections and contracts between the department of juvenile corrections and this state, a political subdivision of this state or a private entity in order to provide employment or vocational educational experience.

12. The aflatoxin control technologies of the cotton research and protection council.

13. The lease or sublease of lands or buildings by the department of economic security pursuant to section 41-1958.

14. The Arizona commerce authority.

15. The Arizona game and fish commission, but only for the sale of goods or services and not firearms.

16. The lease or sublease of lands or buildings by the department of child safety pursuant to section 8-460.

17. Agreements executed by the department of child safety with other states to design, develop, install and operate support collection technology systems and related services. The department shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this paragraph in the child safety collections fund established by section 8-461.

18. The lease or sublease of state hospital lands or buildings by the department of health services.

19. The sale or lease of software, computer systems or intellectual property developed by the department of education or associated services provided for the sale or lease of software, computer systems or intellectual property by the department of education. The department shall deposit, pursuant to sections 35-146 and 35-147, sixty percent of the profit from the monies generated pursuant to this paragraph in the state general fund and the remaining forty percent in the department of education intellectual property fund established by section 15-231.04. The department of education may not transfer or expend monies or personnel resources for the purposes of marketing or soliciting goods or services authorized pursuant to this paragraph that were appropriated and authorized for other functions and programs of the department of education.

20. The lease or sublease of any real estate or related infrastructure by the department of emergency and military affairs pursuant to section 26-262, subsection K, paragraph 4.

D. The restrictions on activities that compete with private enterprise contained in subsection A of this section do not apply to community colleges and universities under the jurisdiction of a governing board.

E. For the purposes of this section, "profit" means any monies generated from the sale or lease of goods and services after accounting for the costs paid by this state, including appropriations from the state general fund.