E-1.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 19

Amend: R9-22-1901, R9-22-1903, R9-22-1904, R9-22-1905, R9-22-1907, R9-22-1909, R9-22-1913, R9-22-1915, R9-22-1919, R9-22-1922

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: June 20, 2024

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 19

Amend: R9-22-1901, R9-22-1903, R9-22-1904, R9-22-1905, R9-22-1907, R9-22-1909, R9-22-1913, R9-22-1915, R9-22-1919, R9-22-1922

Summary:

This regular rulemaking from the Arizona Health Care Cost Containment System (AHCCCS) seeks to amend ten (10) rules in Title 9, Chapter 22, Article 19 related to the Freedom to Work program. The Freedom to Work program is a program that provides health coverage to working people with disabilities in Arizona who are not otherwise eligible for AHCCCS. People in the Freedom to Work program get full AHCCCS coverage in exchange for a monthly premium. The program pays for the same services that standard AHCCCS covers, including visits to the doctor, hospital stays, medical equipment, home care services, and mental health services.

This rulemaking satisfies the proposed course of action from the Five-Year Review Report (5YRR) approved by the Council for this article in August 2023 to correct cross references, statute references, and terminology. The rule amendments are proposed to promulgate rules that are clear, concise, and understandable for members of the public. The proposed rules do not impose any additional burdens or costs to regulated persons, and failure to conduct this rulemaking will promote unnecessary utilization of resources, and the incurring of unnecessary costs.

AHCCCS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

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

AHCCCS cites both general and specific authority for these rules.

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

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 indicates it did not review and does not propose to rely on any study relevant to this rulemaking.

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

The proposed rulemaking is submitted in response to the Five-Year Review Report submitted on January 23, 2018, and on May 30, 2023, which are intended to clarify the current rules. The rule amendments are proposed to promulgate rules that are clear, concise, and understandable for members of the public. The proposed rules do not impose any additional burdens or costs to regulated persons, and failure to conduct this rulemaking will promote unnecessary utilization of resources, and the incurring of unnecessary costs.

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?

According to the Administration, the proposed rules do not impose any additional burdens on stakeholders. The changes are merely clarifying.

6. What are the economic impacts on stakeholders?

According to the Administration, none of the changes have any effect on the economic impact of this chapter. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying.

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

AHCCCS indicates it made no changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking now before the Council.

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

AHCCCS indicates it received no public comments related to this rulemaking.

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

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?

AHCCCS indicates that the rulemaking must be established consistent with 42 CFR § 1003.200 and the rules are not more stringent than federal laws.

11. Conclusion

This regular rulemaking from the Arizona Health Care Cost Containment System (AHCCCS) seeks to amend ten (10) rules in Title 9, Chapter 22, Article 19 related to the Freedom to Work program. This rulemaking would satisfy the proposed course of action in the 5YRR approved for this article by the Council in August 2023. As noted above, AHCCCS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

June 11, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: R9-22-19 Rulemaking

Dear Ms. Klein:

1.	The close of record date:	05/20/2024
2.	Does the rulemaking activity relate to a Five Year Review Report:	Yes
a.	If yes, the date the Council approved the Five Year Review Report:	08/01/2023
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:	No

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. If applicable: 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

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801 East Jefferson Street, Phoenix, AZ 85034

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

ARTICLE 19. FREEDOM TO WORK

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
R9-22-1901	Amend
R9-22-1903	Amend
R9-22-1904	Amend
R9-22-1905	Amend
R9-22-1907	Amend
R9-22-1909	Amend
R9-22-1913	Amend
R9-22-1915	Amend
R9-22-1919	Amend
R9-22-1922	Amend

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

Authorizing statute: A.R.S. § 36-2903.01

Implementing statute: A.R.S. § 36-2929

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, the agency requests a sixty-day effective date.

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: 30 A.A.R. 778, April 19, 2024

Notice of Proposed Rulemaking: 30 A.A.R. 761, April 19, 2024

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

Name: Sladjana Kuzmanovic

Address: AHCCCS Office of the General Counsel
801 E. Jefferson
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:

The proposed rulemaking is submitted in response to the Five-Year Review Report submitted on January 23, 2018, and on May 30, 2023, which are intended to clarify the current rules. The rule amendments are proposed to promulgate rules that are clear, concise, and understandable for members of the public. The proposed rules do not impose any additional burdens or costs to regulated persons, and failure to conduct this rulemaking will promote unnecessary utilization of resources, and the incurring of unnecessary costs.

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

No 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:

None of the changes proposed in this 5YRR have any effect on the economic impact of this chapter. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying.

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

No changes were made between the proposed and final rulemakings.

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

No public comments were made.

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 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 § 1003.200. 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 as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable.

14. Weather 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 19. FREEDOM TO WORK

Sections

R9-22-1901. General Freedom to Work Requirements

~~Under 42 U.S.C. 1396a(a)(10)(A)(ii)(XV) and (XVI), t~~The Administration shall determine eligibility for AHCCCS medical services, under Article 2 of this Chapter, using the eligibility criteria and requirements under this Article for an applicant or member who is:

1. At least 16 years of age, but less than 65 years of age,
2. Employed, and
3. Not income eligible under A.R.S. § 36-2901(6)(a).

R9-22-1903. Application for Coverage

A. A person may apply by submitting an application to an Administration office.

B. The application date is the date the application is received at an Administration office or outstation location approved by the Director as described under R9-22-1406(A).

C. The provisions in ~~R9-22-1406(B) and (D)~~ R9-22-302 apply to this Section.

D. The applicant or representative who files the application may withdraw the application for coverage either orally or in writing. An applicant withdrawing an application shall receive a denial notice under R9-22-1904.

E. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 45 days.

R9-22-1904. Notice of Approval or Denial

The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the action, and:

1. If approved, the notice shall contain:
   a. The effective date of eligibility,
   b. The amount the person shall pay, and
   c. An explanation of the person's hearing rights specified in 9 A.A.C. 34.
2. If denied, ~~R9-22-1501(G)(3)~~ R9-22-307 applies.

R9-22-1905. Reporting and Verifying Changes

An applicant or member shall report and verify changes, as described under ~~R9-22-1501(H)~~ R9-22-306, to the Administration.

R9-22-1907. Notice of Adverse Action Requirements

A. The requirements under ~~R9-22-1501(K)(1)~~ R9-22-312 apply.

B. Advance notice of a change in eligibility or premium amount. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (C), advance notice shall be issued whenever an adverse action is taken to discontinue eligibility, or increase the premium amount.

C. Exceptions from advance notice. A notice shall be issued to the member to discontinue eligibility no later than the effective date of action if:

1. A member provides a clearly written statement, signed by that member, that services are no longer wanted.
2. A member provides information that requires termination of eligibility or reduction of services, indicates that the member understands that this must be the result of supplying that information, and the member signs a written statement waiving advance notice;
3. A member cannot be located and mail sent to the member's last known address has been returned as undeliverable subject to reinstatement of discontinued services under 42 CFR 431.231(d);
4. A member has been admitted to a public institution where a person is ineligible for coverage;
5. A member has been approved for Medicaid in another state; or
6. The Administration receives information confirming the death of a member.

R9-22-1909. Conditions of Eligibility

An applicant or member shall meet the following conditions to qualify for the Freedom to Work program:

1. Furnish a valid Social Security Number (SSN);
2. Be a resident of Arizona;
3. Be a citizen of the United States, or meet requirements for a qualified alien under A.R.S. § 36-2903.03(B);
4. Be at least 16 years of age, but less than 65 years of age;
5. Have countable income that does not exceed 250 percent of FPL. The Administration shall count the income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K with the following exceptions:
    a. The unearned income of the applicant or member shall be disregarded,

b. The income of a spouse or other family member shall be disregarded, and

c. The deduction for a minor child shall not apply;

6. Comply with the member responsibility provisions under ~~R9-22-1502(D) and (F)~~ R9-22-306.

R9-22-1913. Premium Requirements

A. As a condition of eligibility, an applicant or member shall:

1. Pay the premium required under subsection (B).

2. Not have any unpaid premiums for more than one month's premium amount.

B. ~~The Administration shall process premiums under 9 A.A.C. 31, Article 14~~The Administration shall process premiums under R9-31-1409 through R9-31-1419 with the following exceptions:

1. A member who has countable income:

a. Under $500, the monthly premium payment shall be $0.

b. Over $500 but not greater than $750, the monthly premium payment shall be $10.

2. The premium for a member shall be increased by $5 for each $250 increase in countable income above $750.

R9-22-1915. Institutionalized Person

A person is not eligible for AHCCCS medical coverage if the person is:

1. An inmate of a public institution if federal financial participation (FFP) is not available, or

2. ~~Age 21 through age 64 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except when allowed under the Administration's Section 1115 IMD Waiver or allowed under a managed care contract approved by CM~~S. Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration's Section 1115 Demonstration Project or allowed under a managed care contract approved by CMS.

R9-22-1919. Additional Eligibility Criteria for the Medically Improved Group

As a condition of eligibility for the Medically Improved Group, a member shall:

1. Be employed. Under this Section, employed means an individual who:

a. Earns at least the minimum wage and works at least 40 hours per month, or

b. Has gross monthly earnings at least equal to those earned by an individual who is earning the minimum wage working 40 hours per month.

2. Cease to be eligible for medical coverage under R9-22-1918 or a similar Basic Coverage Group program administered by another state because the member, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be disabled; and

3. ~~Continues to have a severe medically determinable impairment, as determined under Social Security Act section 1902(a)(10)(A)(ii)(XVI).~~ Continues to have a severe medically determinable impairment, as determined under 42 U.S.C. 1396d(v)(1).

R9-22-1922. Redetermination of Eligibility

A. Redetermination. Except as provided in subsection (B), the Administration shall complete a redetermination of eligibility at least once a year.

B. ~~Change in circumstance. The Administration may complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility~~. Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.

C. Medical Improvement. If a member is no longer disabled under R9-22-1918, the Administration shall determine if the member is eligible under other coverage groups including the medically improved group.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

Introduction:

The Freedom to Work (FTW) Program was implemented in 2002. The Administration provides coverage for medical services to any person with a disability who is defined as eligible pursuant to A.R.S. § 36-2901, paragraph 6, subdivision (g), who meets the income requirements of subsection B of this section and who has too much income to qualify for the system pursuant to A.R.S. § 36-2901, paragraph 6, subdivision (a). There are currently 1,052 members in the FTW program.

Purpose of Rule:

The rule amendments were based on a 5-year rule review approved by the Governor's Regulatory Review Council on August 5, 2008.

1. Identification of rulemaking.

R9-22-1902 was updated with a current cross-reference to the confidentiality requirements outlined in R9-22-512.

R9-22-1903 was updated with current cross-references to other rules.

R9-22-1904 was updated with current cross-references to other rules.

R9-22-1905 was updated with a current cross-reference to R9-22-1501 where the types of changes a person should report are listed.

R9-22-1907 was updated by adding the circumstance where a reduction of services can occur depending on the change the person has reported.

R9-22-1908 was updated with current cross-references to other rules.

R9-22-1909 thru R9-22-1912, R9-22-1914 and R9-22-1917 were repealed and combined into one rule in R9-22-1909 outlining the conditions of eligibility for the Freedom to Work program.

R9-22-1913, R9-22-1916 and R9-22-1920 were combined into one rule in R9-22-1913 outlining the premium requirements that must be met.

R9-22-1915 was updated to allow the circumstance when CMS approves that a person residing in an IMD can receive AHCCCS covered medical services.

R9-22-1919 was updated to allow for the circumstance when a Freedom to Work member moves from another state to Arizona and was in the Basic Coverage program in the other state, then this member can transition into the Medically Improved Group when they apply for medical services in Arizona. Currently the person would be put into the Basic Coverage Group.

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

The Freedom to Work program encourages individuals who would not otherwise qualify for AHCCCS, to be able to both work and still receive health benefits through the Administration. The proposed amendments are necessary for the program to align with federal requirements as well as changes to the AHCCCS program since the last 5YRR. The

majority of these changes are technical or clarifying in nature and therefore, minimal, or no economic impact is expected.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rule making.

It is anticipated that the contractors, private sector, members, providers, small businesses, political subdivisions, and the Administration will have minimal to no impact as a result of the changes to the rule language. Those stakeholder groups anticipated to be affected are applicants and members.

3. Cost benefit analysis.

a. Probable costs and benefits to implementing agency and other agencies directly affected.

It is anticipated that no additional costs or benefits will be incurred by the Administration when determining eligibility for applicants of the Freedom to Work program.

b. Probable costs and benefits to political subdivision directly affected.

It is anticipated that no additional costs or benefits will be incurred by a political subdivision.

c. Probable costs and benefits to businesses directly affected, including anticipated effect on revenues or payroll for employers.

It is anticipated that no additional costs or benefits will be incurred by businesses.

4. General description of the probable impact on private and public employment in business, agencies, and political subdivisions directly affected by the rulemaking.

There are no anticipated impacts on private or public employments as a result of the changes in this rulemaking.

5. Statement of probable impact of the rule on small businesses, including:

a. Identification of the small businesses subject to the rulemaking.

There are no anticipated impacts on small businesses as a result of the changes in this rulemaking.

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

There are no anticipated costs for small businesses as a result of the changes in this rulemaking.

c. Description of methods agency may use to reduce the impact on small business, which may include:

i. Establishing less costly compliance requirements;

The Administration finds that the changes in this rulemaking are not anticipated to be costly and do not require a less costly compliance requirement.

ii. Establishing less costly schedules or less stringent deadlines for compliance; and

The Administration finds that the changes in this rulemaking are not anticipated to be costly and do not require a less costly schedules or deadlines for compliance.

iii. Exempting small businesses from any or all requirements.

None.

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

Persons applying for medical services that were in another state under a similar Basic Coverage Group will benefit from being able to transition into the Medically Improved Group when moving to Arizona. No cost is anticipated to cover this person since currently the person would be placed in the Basic Coverage Group.

6. Statement of the probable effect on state revenues.

No effect is anticipated for state revenues.

7. Description of any less intrusive or less costly alternative.

AHCCCS is required to establish the Freedom to Work program under state statute, but has examined the program to determine whether there are other ways to determine an applicant's eligibility, and the changes to the rule in this rulemaking reflect the most efficient and cost-effective method for AHCCCS and other parties involved.

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.

36-2929. Services to persons with disabilities; eligibility; premiums

A. Subject to the approval of the centers for medicare and medicaid services, beginning on January 1, 2002, the Arizona health care cost containment system administration shall provide services pursuant to this article to any person with a disability who is defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (g), who meets the income requirements of subsection B of this section and who has too much income to qualify for the system pursuant to section 36-2901, paragraph 6, subdivision (a).

B. A person meets the income requirements of this section if the person's countable income does not exceed two hundred fifty per cent of the federal poverty guidelines. The administration shall use the supplemental security income methodology. For the purposes of this subsection, countable income does not include the person's unearned income, the person's spouse's or any other family member's earned or unearned income or a deduction for a minor child.

C. The administration shall adopt rules for the collection of premiums from persons who qualify for services pursuant to this section. The premium shall not exceed two per cent of the person’s countable income.

D. The administration shall develop and implement a process for eligibility determinations for persons who apply for eligibility and annual redeterminations for continued eligibility. The administration shall also develop and implement a process to determine medically improved disabilities. The administration may enter into an intergovernmental agreement with the department of economic security or may contract with participating health plans to conduct eligibility determinations or redeterminations. The administration may not use a resource test to determine or redetermine eligibility.

This content is from the eCFR and is authoritative but unofficial.

Title 42 —Public Health
Chapter V —Office of Inspector General-Health Care, Department of Health and Human Services
Subchapter B —OIG Authorities
Part 1003 —Civil Money Penalties, Assessments and Exclusions
Subpart B —CMPs, Assessments, and Exclusions for False or Fraudulent Claims and Other Similar Misconduct

Source: 81 FR 88357, Dec. 7, 2016, unless otherwise noted.
Authority: 42 U.S.C. 262a, 300jj-52, 1302, 1320a-7, 1320a-7a, 1320b-10, 1395u(j), 1395u(k), 1395cc(j), 1395w-141(i)(3), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c), and 11137(b)(2).
Source: 51 FR 34777, Sept. 30, 1986, unless otherwise noted.

§ 1003.200 Basis for civil money penalties, assessments, and exclusions.

(a) The OIG may impose a penalty, assessment, and an exclusion against any person who it determines has knowingly presented, or caused to be presented, a claim that was for—

(1) An item or service that the person knew, or should have known, was not provided as claimed, including a claim that was part of a pattern or practice of claims based on codes that the person knew, or should have known, would result in greater payment to the person than the code applicable to the item or service actually provided;

(2) An item or service for which the person knew, or should have known, that the claim was false or fraudulent;

(3) An item or service furnished during a period in which the person was excluded from participation in the Federal health care program to which the claim was presented;

(4) A physician's services (or an item or service) for which the person knew, or should have known, that the individual who furnished (or supervised the furnishing of) the service—

(i) Was not licensed as a physician;

(ii) Was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing); or

(iii) Represented to the patient at the time the service was furnished that the physician was certified by a medical specialty board when he or she was not so certified; or

(5) An item or service that a person knew, or should have known was not medically necessary, and which is part of a pattern of such claims.

(b) The OIG may impose a penalty; an exclusion; and, where authorized, an assessment against any person who it determines—

(1) Has knowingly presented, or caused to be presented, a request for payment in violation of the terms of—

(i) An agreement to accept payments on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act;

(ii) An agreement with a State agency or other requirement of a State Medicaid plan not to charge a person for an item or service in excess of the amount permitted to be charged;

(iii) An agreement to be a participating physician or supplier under section 1842(h)(1) of the Act; or

(iv) An agreement in accordance with section 1866(a)(1)(G) of the Act not to charge any person for inpatient hospital services for which payment had been denied or reduced under section 1886(f)(2) of the Act;

(2) Has knowingly given, or caused to be given, to any person, in the case of inpatient hospital services subject to section 1886 of the Act, information that he or she knew, or should have known, was false or misleading and that could reasonably have been expected to influence the decision when to discharge such person or another person from the hospital;

(3) Is an individual who is excluded from participating in a Federal health care program under section 1128 or 1128A of the Act, and who—

(i) Knows, or should know, of the action constituting the basis for the exclusion and retains a direct or indirect ownership or control interest of 5 percent or more in an entity that participates in a Federal health care program or

(ii) Is an officer or a managing employee (as defined in section 1126(b) of the Act) of such entity;

(4) Arranges or contracts (by employment or otherwise) with an individual or entity that the person knows, or should know, is excluded from participation in Federal health care programs for the provision of items or services for which payment may be made under such a program;

(5) Has knowingly and willfully presented, or caused to be presented, a bill or request for payment for items and services furnished to a hospital patient for which payment may be made under a Federal health care program if that bill or request is inconsistent with an arrangement under section 1866(a)(1)(H) of the Act or violates the requirements for such an arrangement;

(6) Orders or prescribes a medical or other item or service during a period in which the person was excluded from a Federal health care program, in the case when the person knows, or should know, that a claim for such medical or other item or service will be made under such a program;

(7) Knowingly makes, or causes to be made, any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program, including contracting organizations, and entities that apply to participate as providers of services or suppliers in such contracting organizations;

(8) Knows of an overpayment and does not report and return the overpayment in accordance with section 1128J(d) of the Act;

(9) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim for payment for items and services furnished under a Federal health care program; or

(10) Fails to grant timely access to records, documents, and other material or data in any medium (including electronically stored information and any tangible thing), upon reasonable request, to the OIG, for the purpose of audits, investigations, evaluations, or other OIG statutory functions. Such failure to grant timely access means:

(i) Except when the OIG reasonably believes that the requested material is about to be altered or destroyed, the failure to produce or make available for inspection and copying the requested material upon reasonable request or to provide a compelling reason why they cannot be produced, by the deadline specified in the OIG's written request, and

(ii) When the OIG has reason to believe that the requested material is about to be altered or destroyed, the failure to provide access to the requested material at the time the request is made.

(c) The OIG may impose a penalty against any person who it determines, in accordance with this part, is a physician and who executes a document falsely by certifying that a Medicare beneficiary requires home health services when the physician knows that the beneficiary does not meet the eligibility requirements in section 1814(a)(2)(C) or 1835(a)(2)(A) of the Act.

(d) The OIG may impose a penalty against any person who it determines knowingly certifies, or causes another individual to certify, a material and false statement in a resident assessment pursuant to sections 1819(b)(3)(B) and 1919(b)(3)(B).

E-2.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 28, Article 13

Amend: R9-28-1301, R9-28-1303, R9-28-1304, R9-28-1309, R9-28-1313, R9-28-1316, R9-28-1324

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: June 20, 2024

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 28, Article 13

Amend: R9-28-1301, R9-28-1303, R9-28-1304, R9-28-1309, R9-28-1313, R9-28-1316, R9-28-1324

Summary:

This regular rulemaking from the Arizona Health Care Cost Containment System (AHCCCS) seeks to amend seven (7) rules in Title 9, Chapter 28, Article 13 related to the Freedom to Work Program in the Arizona Long Term Care System. AHCCCS, is Arizona's Medicaid program designed to deliver quality health care under managed care. The Freedom to Work program is a program that provides health coverage to working people with disabilities in Arizona who are not otherwise eligible for AHCCCS. People in the Freedom to Work program get full AHCCCS coverage in exchange for a monthly premium. The program pays for the same services that standard AHCCCS covers, including visits to the doctor, hospital stays, medical equipment, home care services, and mental health services.

This rulemaking would satisfy the proposed course of action in the Five-Year Review Report (5YRR) approved by the Council for this article in September 2023 to correct cross references, statute references, and terminology. The rule amendments are proposed to promulgate rules that are clear, concise, and understandable for members of the public. The proposed rules do not impose any additional burdens or costs to regulated persons, and failure to conduct this

rulemaking will promote unnecessary utilization of resources, and the incurring of unnecessary costs. AHCCCS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

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?

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 indicates it did not review and does not propose to rely on any study relevant to this rulemaking.

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

The proposed rulemaking is submitted in response to the Five-Year Review Report submitted on January 23, 2018, and on May 30, 2023, which are intended to clarify the current rules. The rule amendments are proposed to promulgate rules that are clear, concise, and understandable for members of the public. The proposed rules do not impose any additional burdens or costs to regulated persons, and failure to conduct this rulemaking will propose unnecessary utilization of resources, and the incurring of unnecessary costs.

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?

According to the Administration, the proposed rules do not impose any additional burdens on stakeholders. The changes are merely clarifying.

6. What are the economic impacts on stakeholders?

According to the Administration, none of the changes have any effect on the economic impact of this chapter. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying.

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

The Department states that there are no changes between the proposed rulemaking and the final rulemaking now before the Council.

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

AHCCCS indicates it received no public comments related to this rulemaking.

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

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?

AHCCCS indicates that the rulemaking must be established consistent with 42 CFR § 1003.200 and the rules are not more stringent than federal laws.

11. Conclusion

This regular rulemaking from the Arizona Health Care Cost Containment System (AHCCCS) seeks to amend seven (7) rules in Title 9, Chapter 28, Article 13 related to the Freedom to Work Program in the Arizona Long Term Care System. This rulemaking would satisfy the proposed course of action in the Five-Year Review Report (5YRR) approved by the Council for this article in September 2023. As noted above, AHCCCS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

June 11, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: R9-28-13 Rulemaking

Dear Ms. Klein:

1.	The close of record date:	05/20/2024
2.	Does the rulemaking activity relate to a Five Year Review Report:	Yes
a.	If yes, the date the Council approved the Five Year Review Report:	09/06/2023
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:	No

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. If applicable: 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

www.azahcccs.gov
602-417-4000
801 East Jefferson Street, Phoenix, AZ 85034

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 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 13. FREEDOM TO WORK

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
R9-28-1301	Amend
R9-28-1303	Amend
R9-28-1304	Amend
R9-28-1309	Amend
R9-28-1313	Amend
R9-28-1316	Amend
R9-28-1324	Amend

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

Authorizing statute: A.R.S. § 36-2932

Implementing statute: A.R.S. § 36-2950

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, the agency requests a sixty-day effective date.

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: 30 A.A.R. 779, April 19, 2024

Notice of Proposed Rulemaking: 30 A.A.R. 764, April 19, 2024

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

Name: Sladjana Kuzmanovic

Address: AHCCCS Office of the General Counsel
801 E. Jefferson
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:

The proposed rulemaking is submitted in response to the Five-Year Review Report submitted on January 23, 2018, and on May 30, 2023, which are intended to clarify the current rules. The rule amendments are proposed to promulgate rules that are clear, concise, and understandable for members of the public. The proposed rules do not impose any additional burdens or costs to regulated persons, and failure to conduct this rulemaking will promote unnecessary utilization of resources, and the incurring of unnecessary costs.

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

No 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:

None of the changes proposed in this 5YRR have any effect on the economic impact of this chapter. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying.

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

No changes were made between the proposed and final rulemakings.

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

No public comments were made.

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 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 § 1003.200. 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 as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable.

14. Weather 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 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 13. FREEDOM TO WORK

Sections

R9-28-1301. General Freedom to Work Requirements

The Administration shall determine eligibility for AHCCCS medical services under ~~Article 2 of this Chapter and~~ A.A.C. R9-22-1901.

R9-28-1303. Application for Coverage

A. A person may apply by submitting an application to an Administration office.

B. The application date is the date the application is received at an Administration office.

C. The provisions of ~~A.A.C. R9-22-1406(B) and (D)~~ R9-22-302 apply to this Section.

D. An applicant or representative who files an application may withdraw the application either orally or in writing. The Administration shall send an applicant withdrawing an application a denial notice under R9-28-1304.

E. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 45 days.

R9-28-1304. Notice of Approval or Denial

The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the action and:

1. If approved:
    a. The effective date of eligibility,
    b. An explanation of the person's hearing rights specified in 9 A.A.C. 34; or
2. If denied, the information required by ~~R9-28-401.01(G)(2)~~ R9-28-401.01(E)(2).

R9-28-1309. Conditions of Eligibility

An applicant or member shall meet the following conditions to qualify for the Freedom to Work program:

1. Furnish a valid Social Security Number (SSN);
2. Be a resident of Arizona;
3. Be a citizen of the United States, or meet requirements for a qualified alien under A.R.S. § 36 2903.03(B);
4. Be at least 16 years of age, but less than 65 years of age;
5. Have countable income that does not exceed 250 percent of FPL. The Administration shall count income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K with the following exceptions:
    a. The unearned income of the applicant or member shall be disregarded,

b. The income of a spouse or other family members shall be disregarded, and

c. The deduction for a minor child shall not apply;

6. Reside in a living arrangement specified under R9-28-406(A);

7. Be determined as physically or developmentally disabled by meeting the medical criteria under Article 3 of this Chapter; and

8. Comply with the member responsibility provisions under ~~A.A.C. R9-22-1502(D) and (F)~~ R9-22-306.

R9-28-1313. Premium Requirements

A. As a condition of eligibility, an applicant or member shall:

1. Pay the premium required under subsection (B).

2. Not have any unpaid premiums that exceed the premium amount for one month.

B. ~~The Administration shall process premiums under 9 A.A.C. 31, Article 14~~The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419 with the following exceptions:

1. A member who has countable income:

a. Under $500, the monthly premium payment shall be $0.

b. Over $500 but not greater than $750, the monthly premium payment shall be $10.

2. The premium for a member shall be increased by $5 for each $250 increase in countable income above $750.

R9-28-1316. Institutionalized Person

A person is not eligible for AHCCCS medical coverage if the person is:

1. An inmate of a public institution and federal financial participation (FFP) is not available, or

2. ~~Older than age 20 but younger than age 65 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except when allowed under the Administration's Section 1115 IMD Waiver or allowed under a managed care contract approved by CMS.~~ Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration's Section 1115 Demonstration Project or allowed under a managed care contract approved by CMS.

R9-28-1324. Redetermination of Eligibility

A. Redetermination. Except as provided in subsection (B), the Administration shall complete a

redetermination of eligibility at least once a year.

B. ~~Change in circumstance. The Administration may complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility~~. Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.

C. Medical Improvement. If a member is no longer disabled under Article 3 of this Chapter, the Administration shall determine if the member is eligible under other coverage groups.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

Introduction:

The Freedom to Work (FTW) Program was implemented in 2002. The Administration provides coverage for medical services to any person with a disability who is defined as eligible pursuant to A.R.S. § 36-2901, paragraph 6, subdivision (g), who meets the income requirements of subsection B of this section and who has too much income to qualify for the system pursuant to A.R.S. § 36-2901, paragraph 6, subdivision (a).

There are currently 1,052 members in the FTW program.

Purpose of Rule:

The rule amendments were based on a 5-year rule review approved by the Governor's Regulatory Review Council on August 5, 2008.

1. Identification of rulemaking.

R9-28-1301 was updated with a current cross-reference to the parallel Freedom to Work requirements outlined in Chapter 22. The same provisions apply to a person applying through the ALTCS program.

R9-28-1302 was updated with a current cross-reference to the confidentiality requirements outlined in R9-22-512.

R9-28-1303 was updated with current cross-references to other rules.

R9-28-1304 was updated with current cross-references to other rules.

R9-28-1305 was updated with a current cross-reference to R9-28-411 where the types of changes a person should report are listed.

R9-28-1307 was updated by adding the circumstance where a reduction of services can occur depending on the change the person has reported.

R9-28-1308 was updated with current cross-references to other rules.

R9-28-1309 thru R9-28-1312, R9-28-1314, R9-28-1315, R9-28-1317 and R9-28-1319 were repealed and combined into one rule in R9-28-1309 outlining the conditions of eligibility for the Freedom to Work program.

R9-28-1313, R9-28-1318 and R9-28-1322 were combined into one rule in R9-28-1313 outlining the premium requirements that must be met.

R9-28-1316 was updated to allow the circumstance when CMS approves a person residing in an IMD to receive AHCCCS covered medical services.

R9-28-1320 was updated to clearly describe the requirement of employment to qualify for the Freedom to Work program. Since all the eligibility requirements were outlined in R9-28-1309 it was not necessary to cross-reference Article 3 of Chapter 28.

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

The Freedom to Work program encourages individuals who would not otherwise qualify for AHCCCS, to be able to both work and still receive health benefits through the Administration. The proposed amendments are necessary for the program to align with federal requirements as well as changes to the AHCCCS program since the last 5YRR. The majority of these changes are technical or clarifying in nature and therefore, minimal, or no economic impact is expected.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rule making.

It is anticipated that the contractors, private sector, members, providers, small businesses, political subdivisions, and the Administration will have minimal to no impact as a result of the changes to the rule language. Those stakeholder groups anticipated to be affected are applicants and members.

3. Cost benefit analysis.

a. Probable costs and benefits to implementing agency and other agencies directly affected.

It is anticipated that no additional costs or benefits will be incurred by the Administration when determining eligibility for applicants of the Freedom to Work program.

b. Probable costs and benefits to political subdivision directly affected.

It is anticipated that no additional costs or benefits will be incurred by a political subdivision.

c. Probable costs and benefits to businesses directly affected, including anticipated effect on revenues or payroll for employers.

It is anticipated that no additional costs or benefits will be incurred by businesses.

4. General description of the probable impact on private and public employment in business, agencies, and political subdivisions directly affected by the rulemaking.

There are no anticipated impacts on private or public employments as a result of the changes in this rulemaking.

5. Statement of probable impact of the rule on small businesses, including:

a. Identification of the small businesses subject to the rulemaking.

There are no anticipated impacts on small businesses as a result of the changes in this rulemaking.

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

There are no anticipated costs for small businesses as a result of the changes in this rulemaking.

c. Description of methods agency may use to reduce the impact on small business, which may include:

i. Establishing less costly compliance requirements;

The Administration finds that the changes in this rulemaking are not anticipated to be costly and do not require a less costly compliance requirement.

ii. Establishing less costly schedules or less stringent deadlines for compliance; and

The Administration finds that the changes in this rulemaking are not anticipated to be costly and do not require a less costly schedules or deadlines for compliance.

iii. Exempting small businesses from any or all requirements.

None.

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

Persons applying for medical services that were in another state under a similar Basic Coverage Group will benefit from being able to transition into the Medically Improved Group when moving to Arizona. No cost is anticipated to cover this person since currently the person would be placed in the Basic Coverage Group.

6. Statement of the probable effect on state revenues.

No effect is anticipated for state revenues.

7. Description of any less intrusive or less costly alternative.

AHCCCS is required to establish the Freedom to Work program under state statute, but has examined the program to determine whether there are other ways to determine an applicant's eligibility, and the changes to the rule in this rulemaking reflect the most efficient and cost-effective method for AHCCCS and other parties involved.

36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.

2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.

3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.

4. Providing technical assistance to the program contractors.

5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.

6. Conducting quality control on eligibility determinations and preadmission screenings.

7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.

8. Establishing an enrollment system.

9. Establishing a member case management tracking system.

10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.

11. Coordinating benefits as provided in section 36-2946.

12. Establishing standards for the coordination of services.

13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.

14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.

15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.

16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for

the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.

2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.

3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.

2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

36-2950. Services to persons with disabilities; eligibility; premiums

A. Subject to the approval of the centers for medicare and medicaid services, beginning on January 1, 2002, the Arizona health care cost containment system administration shall provide services pursuant to this article to any person with a disability who is defined as eligible pursuant to section 36-2931, paragraph 5, subdivision (d), who meets the income requirements of subsection B of this section and who has too much income or resources to qualify for the system pursuant to section 36-2934.

B. A person meets the income requirements of this section if the person's countable income does not exceed two hundred fifty per cent of the federal poverty guidelines. The administration shall use the supplemental security income methodology. For purposes of this subsection, countable income does not include the person's unearned income, the person's spouse's or any other family member's earned or unearned income or a deduction for a minor child.

C. The administration shall adopt rules for the collection of premiums from persons who qualify for services pursuant to this section. The premium shall not exceed two per cent of the person’s countable income.

D. The administration shall develop and implement a process for eligibility determinations for persons who apply for eligibility and annual redeterminations for continued eligibility. The administration shall also develop and implement a process to determine medically improved disabilities. The administration may enter into an intergovernmental agreement with the department of economic security or may contract with participating health plans to conduct eligibility determinations or redeterminations. The administration may not use a resource test to determine or redetermine eligibility.

This content is from the eCFR and is authoritative but unofficial.

Title 42 —Public Health
Chapter V —Office of Inspector General-Health Care, Department of Health and Human Services
Subchapter B —OIG Authorities
Part 1003 —Civil Money Penalties, Assessments and Exclusions
Subpart B —CMPs, Assessments, and Exclusions for False or Fraudulent Claims and Other Similar Misconduct

Source: 81 FR 88357, Dec. 7, 2016, unless otherwise noted.
Authority: 42 U.S.C. 262a, 300jj-52, 1302, 1320a-7, 1320a-7a, 1320b-10, 1395u(j), 1395u(k), 1395cc(j), 1395w-141(i)(3), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c), and 11137(b)(2).
Source: 51 FR 34777, Sept. 30, 1986, unless otherwise noted.

§ 1003.200 Basis for civil money penalties, assessments, and exclusions.

(a) The OIG may impose a penalty, assessment, and an exclusion against any person who it determines has knowingly presented, or caused to be presented, a claim that was for—

(1) An item or service that the person knew, or should have known, was not provided as claimed, including a claim that was part of a pattern or practice of claims based on codes that the person knew, or should have known, would result in greater payment to the person than the code applicable to the item or service actually provided;

(2) An item or service for which the person knew, or should have known, that the claim was false or fraudulent;

(3) An item or service furnished during a period in which the person was excluded from participation in the Federal health care program to which the claim was presented;

(4) A physician's services (or an item or service) for which the person knew, or should have known, that the individual who furnished (or supervised the furnishing of) the service—

(i) Was not licensed as a physician;

(ii) Was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing); or

(iii) Represented to the patient at the time the service was furnished that the physician was certified by a medical specialty board when he or she was not so certified; or

(5) An item or service that a person knew, or should have known was not medically necessary, and which is part of a pattern of such claims.

(b) The OIG may impose a penalty; an exclusion; and, where authorized, an assessment against any person who it determines—

(1) Has knowingly presented, or caused to be presented, a request for payment in violation of the terms of—

(i) An agreement to accept payments on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act;

(ii) An agreement with a State agency or other requirement of a State Medicaid plan not to charge a person for an item or service in excess of the amount permitted to be charged;

(iii) An agreement to be a participating physician or supplier under section 1842(h)(1) of the Act; or

(iv) An agreement in accordance with section 1866(a)(1)(G) of the Act not to charge any person for inpatient hospital services for which payment had been denied or reduced under section 1886(f)(2) of the Act;

(2) Has knowingly given, or caused to be given, to any person, in the case of inpatient hospital services subject to section 1886 of the Act, information that he or she knew, or should have known, was false or misleading and that could reasonably have been expected to influence the decision when to discharge such person or another person from the hospital;

(3) Is an individual who is excluded from participating in a Federal health care program under section 1128 or 1128A of the Act, and who—

(i) Knows, or should know, of the action constituting the basis for the exclusion and retains a direct or indirect ownership or control interest of 5 percent or more in an entity that participates in a Federal health care program or

(ii) Is an officer or a managing employee (as defined in section 1126(b) of the Act) of such entity;

(4) Arranges or contracts (by employment or otherwise) with an individual or entity that the person knows, or should know, is excluded from participation in Federal health care programs for the provision of items or services for which payment may be made under such a program;

(5) Has knowingly and willfully presented, or caused to be presented, a bill or request for payment for items and services furnished to a hospital patient for which payment may be made under a Federal health care program if that bill or request is inconsistent with an arrangement under section 1866(a)(1)(H) of the Act or violates the requirements for such an arrangement;

(6) Orders or prescribes a medical or other item or service during a period in which the person was excluded from a Federal health care program, in the case when the person knows, or should know, that a claim for such medical or other item or service will be made under such a program;

(7) Knowingly makes, or causes to be made, any false statement, omission, or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider of services or a supplier under a Federal health care program, including contracting organizations, and entities that apply to participate as providers of services or suppliers in such contracting organizations;

(8) Knows of an overpayment and does not report and return the overpayment in accordance with section 1128J(d) of the Act;

(9) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim for payment for items and services furnished under a Federal health care program; or

(10) Fails to grant timely access to records, documents, and other material or data in any medium (including electronically stored information and any tangible thing), upon reasonable request, to the OIG, for the purpose of audits, investigations, evaluations, or other OIG statutory functions. Such failure to grant timely access means:

(i) Except when the OIG reasonably believes that the requested material is about to be altered or destroyed, the failure to produce or make available for inspection and copying the requested material upon reasonable request or to provide a compelling reason why they cannot be produced, by the deadline specified in the OIG's written request, and

(ii) When the OIG has reason to believe that the requested material is about to be altered or destroyed, the failure to provide access to the requested material at the time the request is made.

(c) The OIG may impose a penalty against any person who it determines, in accordance with this part, is a physician and who executes a document falsely by certifying that a Medicare beneficiary requires home health services when the physician knows that the beneficiary does not meet the eligibility requirements in section 1814(a)(2)(C) or 1835(a)(2)(A) of the Act.

(d) The OIG may impose a penalty against any person who it determines knowingly certifies, or causes another individual to certify, a material and false statement in a resident assessment pursuant to sections 1819(b)(3)(B) and 1919(b)(3)(B).

E-3.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 7

Amend: R9-7-101.0, R9-7-102, R9-7-302, R9-7-305, R9-7-311, R9-7-313, R9-7-318, R9-7-709, R9-7-710, R9-7-711, R9-7-718, R9-7-719, R9-7-720, R9-7-721, R9-7-723, R9-7-727, R9-7-728, R9-7-744, Exhibit A, R9-7-1943

Renumber: R9-7-101.01, R9-7-1909

New Section: R9-7-712.01

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: **July 8, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 7

Amend: R9-7-101.0, R9-7-102, R9-7-302, R9-7-305, R9-7-311, R9-7-313, R9-7-318, R9-7-709, R9-7-710, R9-7-711, R9-7-718, R9-7-719, R9-7-720, R9-7-721, R9-7-723, R9-7-727, R9-7-728, R9-7-744, Exhibit A, R9-7-1943

Renumber: R9-7-101.01, R9-7-1909

New Section: R9-7-712.01

Summary:

This Expedited rulemaking from the Arizona Department of Health Services (Department) seeks to amend twenty-one (21) rules and one (1) exhibit in Title 9, Chapter 7 related to Radiation Control. Arizona is an Agreement State via a Document negotiated between the U.S. Atomic Energy Commission (now U.S. Nuclear Regulatory Commission (NRC)) and the Governor of Arizona in March of 1967 under A.R.S. § 30-656. In order to remain in compliance with the Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations. The Department is required to make rules deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation.

Portions of this rulemaking relate to five-year-review reports (5YRR) approved by Council on July 7, 2021; August 3, 2021; March 1, 2022; and July 5, 2023.

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)(4), as the rulemaking makes changes to comply with recent federal requirements of the NRC; (A)(3) and (A)(6) as the rulemaking amends rules that are outdated or need clarification. In addition, this rulemaking makes changes consistent with amendments proposed in prior 5YRRs.

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 comments were received in response to this rulemaking.

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

The Department states no changes were made between the proposed and final rulemaking.

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 corresponding federal law.

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 that general permits apply to certain levels of radioactive material, and indicates that specific permits are issued under Title 30, Chapter 4, Article 2 as allowed under ARS § 41-1037(A)(2).

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 states that no study was relied on or reviewed during the course of this rulemaking.

8. Conclusion

This Expedited rulemaking from the Arizona Department of Health Services seeks to amend twenty-one rules and one exhibit in Title 9, Chapter 7 related to Radiation Control. As indicated above, this rulemaking satisfies the criteria of an expedited rulemaking pursuant to ARS § 41-1027(A). 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

June 7, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, 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. 7, Expedited Rulemaking

Dear Ms. Klein:

1. The close of record date: May 28, 2024

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 makes changes to comply with recent federal requirements of the U.S. Nuclear Regulatory Commission, meeting the requirements in A.R.S. § 41-1027(A)(4). The rulemaking also amends rules that are outdated or need clarification, meeting the requirements in A.R.S. § 41-1027(A)(3) and (6). Many of the latter changes are consistent with the most recent five-year-review report on these rules, although the rulemaking falls outside the time specified in A.R.S. § 41-1027(A)(7).

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
Portions of the rulemaking for 9 A.A.C. 7 relate to five-year-review reports for the relevant Articles approved by the Council on July 7, 2021; August 3, 2021; March 1, 2022; and July 5, 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 August 6, 2024.

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 7. DEPARTMENT OF HEALTH SERVICES

RADIATION CONTROL

PREAMBLE

1. Permission to proceed with this final expedited rulemaking was granted under A.R.S. § 41-1039(B) by the Governor on:

June 6, 2024

2. Article, Part or Sections Affected (as applicable)	**Rulemaking Action**
R9-7-101.01	Renumber
R9-7-101.01	Amend
R9-7-102	Amend
R9-7-302	Amend
R9-7-305	Amend
R9-7-311	Amend
R9-7-313	Amend
R9-7-318	Amend
R9-7-709	Amend
R9-7-709	Amend
R9-7-710	Amend
R9-7-711	Amend
R9-7-712.01	New Section
R9-7-718	Amend
R9-7-719	Amend
R9-7-720	Amend
R9-7-721	Amend
R9-7-723	Amend
R9-7-727	Amend
R9-7-728	Amend
R9-7-744	Amend
Exhibit A	Amend
R9-7-1909	Renumber

R9-7-1943 Amend

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

Authorizing statutes: A.R.S. §§ 30-654(B)(5), 36-132(A)(1), 36-136(G)

Implementing statutes: A.R.S. §§ 30-654, 30-657, 30-671, 30-672, and 30-673

4. The effective date of the rule:

This expedited rulemaking becomes effective immediately on the filing of the Notice of Final Expedited Rulemaking pursuant to A.R.S. § 41-1027(H). The effective date is (to be filled in by Register editor).

5. 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: 30 A.A.R. 817, April 26, 2024

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 1010, May 17, 2024

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

Name: Brian D. Goretzki, Chief, Bureau of Radiation Control
Address: Arizona Department of Health Services
Public Health Licensing Services
4814 South 40th Street
Phoenix, AZ 85040
Telephone: (602) 255-4840
Fax: (602) 437-0705
E-mail: Brian.Goretzki@azdhs.gov

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

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

Arizona Revised Statutes (A.R.S.) § 30-654(B)(5) requires the Arizona Department of Health Services (Department) to make rules deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation. The Department has adopted these rules in A.A.C. Title 9, Chapter 7. Arizona is an Agreement State by the Document negotiated between the U.S. Atomic Energy Commission (now U.S. Nuclear Regulatory Commission) and the Governor of Arizona in March of 1967 under A.R.S. § 30-656. In order to remain in compliance with the Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations. The U.S. Nuclear Regulatory Commission periodically issues changes, denoted as Regulation Toolbox: Review Summary Sheets for Regulation Amendments (RATS IDs), that are required to be incorporated by Agreement States. Several RATS IDs have not yet been incorporated into Arizona's rules related to radioactive material. After receiving an approval for the rulemaking according to A.R.S. § 41-1039(A), the Department is revising the rules in A.A.C. Title 9, Chapter 7, by expedited rulemaking to make changes to conform to the RATS IDs and changes specified in the five-year-review reports for the affected Sections. The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons, and either adopts or incorporates by reference, without material change, federal statutes and regulations, or clarifies language of a rule without changing its effect, while protecting the health and safety of patients, staff, and the general public.

8. 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.

9. 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

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

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

11. A description of any change between the proposed expedited rulemaking, to include a

supplemental proposed notice, and the final rulemaking:

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

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

No comments were received.

13. 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:

According to A.R.S. Title 30, Chapter 4, Article 2, the Department is authorized to issue licenses and registrations for sources of ionizing radiation and those persons using these sources. This licensing and registration must be compatible with requirements in the Agreement. The rules refer to permits both general and specific. The general permit applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

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

The rules are not more stringent than federal law. Applicable federal law includes:
10 CFR 20.1906; 10 CFR 20.2201; 10 CFR 20.2202; 10 CFR 20.2207; 10 CFR 30.50; 10 CFR 34.47; 10 CFR 34.83; 10 CFR 35.50; 10 CFR 35.55; 10 CFR 35.57; 10 CFR 35.390; 10 CFR 35.490; 10 CFR 35.690; 10 CFR 35.3045; 10 CFR 35.3047;
10 CFR 37.27; 10 CFR 39.65; Appendix A to 10 CFR part 37; 10 CFR 71.4; 10 CFR 71.97.

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 received by the Department.

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

In R9-7-102:

- 21 CFR 1020.40, revised April 1, 2019, is incorporated by reference in the definition of "certifiable cabinet x-ray system";
- 21 CFR 1010.2, revised January 20, 2023, and 21 CFR 1020.40, revised April 10, 1974, are incorporated by reference in the definition of "certified cabinet x-ray system";
- 40 CFR 190, revised December 1, 1979, and 40 CFR 191, revised December 20, 1993, are incorporated by reference in the definition of "generally applicable environmental radiation standards";
- 49 CFR 173.403, revised January 8, 2015, is incorporated by reference in the definition of "nuclear waste";
- 10 CFR 35.50(a) or (c)(1), revised July 16, 2018, and 10 CFR 35.59, revised March 27, 2006, are incorporated by reference in the definition of "Radiation Safety Officer"; and
- 49 CFR 107, revised December 27, 2022; 49 CFR 171, revised December 21, 2022; 49 CFR 172, revised December 27, 2022; 49 CFR 173, revised December 27, 2022; 49 CFR 174, revised December 27, 2022; 49 CFR 175, revised December 27, 2022; 49 CFR 176, December 21, 2020; 49 CFR 177, revised December 27, 2022; 49 CFR 178, revised July 26, 2022; 49 CFR 179, revised December 21, 2020; and 49 CFR 180, revised July 26, 2022, are incorporated by reference in the definition of "regulations of the U.S. Department of Transportation."

In R9-7-311:

- 10 CFR 31.5(c)(13)(i), revised December 19, 2014, is incorporated by reference in subsection (A)(1)(f);
- 10 CFR 32.52, revised December 19, 2014, is incorporated by reference in subsection (A)(4)(b)(i);
- 10 CFR 32.53 through 32.56, revised July 25, 2012, are incorporated by reference in subsection (B)(2);
- 10 CFR 32.57, 32.58, 32.59, and 70.39, revised July 25, 2012, are incorporated by reference in subsection (C)(2);
- 10 CFR 32.57, 32.58, 32.59, and 70.39, revised July 25, 2012, are incorporated by reference in subsection (D)(2);
- 10 CFR 32.61 and 32.62, revised July 25, 2012, are incorporated by reference in subsection (F)(2);
- 10 CFR 30.32(j), revised November 21, 2023, and 10 CFR 32.72, revised August 24, 2023, are incorporated by reference in subsection (G);
- 10 CFR 32.74, revised July 25, 2012, is incorporated by reference in subsection (I); and

- 10 CFR 32.201, revised November 8, 2006, is incorporated by reference in subsection (K).

In R9-7-723:

- 10 CFR 35.392, July 16, 2018, is incorporated by reference in subsection (B);
- 10 CFR 35.394, July 16, 2018, is incorporated by reference in subsection (C); and
- 10 CFR 35.396, July 16, 2018, is incorporated by reference in subsection (D).

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 7. DEPARTMENT OF HEALTH SERVICES

RADIATION CONTROL

ARTICLE 1. GENERAL PROVISIONS

Section

~~R9-7-1909.~~R9-7-101.01. Interpretations

R9-7-102. Definitions

ARTICLE 3. RADIOACTIVE MATERIAL LICENSING

Section

R9-7-302. Source Material; Exemptions

R9-7-305. General Licenses – Source Material

R9-7-311. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices that Contain Radioactive Material

R9-7-313. Specific Terms and Conditions

R9-7-318. Transfer of Radioactive Material

ARTICLE 7. MEDICAL USES OF RADIOACTIVE MATERIAL

Section

R9-7-709. Sealed Sources or Devices for Medical Use

R9-7-710. Radiation Safety Officer and Associate Radiation Safety Officer Training

R9-7-711. Authorized Medical Physicist Training

R9-7-712.01. Training for Experienced Radiation Safety Officers, Teletherapy or Medical Physicists, Authorized Medical Physicists, Authorized Users, Nuclear Pharmacists, and Authorized Nuclear Pharmacists

R9-7-718. Mobile Medical Service

R9-7-719. Training for Uptake, Dilution, and Excretion Studies

R9-7-720. Permissible Molybdenum-99, Strontium-82, and Strontium-85 Concentrations

R9-7-721. Training for Imaging and Localization Studies Not Requiring a Written Directive

R9-7-723. Training for Use of Unsealed Radioactive Material Requiring a Written Directive, Including Treatment of Hyperthyroidism, and Treatment of Thyroid Carcinoma

R9-7-727. Training for Use of Manual Brachytherapy Sources and Training for the Use of Strontium-90 Sources for Treatment of Ophthalmic Disease

R9-7-728. Training for Use of Sealed Sources for Diagnosis

ARTICLE 19. PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

ARTICLE 1. GENERAL PROVISIONS

~~R9-7-1909.~~R9-7-101.01. Interpretations

Except as specifically authorized by the Department in writing, no interpretations of the meaning of the rules in this ~~Article~~ Chapter by any officer or employee of the Department other than a written interpretation by the Arizona Assistant Attorney General counsel assigned to the Department will be recognized as binding upon the Department.

R9-7-102. Definitions

Terms defined in A.R.S. § 30-651 have the same meanings when used in this Chapter, unless the context otherwise requires. Additional subject-specific definitions are used in other Articles.

"A1" means the maximum activity of special form radioactive material permitted in a type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A.

"A2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity (LSA) material, and surface contaminated object (SCO) material, permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, Table A-1, or may be derived in accordance with the procedure prescribed in 10 CFR 71, Appendix A.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium ~~at energies usually in excess of 1 MeV~~. For purposes of this definition, "particle accelerator" is an equivalent term.

"Accelerator produced material" means any material made radioactive by irradiating it in a particle accelerator.

"Act" means A.R.S. Title 30, Chapter 4.

"Activity" means the rate of disintegration, transformation, or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Agreement State" means any state with which the United States Nuclear Regulatory Commission has entered into an effective agreement under Section 274(b) of the Atomic Energy Act of 1954, as amended (73 Stat. 689). "Nonagreement State" means any other state.

"Airborne radioactive material" means any radioactive material dispersed in the air in the form of aerosols, dusts, fumes, mists, vapors, or gases.

"Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed radioactive material, exist in concentrations:

In excess of the derived air concentrations (DACs) specified in Appendix B, Table I of Article 4 of these rules; or

That an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

"ALARA" means as low as is reasonably achievable, making every reasonable effort to maintain exposures to radiation as far below the dose limits in these rules as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Analytical x-ray equipment" means equipment used for x-ray diffraction or x-ray-induced fluorescence analysis.

"Analytical x-ray system" means a group of components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials.

"Annual" means done or performed yearly. For purposes of Chapter 1, any required activity done or performed within plus or minus two weeks of the annual due date is considered done or performed in a timely manner.

"Approved individual" means an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with subpart B of this part and who has completed the training required by 10 CFR 37.43(c).

"Associate Radiation Safety Officer" means an individual who:

Meets the requirements in 10 CFR 35.50 and 10 CFR 35.59; and

Is currently identified as an Associate Radiation Safety Officer for the types of use of byproduct material for which the individual has been assigned duties and tasks by the Radiation Safety Officer on:

A specific medical use license issued by the Commission or an Agreement State~~;~~, or

A medical use permit issued by a Commission master material licensee.

"Authorized medical physicist" means an individual who meets the requirements in R9-7-711; or is identified as an authorized medical physicist or teletherapy physicist on:

A specific medical use license issued by the Department, the NRC, or another Agreement State;

A medical use permit issued by a NRC master material licensee;

A permit issued by the Department, the NRC, or another Agreement State broad scope medical use licensee; or

A permit issued by a NRC master material license broad scope medical use permittee.

"Authorized nuclear pharmacist" means a pharmacist who meets the requirements in R9-7-712; or is:

Identified as an authorized nuclear pharmacist on a specific license issued by the Department, the NRC, or another Agreement State that authorizes medical use or the practice of nuclear pharmacy;

Identified as an authorized nuclear pharmacist on a permit issued by a NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

Identified as an authorized nuclear pharmacist on a permit issued by the Department, the NRC, or another Agreement State broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; ~~or~~

Identified as an authorized nuclear pharmacist on a permit issued by a NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; ~~or~~

Identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

Designated as an authorized nuclear pharmacist in accordance with R9-7-311(G).

"Authorized user" means a physician, dentist, or podiatrist who meets the requirements in R9-7-719, R9-7-723, R9-7-727, R9-7-728, or R9-7-744; or is identified as an authorized user on:

The Department, NRC, or another Agreement State license that authorizes the medical use of radioactive material;

A permit issued by a NRC master material licensee that is authorized to permit the medical use of radioactive material;

A permit issued by the Department, the NRC, or another Agreement State specific licensee of broad scope that is authorized to permit the medical use of radioactive material; or

A permit issued by a NRC master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

"Background investigation" means an assessment of an individual's prior actions and experience

conducted by a licensee or applicant, to support the determination of the individual's trustworthiness and reliability in accordance with 10 CFR 37.25.

"Background radiation" means radiation from cosmic sources; not technologically enhanced naturally occurring radioactive material, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents, such as Chernobyl, that contribute to background radiation and are not under the control of a licensee. "Background radiation" does not include sources of radiation regulated by the Department.

"Becquerel" (Bq) means the International System (SI) unit for activity and is equal to 1 disintegration per second (dps or tps).

"Bioassay" means the determination of kinds, quantities, or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Brachytherapy" means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver beta or gamma radiation at a distance of up to a few centimeters, by surface, intracavitary or interstitial application.

"Byproduct material" means:

Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition;

Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; or any material that, has been made radioactive by use of a particle accelerator; and is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; and

Any discrete source of naturally occurring radioactive material, other than source material, that the NRC, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to

the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security and; before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

"Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. A licensee or registrant shall not change the method of determining calendar quarters for purposes of this Chapter except at the beginning of a calendar year.

"Calibration" means the determination of:

The response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or

The strength of a source of radiation relative to a standard.

"Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

"Certifiable cabinet x-ray system" means an existing uncertified x-ray system that meets or has been modified to meet the certification requirements specified in 21 CFR 1020.40, revised April 1, 2019, incorporated by reference, ~~and~~ available under R9-7-101~~. This incorporated material contains~~, and containing no future editions or amendments.

"Certificate holder" means a person who has been issued a certificate of compliance or other package approval by the Department or NRC.

"Certificate of Compliance" (CoC) means the certificate issued by the NRC under 10 CFR 71, Subpart D, which authorizes the design of a package for the transportation of radioactive material.

"Certified cabinet x-ray system" means an x-ray system that has been certified in accordance with 21 CFR 1010.2, revised January 20, 2023, as being manufactured and assembled on or after April 10, 1975, in accordance with the provisions of 21 CFR 1020.40, ~~both sections~~ revised ~~April 1, 2019~~ April 10, 1974, both incorporated by reference, ~~and~~ available under R9-7-101~~. This incorporated material contains~~, and containing no future editions or amendments.

"CFR" means Code of Federal Regulations.

"Chelating agent" means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Civil penalty" means the monetary fine which may be imposed on licensees by the Department, pursuant to A.R.S. § 30-687, for violations of the Act, this Chapter, or license conditions.

"Collective dose" means the sum of the individual doses received in a given period of time by a

specified population from exposure to a specified source of radiation.

"Committed dose equivalent" (HT,50) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" (HE,50) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues (HE,50 = S wT,HT,50).

"Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a federal facility or a medical facility.

"Contamination" means the presence of a radioactive substance on a surface in quantities in excess of 0.4 Bq/cm^2 (1×10^{-5} $\mu Ci/cm^2$) for beta and gamma emitters and low toxicity alpha emitters, or 0.04 Bq/cm^2 (1×10^{-6} $\mu Ci/cm^2$) for all other alpha emitters.

"Fixed contamination" means contamination that cannot be removed from a surface during normal conditions of transport.

"Non-fixed contamination" means contamination that can be removed from a surface during normal conditions of transport.

"Criticality Safety Index (CSI)" means the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages, overpacks or freight containers containing fissile material during transportation. Determination of the criticality safety index is described in 10 CFR 71.22, 10 CFR 71.23, and 10 CFR 71.59. The criticality safety index for an overpack, freight container, consignment or conveyance containing fissile material packages is the arithmetic sum of the criticality safety indices of all the fissile material packages contained within the overpack, freight container, consignment or conveyance.

"Curie" means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7E + 1010 transformations per second (tps).

"Current license or registration" means a license or registration issued by the Department and for which the licensee has paid the license or registration fee for the current year according to R9-7-1304.

"Deep-dose equivalent" (Hd), which applies to external whole body exposure, is the dose

equivalent at a tissue depth of 1 centimeter (1000 mg/cm2).

“Depleted uranium” means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

“Discrete source” means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

“Dose” is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these rules, “radiation dose” is an equivalent term.

“Dose equivalent” (HT) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

“Dose limits” means the permissible upper bound of radiation doses established in accordance with these rules. For purposes of these rules, “limits” is an equivalent term.

“Dosimeter” (See “Individual monitoring device”)

“Effective dose equivalent” (HE) means the sum of the products of the dose equivalent to each organ or tissue (HT) and the weighting factor (wT) applicable to each of the body organs or tissues that are irradiated (HE = S wTHT).

“Effluent release” means any disposal or release of radioactive material into the ambient atmosphere, soil, or any surface or subsurface body of water.

“Embryo/fetus” means the developing human organism from conception until the time of birth.

“Enclosed beam x-ray system” means an analytical x-ray system constructed in such a way that access to the interior of the enclosure housing the x-ray source during operation is precluded except through bypassing of interlocks or other safety devices to perform maintenance or servicing.

“Enclosed radiography” means industrial radiography conducted by using cabinet radiography or shielded room radiography.

> “Cabinet radiography” means industrial radiography conducted by using an x-ray machine in an enclosure not designed for human admittance and which is so shielded that every location on the exterior meets the conditions for an “unrestricted area.”
>
> “Shielded room radiography” means industrial radiography conducted using an x-ray machine in an enclosure designed for human admittance and which is so shielded that every location of the exterior meets the conditions for an “unrestricted area.”

“Entrance or access point” means any opening through which an individual or extremity of an

individual could gain access to radiation areas or to licensed radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Exhibit" for purposes of these rules, is equivalent in meaning to the word "Schedule" as found in previously issued rules, current license conditions, and regulation guide.

"Explosive material" means any chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"Exposure" means:

Being subjected to ionizing radiation or radioactive materials.

The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The special unit of exposure is the roentgen (R).

"Exposure rate" means the exposure per unit of time.

"External dose" means that portion of the dose equivalent received from any source of radiation outside the body.

"Extremity" means the hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Fail-safe characteristics" means a design feature which causes beam port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device.

"FDA" means the United States Food and Drug Administration.

"Field radiography" means industrial radiography, utilizing a portable or mobile x-ray system, which is not conducted in a shielded enclosure.

"Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

"Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency (EPA), 40 CFR 190, revised December 1, 1979, and 40 CFR 191, revised December 20, 1993, incorporated by reference, ~~and~~ available under R9-7-101, and containing not future editions or amendments, under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or

quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material. ~~This incorporated material contains no future editions or amendments.~~

"Gray" (Gy) means the International System (SI) unit of absorbed dose and is equal to 1 joule per kilogram. One gray equals 100 rad.

"Hazardous waste" means those wastes designated as hazardous in A.R.S. § 49-921(5).

"Healing arts" means the practice of medicine, dentistry, osteopathy, podiatry, chiropractic, and veterinary medicine.

"Health care institution" means every place, institution, or building which provides facilities for medical services or other health-related services, not including private clinics or offices which do not provide overnight patient care.

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

"Human use" means the internal or external administration of radiation or radioactive materials to human beings.

"Impound" means to abate a radiological hazard. Actions which may be taken by the Department in impounding a source of radiation include seizing the source of radiation, controlling access to an area, and preventing a radiation machine from being utilized.

"Indian Tribe" means an Indian or Alaska native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

"Individual" means any human being.

"Individual monitoring" means the assessment of:

Dose equivalent:

By the use of individual monitoring devices, or

By the use of survey data, or

Committed effective dose equivalent:

By bioassay; or

By determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition of DAC-hours in Article 4).

"Individual monitoring device" means a device designed to be worn by a single individual for the

assessment of dose equivalent. For purposes of this Chapter, "dosimeter" and "personnel dosimeter," are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, optical stimulation devices, and personal ("lapel") air sampling devices.

"Individual monitoring equipment" means one or more individual monitoring devices. For purposes of this Chapter, "personnel monitoring equipment" is an equivalent term.

"Industrial radiography" means the examination of the macroscopic structure of materials by non-destructive methods utilizing sources of ionizing radiation.

"Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

"Inspection" means an examination or observation by a representative of the Department, including but not limited to tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions of the License or certificate of registration.

"Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Irradiate" means to expose to radiation.

"Laser" (light amplification by the stimulated emission of radiation) means any device which can produce or amplify electromagnetic radiation with wavelengths in the range of 180 nanometers to 1 millimeter primarily by the process of controlled stimulated emission.

"Lens dose equivalent" (LDE) means the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeters (300 mg/cm2).

"License" means the grant of authority, issued pursuant to Articles 3 and 14 of this Chapter and A.R.S. §§ 30-671, 30-672, and 30-721 et seq., to acquire, possess, transfer, and use sources of radiation. The types of licenses issued by the Department are described in R9-7-1302.

"Licensed material" means radioactive material received, possessed, used, transferred, or disposed of under a general or specific license issued by the Department.

"Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, osteopathy, chiropractic, podiatry, or naturopathy in this state.

"Licensee" means any person who is licensed by the Department under this Chapter to acquire, possess, transfer, or use sources of radiation.

"Licensing State" means any state having regulations equivalent to this Chapter relating to, and an effective program for the regulation of, naturally occurring and accelerator-produced

radioactive material (NARM).

"Limits" (See "Dose limits")

"Local components" means those parts of an analytical x-ray system that are struck by x-rays, including radiation source housings, port and shutter assemblies, collimator, sample holders, cameras, goniometer, detectors and shielding but not including power supplies, transformers, amplifiers, readout devices, and control panels.

"Logging supervisor" means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

"Logging tool" means a device used subsurface to perform well logging.

"Lost or missing licensed or registered source of radiation" means licensed or registered source of radiation the location of which is unknown. Included are licensed radioactive material or a registered radiation source that has been shipped but has not reached its planned destination and whose location cannot be readily traced or ascertained in the transportation system.

"Low-level waste" means waste material which contains radioactive nuclides in concentrations or quantities which exceed applicable standards for unrestricted release but does not include:

High-level waste, such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;

Waste material containing transuranic elements with contamination levels greater than 10 nanocuries per gram (370 kilobecquerels per kilogram) of waste material; or

The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

"Low Specific Activity (LSA) material" means radioactive material with limited specific activity which is nonfissile or is excepted under 10 CFR 71.15, and which satisfies the descriptions and limits set forth in the following section. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. The LSA material must be in one of three groups:

LSA—I.

Uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radionuclides that are intended to be processed for the use of these radionuclides;

Natural uranium, depleted uranium, natural thorium or their compounds or mixtures, provided they are unirradiated and in solid or liquid form;

Radioactive material other than fissile material, for which the A2 value is unlimited; or

Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with appendix A.

LSA—II.

Water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 10–4 A2/g for solids and gases, and 10–5 A2/g for liquids.

LSA—III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of 10 CFR 71.77, in which:

The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for 7 days will not exceed 0.1 A2; and

The estimated average specific activity of the solid, excluding any shielding material, does not exceed 2 x 10–3A2/g.

“Major processor” means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material or exceeding four times Type B quantities as sealed sources but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

“Medical dose” means a radiation dose intentionally delivered to an individual for medical examination, diagnosis, or treatment.

“Member of the public” means any individual except when that individual is receiving an occupational dose.

“MeV” means Mega Electron Volt which equals 1 million volts (106 eV).

“Mineral logging” means any well logging performed in a borehole drilled for the purpose of exploration for minerals other than oil or gas.

“Minor” means an individual less than 18 years of age.

“Monitoring” means the measurement of radiation, radioactive material concentrations, surface area activities, or quantities of radioactive material, and the use of the results of these

measurements to evaluate potential exposures and doses. For purposes of these rules, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

"Multiplier" means a letter representing a number. The use of a multiplier is based on the code given below:

Prefix	*Multiplier Symbol*	*Value*
eka	E	10^{18}
peta	P	10^{15}
tera	T	10^{12}
giga	G	10^{9}
mega	M	10^{6}
kilo	k	10^{3}
milli	m	10^{-3}
micro	u	10^{-6}
nano	n	10^{-9}
pico	p	10^{-12}
femto	f	10^{-15}
atto	a	10^{-18}

"NARM" means any naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source, or special nuclear material. This term should not be confused with "NORM" which is defined as naturally occurring radioactive material.

"Natural radioactivity" means the radioactivity of naturally occurring radioactive substances.

"Normal operating procedures" means the entire set of instructions necessary to accomplish the intended use of the source of radiation. These procedures shall include, but are not limited to, sample insertion and manipulation, equipment alignment, routine maintenance by the licensee, and data recording procedures which are related to radiation safety.

"NRC" means Nuclear Regulatory Commission, the U.S. Nuclear Regulatory Commission, or its duly authorized representatives.

"NRC Document Control Desk" means the Nuclear Regulatory Document Control Desk. ATTN: Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

"Nuclear waste" means any highway route-controlled quantity (defined in 49 CFR 173.403,

revised January 8, 2015, incorporated by reference, available under R9-7-101, and containing no future editions or amendments) of source, byproduct, or special nuclear material required to be in NRC-approved packaging while transported to, through, or across state boundaries to a disposal site, or to a collection point for transport to a disposal site. Additional requirements associated with transportation of radioactive material can be found in Article 15.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to sources of radiation, whether in the possession of a licensee, registrant, or other person. Occupational dose does not include a dose received from background radiation, medical administration of radiation to the individual, exposure to an individual who has been administered radioactive material and released in accordance with R9-7-717, voluntary participation in a medical research program, or as a member of the public.

"Open beam system" means an analytical x-ray system in which an individual could place some body part in the primary beam path during normal operation.

"Ophthalmic physicist" means an individual who:

Meets the requirements in 10 CFR 35.433(a)(2) and 10 CFR 35.59; and

Is identified as an ophthalmic physicist on a:

Specific medical use license issued by the Department, the NRC, or another Agreement State;

Permit issued by a Department, NRC, or another Agreement State broad scope medical use licensee;

Medical use permit issued by a NRC master material licensee; or

Permit issued by a NRC master material licensee broad scope medical use permittee.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" (See "Accelerator")

"Permanent radiographic installation" means a fixed, shielded installation or structure designed or intended for industrial radiography and in which industrial radiography is regularly performed.

"Personal supervision" means supervision in which the supervising individual is physically present at the site where sources of radiation and associated equipment are being used, watching the performance of the supervised individual and in such proximity that immediate assistance can be given if required.

"Personnel dosimeter" (See "Individual monitoring device")

"Personnel monitoring equipment" (See "Individual monitoring device")

~~"Personal supervision" means supervision in which the supervising individual is physically present at the site where sources of radiation and associated equipment are being used, watching the performance of the supervised individual and in such proximity that immediate assistance can be given if required.~~

"PET" (See Positron Emission Tomography (PET))

"Pharmacist" means an individual licensed by this state to compound and dispense drugs, prescriptions, and poisons.

"Physician" means an individual licensed pursuant to A.R.S. Title 32, Chapters 13 or 17.

"Positron Emission Tomography (PET)" means an imaging technique using radionuclides to produce high resolution images of the body's biological functions.

"Positron Emission Tomography radionuclide production facility" means a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

"Preceptor" means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, a Radiation Safety Officer, or an Associate Radiation Safety Officer.

"Primary beam" means radiation which passes through an aperture of the source housing by a direct path from the x-ray tube or a radioactive source located in the radiation source housing.

"Public dose" means the dose received by a member of the public from radiation from radioactive material released by a licensee or registrant, or exposure to a source of radiation used in a licensed or registered operation. It does not include an occupational dose or a dose received from background radiation, medical administration of radiation to the individual, exposure to an individual who has been administered radioactive material and released in accordance with R9-7-717, or voluntary participation in a medical research program.

"Pyrophoric liquid" means any liquid that ignites spontaneously in dry or moist air at or below 130° F (54.4° C).

"Pyrophoric solid" means any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently that it creates a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Qualified expert" means an individual certified in the appropriate field by the American Board of Radiology or the American Board of Health Physics, or having equivalent qualifications that provide the knowledge and training to measure ionizing radiation, to evaluate safety techniques,

and to advise regarding radiation protection needs; or an individual certified in Therapeutic Radiological Physics or X-ray and Radium Physics by the American Board of Radiology, or having equivalent qualifications that provide training and experience in the clinical applications of radiation physics to radiation therapy, to calibrate radiation therapy equipment. The detailed requirements for a particular qualified expert may be provided in the respective Articles of this Chapter. For clarification purposes, a qualified expert is not always an authorized medical physicist; however, an authorized medical physicist is included within the definition of "qualified expert."

"Quality Factor" (Q) means the modifying factor, listed in Tables I and II of this Article, that is used to derive dose equivalent from absorbed dose.

"Quarter" (See "Calendar quarter")

"Rad" means the special unit of absorbed dose. One rad equals 100 ergs per gram, or 0.01 gray.

"Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these rules, this term is synonymous with ionizing radiation. Equivalent terminology for non-ionizing radiation is defined in Article 14.

"Radiation area" means any area accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

"Radiation dose" (See "Dose")

"Radiation machine" means any device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation Safety Officer" (RSO) means the individual who:

For license conditions:

Meets the requirements in 10 CFR 35.50(a) or (c)(1), revised July 16, 2018, and 10 CFR 35.59, revised March 27, 2006, incorporated by reference, available under ~~R9-7-10~~ R9-7-101, and containing no future editions or amendments; or

Is identified as a Radiation Safety Officer on a specific medical use license issued by the Department, the NRC or another Agreement State; or a medical use permit issued by a NRC master material licensee; or

For registration conditions, is designated by the registrant as the individual who has the knowledge, authority, and responsibility to apply appropriate radiation protection principles to ensure radiation safety and compliance with the Act, this Chapter, and any registration conditions.

"Radiation Safety Officer" (RSO) means the individual who:

For license conditions:

Meets the requirements of R9-7-407, and for a medical license meets the training requirements of R9-7-710; ~~or~~

Is identified as a Radiation Safety Officer on a specific medical use license issued by the Department, the NRC, or another Agreement State; or a medical use permit issued by a NRC master material licensee; or

Meets the requirements in R9-7-512 on a specific industrial license issued by the Department, the NRC, or another Agreement State; or an industrial use permit issued by a NRC master material licensee; or

For registration conditions, is designated by the registrant as the individual who has the knowledge, authority, and responsibility to apply appropriate radiation protection principles to ensure radiation safety and compliance with the Act, this Chapter and any registration conditions.

"Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

"Radioactive material" means any solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means emission of electromagnetic energy or particles or both during the transformation of unstable atomic nuclei.

"Radiographer" means any individual who performs or personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of this Chapter and all conditions of the license or certificate of registration.

"Radiographer's assistant" means any individual who, under the personal supervision of a radiographer, uses sources of radiation, radiographic exposure devices, related handling tools, or survey instruments in industrial radiography.

"Registrant" means any person who is registered with the Department and is legally obligated to register with the Department pursuant to these rules and the Act.

"Registration" is the process by which a person becomes a registrant pursuant to Article 2 or 14 of this Chapter. With the exception of registration of persons who install or service radiation machines, the types of registrations issued by the Department are described in R9-7-1302.

"Regulations of the U.S. Department of Transportation" means the federal regulations in 49 CFR 107, revised ~~April 19, 2017~~ December 27, 2022; 49 CFR 171, revised ~~April 19, 2017~~ December 21, 2022; 49 CFR 172, revised ~~November 23, 2015~~ December 27, 2022; 49 CFR 173, revised

~~March 6, 2019~~ December 27, 2022; 49 CFR 174, revised ~~February 28, 2019~~ December 27, 2022; 49 CFR 175, revised ~~October 18, 2018~~ December 27, 2022; 49 CFR 176, ~~November 7, 2018~~ December 21, 2020; 49 CFR 177, revised ~~September 25, 2013~~ December 27, 2022; 49 CFR 178, revised ~~November 7, 2018~~ July 26, 2022; 49 CFR 179, revised ~~September 25, 2018~~ December 21, 2020; and 49 CFR 180, revised ~~March 30, 2017~~ July 26, 2022, incorporated by reference, available under R9-7-101, and containing no future editions or amendments.

"Rem" means the special unit of dose equivalent (see "Dose equivalent"). The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem - 0.01 sievert).

"Research and Development" means exploration, experimentation, or the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and Development does not include the internal or external administration of radiation or radioactive material to human beings.

"Restricted area" means any area where the licensee or registrant controls access for purposes of protecting individuals from exposure to radiation and radioactive material. A restricted area does not include any areas used for residential quarters, although a room or separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of exposure and is equal to the quantity of x or gamma radiation which causes ionization in air equal to 258 microcoulomb per kilogram (see "Exposure").

"Safety system" means any device, program, or administrative control designed to ensure radiation safety.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Sealed Source and Device Registry" means the national registry that contains all the registration certificates, generated by both the NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for each source or device.

"Shallow dose equivalent" (HS), which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm2).

"Shielded position" means the location within a radiographic exposure device or storage

container which, by manufacturer's design, is the proper location for storage of the sealed source.

"Sievert" means the SI unit of dose equivalent (see "Dose equivalent"). The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those also used for transporting and storage of sealed sources.

"Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source in well-logging operations.

"Source material" means:

Uranium or thorium, or any combination of uranium or thorium, in any physical or chemical form; or

Ores that contain by weight 1/20 of 1 percent (0.05 percent) or more of uranium, thorium, or any combination of uranium and thorium.

Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by the second subsection under the definition of "Byproduct material."

"Source of radiation" or "source" means any radioactive material or any device or equipment emitting, or capable of producing, radiation.

"Special form radioactive material" means radioactive material that satisfies all of the following conditions:

It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

The piece or capsule has at least one dimension not less than 5 millimeters (0.2 inch); and

It satisfies the test requirements specified in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of 10 CFR 71.4 in effect on March 31, 1996 (see 10 CFR part 71, revised as of January 1, 1996), and constructed before April 1, 1998; and special form material that was successfully tested before September 10, 2015 in accordance with the requirements of 10 CFR 71.75(d) in effect before September 10, 2015 may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

“Special nuclear material in quantities not sufficient to form a critical mass” means Uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; Uranium-233 in quantities not exceeding 200 grams; Plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{X\,gms\,U235}{350} + \frac{Y\,gms\,U233}{200} + \frac{Z\,gms\,Pu}{200} \leq 1$$

“Storage area” means any location, facility, or vehicle which is used to store, transport, or secure a radiographic exposure device, storage container, sealed source, or other source of radiation when it is not in use.

“Storage container” means a device in which sealed sources are transported or stored.

“Subsurface tracer study” means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

“Survey” means an evaluation of the production, use, release, disposal, or presence of sources of radiation or any combination thereof under a specific set of conditions to determine actual or potential radiation hazards. Such evaluations include, but are not limited to, tests, physical examination and measurements of levels of radiation or concentration of radioactive material present.

“TEDE” (See “Total Effective Dose Equivalent”)

“Teletherapy” means therapeutic irradiation in which the source of radiation is at a distance from the body.

“Temporary job site” means any location where sources of radiation are used other than the specified locations listed on a license document. Storage of sources of radiation at a temporary jobsite shall not exceed six months unless the Department has granted an amendment authorizing storage at that jobsite.

“Test” means the process of verifying compliance with an applicable rule, order, or license condition.

“These rules” means all Articles of 9 A.A.C. 7.

“Total Effective Dose Equivalent” (TEDE) means the sum of the effective dose equivalent (for

external exposures) and the committed effective dose equivalent (for internal exposures).

"Total Organ Dose Equivalent" (TODE) means the sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose. Determination of TODE is described in R9-7-411.

"Tribal official" means the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

"Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

"Unrestricted area" means any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive material. Any area used for residential quarters is an unrestricted area.

"Uranium - natural, depleted, enriched."

> Natural uranium means uranium (which may be chemically separated) with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).
>
> Depleted uranium means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.
>
> Enriched uranium means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

"U.S. Department of Energy" means the Department of Energy established by P.L. 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department of Energy exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers, and components; and transferred to the U.S. Energy Research and Development Administration and to the administrator of that agency under sections 104(b), (c), and (d) of the Energy Reorganization Act of 1974 (P.L. 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 U.S.C. 5814, effective January 19, 1975) and retransferred to the Secretary of Energy under Section 301(a) of the Department of Energy Organization Act (P.L. 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

"Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose that exceeds 5 grays (500 rads) in one hour at one meter from a radiation source or one meter from any surface that the radiation penetrates.

"Waste" (See "Low-level waste")

“Waste handling licensees” means persons licensed to receive and store radioactive wastes prior to disposal and persons licensed to dispose of radioactive waste.

“Week” means seven consecutive days starting on Sunday.

“Well-bore” means a drilled hole in which wireline service operations and subsurface tracer studies are performed.

“Well-logging” means the lowering and raising of measuring devices or tools which may contain sources of radiation into well-bores or cavities for the purpose of obtaining information about the well and adjacent formations.

“Whole body” means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

“Wireline” means an armored cable containing one or more electrical conductors which is used to lower and raise logging tools in the well-bore.

“Wireline service operation” means any evaluation or mechanical service which is performed in the well-bore using devices on a wireline.

“Worker” means any individual engaged in work under a license or registration issued by the Department and controlled by employment or contract with a licensee or registrant.

“WL” means working level, any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3E + 5 MeV of potential alpha particle energy. The short-lived radon daughters are – for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

“WLM” means working level month, an exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

“Workload” means the degree of use of an x-ray or gamma-ray source per unit time.

“Year” means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

ARTICLE 3. RADIOACTIVE MATERIAL LICENSING

R9-7-302. Source Material; Exemptions

A. Any person is exempt from this Article to the extent the person receives, possesses, uses, delivers or transfers source material in any chemical mixture, compound, solution, or alloy in which the source material is by weight less than 1/20th of 1 percent (0.0005) of the mixture, compound, solution, or alloy.

B. Any person is exempt from this Article to the extent the person receives, possesses, uses, or transfers unrefined and unprocessed ore containing source material, provided that, the person does not refine or process the ore except as authorized in a specific license.

C. Any person is exempt from the requirements for a license set forth in this Article if the person receives, possesses, uses, or transfers:

1. Any quantities of thorium contained in:
    a. Incandescent gas mantles;
    b. Vacuum tubes;
    c. Welding rods;
    d. Electric lamps for illuminating purposes provided that each lamp does not contain more than 50 milligrams of thorium;
    e. Germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting, provided that each lamp does not contain more than 2 grams of thorium;
    f. Rare earth metals, compounds, mixtures, or products containing not more than 0.25 percent by weight thorium, uranium, or any combination of thorium and uranium; or
    g. Individual neutron dosimeters, provided that each dosimeter does not contain more than 50 milligrams of thorium;
2. Source material contained in the following products:
    a. Glazed ceramic tableware manufactured before August 27, 2013, provided that the glaze contains not more than 20 percent by weight source material ~~by weight~~;
    b. Glassware containing not more than 2 percent by weight source material or, for glassware manufactured before August 27, 2013, 10 percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile or other glass or ceramic used in construction; or
    c. Piezoelectric ceramic containing not more than 2 percent by weight source material ~~by weight~~;

3. Photographic film, negatives, and prints containing uranium or thorium;
4. Any finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed 4 percent by weight and that the exemption contained in this subsection does not authorize the chemical, physical, or metallurgical treatment or processing of the finished product or part;
5. Uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of counterweights, provided that:
    a. Each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM";
    b. Each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED";
    c. The exemption contained in subsection (C)(5) does not authorize the chemical, physical, or metallurgical treatment or processing of any counterweight other than repair or restoration of any plating or other covering; and
    d. The requirements specified in subsections (C)(5)(a) and (b) need not be met by counterweights manufactured prior to December 31, 1969; provided, that these counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were impressed with the legend, ~~"CAUTION – RADIOACTIVE MATERIAL – URANIUM"~~ "UNAUTHORIZED ALTERATIONS PROHIBITED";
6. Natural or depleted uranium metal used as shielding and constituting part of any shipping container; provided that:
    a. The shipping container is conspicuously and legibly impressed with the legend "CAUTION – RADIOACTIVE SHIELDING – URANIUM," and
    b. The uranium metal is encased in mild steel or equally fire resistant metal with minimum wall thickness of 1/8 inch (3.2 mm);
7. Thorium or uranium contained in or on finished optical lenses or mirrors, provided that each lens or mirror does not contain more than 10 percent by weight thorium or uranium or, for lenses manufactured before August 27, 2013, 30 percent by weight of thorium; and that the exemption contained in this Section does not authorize either:
    a. The shaping, grinding, or polishing of such lens or mirror or manufacturing processes

other than the assembly of such lens or mirror into optical systems and devices without any alteration of the lens or mirror; or

b. The receipt, possession, use, or transfer of uranium or thorium contained in contact lenses, spectacles, or the eyepieces of binoculars or other optical instruments;

8. Uranium contained in detector heads of fire detection units, provided that each detector head contains not more than 5 nanocuries (185 Bq) of uranium; or

9. Thorium contained in any finished aircraft engine part containing nickel-thoria alloy, provided that:

a. The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and

b. The thorium content in the nickel-thoria alloy does not exceed 4 percent by weight.

D. No person may initially transfer for sale or distribution a product containing source material to persons exempt under subsection (C), or equivalent regulations of the NRC or another Agreement State, unless authorized by a license issued under R9-7-318 to initially transfer such products for sale or distribution.

E. Persons authorized to manufacture, process, or produce these materials or products containing source material by ~~an~~ another Agreement State, and persons who import finished products or parts, for sale or distribution must be authorized by a license issued under R9-7-318 for distribution only and are exempt from the requirements of Articles 4 and 10 of this Chapter, and R9-7-309(1) and (2).

F. The exemptions in subsections (C), (D), and (E) do not authorize the manufacture of any of the products described.

R9-7-305. General Licenses – Source Material

A. A general license is hereby issued authorizing commercial and industrial firms; research, educational, and medical institutions; and Federal, State, and local government agencies to receive, possess, use, and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, commercial, or operational purposes in the following forms and quantities.

1. No more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms (e.g., gaseous, liquid, powder, etc.) at any one time. Any material processed by the general licensee that alters the chemical or physical form of the material containing source material must be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under this subsection may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year.

2. As applicable:
    a. No more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source material under this subsection may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any one calendar year. A person may not alter the chemical or physical form of the source material possessed under this subsection unless it is accounted for under the limits of subsection (A)(1);
    b. No more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under this subsection; or
    c. No more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under this subsection may not receive more than a total of 70 kg (154 lb) of source material in any one calendar year.

B. ~~A~~ Any person who receives, possesses, uses, or transfers source material ~~under~~ in accordance with a general license granted under subsection (A) ~~is exempt from the provisions of Article 4 and Article 10 of this Chapter, provided the receipt possession, use, or transfer is within the terms of the general license, except that such person shall comply with the provisions of R9-7-434 and R9-7-452. This exemption does not apply to any person who is also in possession of source material under a specific license issued under this Article.~~:

1. Is prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings, except as may be authorized by the Department in a specific license;
2. Shall not abandon such source material, but source material may be disposed of as follows:
    a. A cumulative total of 0.5 kg (1.1 lb) of source material in a solid, non-dispersible form may be transferred each calendar year, by a person authorized to receive, possess, use, and transfer source material under this general license to persons receiving the material for permanent disposal. The recipient of source material transferred under the provisions of this subsection is exempt from the requirements to obtain a license under Article to the extent the source material is permanently disposed. This provision does not apply to any person who is in possession of source material under a specific license issued under this Chapter; or

b. In accordance with R9-7-434.

3. Is subject to the provisions in 10 CFR 40.56 and R9-7-101, R9-7-101.01, R9-7-102, R9-7-107, R9-7-308, R9-7-313(A) through (E), R9-7-313(I), R9-7-318, R9-7-405, R9-7-443, R9-7-444, R9-7-445, and R9-7-1213 through R9-7-1220; and

4. Shall not export such source material except in accordance with 10 CFR 110.

C. Any person who receives, possesses, uses, or transfers source material in accordance with subsection (A) shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the Department about such contamination and may consult with the Department as to the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in R9-7-452.

D. Any person who receives, possesses, uses, or transfers source material in accordance with a general license granted under subsection (A) is exempt from the provisions of Article 4 and Article 10 of this Chapter, provided the receipt, possession, use, or transfer is within the terms of the general license, except that such person shall comply with the provisions of R9-7-434 and R9-7-452. This exemption does not apply to any person who is also in possession of source material under a specific license issued under this Article.

E. No person may initially transfer or distribute source material to persons generally licensed under subsection (A)(1) or (2), or equivalent regulations of the NRC or another Agreement State, unless authorized by a specific license issued in accordance with R9-7-318 or equivalent provisions of the NRC or another Agreement State. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample.

~~C.~~**F.** This subsection grants a general license that authorizes a person to receive acquire, possess, use, or transfer, in accordance with subsections (G) through (J), depleted uranium contained in industrial products and devices provided~~:~~

~~1.~~ ~~The~~ the depleted uranium is contained in the industrial product or device for the purpose of providing a concentrated mass in a small volume of the product or device~~;~~.

~~2.~~**G.** The general license in subsection (F) applies only to industrial products or devices have been manufactured or initially transferred in accordance with a specific license governed by R9-7-311(J), or in accordance with a specific license issued by the NRC or another Agreement State that authorizes manufacture of the products or devices for distribution to persons generally licensed by the NRC or an Agreement State~~; and~~.

~~3.~~**H.** ~~The person files~~ Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by subsection (F) shall file an ARRA 23 "Registration Certificate -- Use of Depleted Uranium Under General License" with the Department. The person shall provide the information requested on the certificate and listed in Exhibit E. The person shall submit the information within 30 days after first receipt or acquisition of the depleted uranium, returning the completed registration certificate to the Department. The person shall report in writing to the Department any change in information originally submitted to the Department on ARRA 23. The person shall submit the change report within 30 days after the effective date of the described change.

~~D.~~**I.** A person who receives, acquires, possesses, or uses depleted uranium according to the general license provided under subsection ~~(C)~~ (F) shall:

1. Not introduce depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;
2. Not abandon the depleted uranium;
3. Transfer the depleted uranium as prescribed in R9-7-318. If the transferee receives the depleted uranium under a general license established by subsection ~~(C)~~ (F), the transferor shall furnish the transferee with a copy of this subsection and a copy of the registration certificate. If the transferee receives the depleted uranium under a general license governed by a regulation of the NRC or another Agreement State that is equivalent to subsection ~~(C)~~ (F), the transferor shall furnish the transferee a copy of the equivalent rule and a copy of the registration certificate, accompanied by a letter explaining that use of the product or device is regulated by the NRC or an Agreement State under requirements substantially similar to those in this Section; and
4. Within 30 days of any transfer, report in writing to the Department the name and address of the person receiving the depleted uranium~~; and~~.
5. ~~Not export depleted source material except under a license issued by the U.S. Nuclear Regulatory Commission in accordance with 10 CFR 110.~~

~~E.~~**J.** A person who receives, acquires, possesses, uses, or transfers depleted uranium in accordance with a general license granted under subsection ~~(C)~~ (F) is exempt from the requirements in Articles 4 and 10 of this Chapter with respect to the depleted uranium covered by that general license.

~~F. Any person who receives, possesses, uses, or transfers source material in accordance with subsection (A) shall conduct activities so as to minimize contamination of the facility and the environment.~~

~~When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the Department about such contamination and may consult with the Department as to the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in R9-7-452.~~

~~G.~~ ~~No person may initially transfer or distribute source material to persons generally licensed under subsection (A)(1) or (2), or equivalent regulations of the NRC or another Agreement State, unless authorized by a specific license issued in accordance with R9-7-318 or equivalent provisions of another Agreement State. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample.~~

R9-7-311. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices that Contain Radioactive Material

A. Licensing the manufacture and distribution of devices to persons generally licensed under R9-7-306(A).

1. The Department shall grant a specific license to manufacture or distribute each device that contains radioactive material, excluding special nuclear material, to persons generally licensed under R9-7-306(A) or equivalent regulations of the ~~U.S.~~ NRC, an Agreement State, or the Licensing State if:
    a. The applicant satisfies the requirements of R9-7-309;
    b. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, pro-posed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:
        i. The device can be safely operated by persons not having training in radiological protection;
        ii. Under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive a dose in excess of 10 percent of the limits specified in R9-7-408; and
        iii. Under accident conditions (such as fire and explosion) associated with handling, storage, and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess

of the following organ doses:

(1) Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye: 150 mSv (15 rem);

(2) Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than 1 square centimeter; 2 Sv (200 rem);

(3) Other organs: 500 mSv (50 rem);

c. Each device bears a durable, legible, clearly visible label or labels that contain in a clearly identified and separate statement:

i. Instructions and precautions necessary to assure safe installation, operating, and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

ii. The requirement, or lack of requirement, for leak testing, or for testing any on-off mechanism and indicator, including the maximum time interval for the testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity; and

iii. The information called for in one of the following statements in the same or substantially similar form:

The receipt, possession, use, and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION – RADIOACTIVE MATERIAL

_____

(name of manufacturer or distributor)

The receipt, possession, use and transfer of this device, Model _____, Serial No. _____, are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION – RADIOACTIVE MATERIAL

_____

(name of manufacturer or distributor)

d. The model, serial number, and name of manufacturer or distributor may be omitted from the label if the information location is specified in labeling affixed to the device;

e. Each device with a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label that provides the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in R9-7-428, and the name of the manufacturer or initial distributor; ~~and~~

f. Each device meets the criteria in 10 CFR 31.5(c)(13)(i) (revised ~~January 1, 2013~~ December 19, 2014, incorporated by reference, ~~and~~ available under R9-7-101, and containing no future editions or amendments. ~~This incorporated material contains no future editions or amendments~~) and bears a permanent (e.g., embossed, etched, stamped, or engraved) label affixed to the source housing, if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in R9-7-428~~.~~; and

g. The device has been registered in the Sealed Source and Device Registry.

2. In the event the applicant desires that the device undergo mandatory testing at intervals longer than six months, either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material or for both, the application shall contain sufficient information to demonstrate that the longer interval is justified by performance characteristics of the device or similar de-vices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the on-off mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Department shall consider information which includes, but is not limited to:

a. Primary containment (source capsule),

b. Protection of primary containment,

c. Method of sealing containment,

d. Containment construction materials,

e. Form of contained radioactive material,

f. Maximum temperature withstood during prototype tests,

g. Maximum pressure withstood during prototype tests,

h. Maximum quantity of contained radioactive material,

i. Radiotoxicity of contained radioactive material, and

j. Operating experience with identical devices or similarly designed and constructed devices.

3. In the event the applicant desires that the general licensee under R9-7-306(A), or under equivalent regulations of the NRC or an Agreement State or Licensing State, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device from installation, the application shall include written instructions to be followed by the general licensee, estimated calendar quarter doses associated with the activity or activities, and bases for the estimates. The submitted information shall demonstrate that performance of the activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of 10 percent of the limits specified in R9-7-408.

4. A licensee authorized under subsection (A) to distribute a device to a generally licensed person shall provide, if a device that contains radioactive material is to be transferred for use under the general license granted in R9-7-306(A), the name of each person that is licensed under ~~R9-7-311(A)~~ subsection (A) and the information specified in this subsection for each person to whom a device will be transferred. The licensee shall provide this information before the device may be transferred. In the case of transfer through another person, the licensee shall provide the listed information to the intended user before initial transfer to the other person.

   a. The licensee shall provide:

      i. A copy of the general license, issued under R9-7-306(A)~~,~~;

      ii. A copy of R9-7-443 and R9-7-445~~,~~;

      iii. A list of the services that can only be performed by a specific licensee~~,~~;

      iv. Information on authorized disposal options, including estimated costs of disposal~~,~~; and

      v. A list of civil penalties for improper disposal.

   b. The licensee shall:

      i. Report on a quarterly basis to the responsible Agreement State or NRC

all transfers of devices to persons for use under a general license in accordance with 10 CFR 32.52, revised ~~January 1, 2013~~ December 19, 2014, incorporated by reference, ~~and~~ available under R9-7-101. ~~This incorporated material contains~~, and containing no future editions or amendments.;

ii. Maintain all information concerning transfers and receipts of devices that supports the reports required by subsection (A)(4)(b)(i)~~.~~; and

iii. Maintain records required by subsection (A)(4)(b)(i) for a period of at least three years following the date of the recorded event.

5. If radioactive material is to be transferred in a device for use under an equivalent general license of the NRC or another Agreement State, each person that is licensed under R9-7-304(B) shall provide the information specified in this subsection to each person to whom a device will be transferred. The licensee shall provide this information before the device is transferred. In the case of transfer through another person, the licensee shall provide the listed information to the intended user before initial transfer to the other person. The licensee shall provide:
   a. A copy of the Agreement State's requirements that are equivalent to R9-7-306(A), R9-7-443, and R9-7-445, and to A.R.S. § 30-657. If a copy of NRC regulations is provided to a prospective general licensee in lieu of the Agreement State's requirements, the licensee shall explain in writing that use of the device is regulated by the Agreement State. If certain requirements do not apply to a particular device, the licensee may omit the requirement from the material provided;
   b. A list of the services that can only be performed by a specific licensee;
   c. Information on authorized disposal options, including estimated costs of disposal; and
   d. The name, title, address, and telephone number of the individual at the Agreement State regulatory agency who can provide additional information.
6. A licensee may propose to the Department an alternate method of informing the customer.
7. If a licensee has notified the Department of bankruptcy under R9-7-313(E) or is terminating under R9-7-319, the licensee shall provide, upon request, to the Department, the NRC, or another Agreement State, records of the disposition as required under A.R.S. § 30-657.
8. A licensee authorized to transfer a device to a generally licensed person, shall comply with the following requirements:

a. The person licensed under subsection (A) shall report all transfers of devices to persons for use under a general license obtained under R9-7-306(A), and all receipts of devices from persons licensed under R9-7-306(A) to the Department, the NRC, or other affected Agreement State. The report shall be submitted on a quarterly basis, in a clear and legible form, and contain the following information:

i. The identity of each general licensee by name and mailing address for the location of use. If there is no mailing address for the location of use, the person licensed under subsection (A) shall submit an alternate address for the general licensee, along with information on the actual location of use;

ii. The name, title, and telephone number of a person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the applicable laws;

iii. The date of transfer;

iv. The type, model number, and serial number of the device transferred; and

v. The quantity and type of radioactive material contained in the device.

b. If one or more intermediaries will temporarily possess the device at the intended place of use before its possession by the in-tended user, the report shall include the information required of the general licensee in subsection (A)(4) for both the intended user and each intermediary, clearly identifying the intended user and each intermediary.

c. For devices received from a general licensee, licensed under R9-7-306(A), the report shall include:

i. The identity of the general licensee by name and address;

ii. The type, model number, and serial number of the device received;

iii. The date of receipt; and

iv. In the case of a device not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

d. If the person licensed under subsection (A) makes a change to a device possessed by a general licensee so that the label must be changed to update required information, the report shall identify the general licensee, the device, and the changes to information on the device label.

e. The report shall cover a calendar quarter, be filed within 30 days of the end of

each calendar quarter, and clearly indicate the period covered by the report.

f. The report shall clearly identify the person licensed under subsection (A) submitting the report and include the license number of the license.

g. If no transfers are made to or from persons generally licensed under R9-7-306(A) during a reporting period, the person licensed under subsection (A) shall submit a report indicating the lack of activity.

9. The licensee shall maintain records of all transfers for Department inspection. Records shall be maintained for at least three years after termination of the license to manufacture the generally licensed devices regulated under R9-7-306(A).

B. The Department shall grant a specific license to manufacture, assemble, repair, or initially transfer luminous safety devices that contain tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed under R9-7-306(B), if the applicant satisfies:

1. The general requirements specified in R9-7-309; and
2. The requirements of 10 CFR 32.53 through 32.56, revised ~~January 1, 2015~~ July 25, 2012, incorporated by reference, ~~and~~ available under R9-7-101. ~~This incorporated material contains~~, and containing no future editions or amendments.

C. The Department shall grant a specific license to manufacture or initially transfer calibration or reference sources that contain americium-241, radium-226, or plutonium for distribution to persons generally licensed under R9-7-306(C) if the applicant satisfies:

1. The general requirements of R9-7-309; and
2. The requirements of 10 CFR 32.57, 32.58, 32.59, and 70.39, revised ~~January 1, 2015~~ July 25, 2012, incorporated by reference, ~~and~~ available under R9-7-101. ~~This incorporated material contains~~, and containing no future editions or amendments.

D. The Department shall grant a specific license to distribute radioactive material for use by a physician under the general license in R9-7-306(D) if:

1. The general requirements of R9-7-309; and
2. The requirements of 10 CFR 32.57, 32.58, 32.59, and 70.39, revised ~~January 1, 2015~~ July 25, 2012, incorporated by reference, ~~and~~ available under R9-7-101. ~~This incorporated material contains~~, and containing no future editions or amendments.

E. The Department shall grant for a specific license to manufacture or distribute radioactive material for use under the general license of R9-7-306(E) if:

1. The applicant satisfies the general requirements specified in R9-7-309.
2. The radioactive material is to be prepared for distribution in prepackaged units of:

a. Iodine-125 in units not exceeding 370 kBq (10 microcuries) each;

b. Iodine-131 in units not exceeding 370 kBq (10 microcuries) each;

c. Carbon-14 in units not exceeding 370 kBq (10 microcuries) each;

d. Hydrogen-3 (tritium) in units not exceeding 1.85 MBq (50 microcuries) each;

e. Iron-59 in units not exceeding 740 kBq (20 microcuries) each;

f. Cobalt-57 or selenium-75 in units not exceeding 370 kilobecquerels (10 microcuries) each;

g. Mock iodine-125 in units not exceeding 1.85 kBq (50 nanocuries) of iodine-129 and 185 Bq (5 nanocuries) of americium-241 each.

3. Each prepackaged unit bears a durable, clearly visible label:

a. Identifying the radioactive contents as to chemical form and radionuclide and indicating that the amount of radioactivity does not exceed 370 kilobecquerels (10 microcuries) of iodine-125, iodine-131, cobalt-57, selenium-75, or carbon-14; 1.85 mega-becquerels (50 microcuries) of hydrogen-3 (tritium); 740 kilobecquerels (20 microcuries) of iron-59; or mock iodine-125 in units not exceeding 1.85 kilobecquerels (0.05 microcurie) of iodine-129 and 185 becquerels (0.005 microcurie) of americi-um-241 each; and

b. Displaying the radiation caution symbol described in R9-7-428, the words, "CAUTION, RADIOACTIVE MATERIAL," and the phrase "Not for Internal or External Use in Humans or Animals."

4. One of the following statements, or a substantially similar statement that contains the information called for in the following statements appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:

a. This radioactive material may be received, acquired, possessed, and used only by physicians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation from the radioactive material, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority.

_____

Name of Manufacturer

b. This radioactive drug may be received, acquired, possessed, and used only by physicians, clinical laboratories or hospitals and only for in vitro clinical or

laboratory tests not involving internal or external administration of the material, or the radiation from the radioactive material, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

_____

Name of Manufacturer

5. The label affixed to the unit, or the leaflet or brochure that accompanies the package, contains adequate information about the precautions to be observed in handling and storing the specified radioactive material. In the case of the mock iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements set out in R9-7-434.

F. The Department shall grant for a specific license to manufacture and distribute ice detection devices to persons generally licensed under R9-7-306(F) if the applicant satisfies:

1. The general requirements of R9-7-309; and
2. The criteria of 10 CFR 32.61 and 32.62, revised ~~January 1, 2015~~ July 25, 2012, incorporated by reference, ~~and~~ available under R9-7-101~~. This incorporated material contains~~, and containing no future editions or amendments.

G. The Department shall grant a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs that contain radioactive material for use by a person authorized in accordance with Article 7 of this Chapter, if the applicant meets all of the requirements in 10 CFR 30.32(j), revised November 21, 2023, or 10 CFR 32.72, revised ~~January 1, 2013~~ August 24, 2023, both incorporated by reference, ~~and~~ available under R9-7-101~~. This incorporated material contains~~, and containing no future editions or amendments.

1. Authorization under this Section to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.
2. Each licensee authorized under this Section to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:
    a. Satisfy the labeling requirements in R9-7-431 for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium~~.~~; and
    b. Possess and use instrumentation to measure the radioactivity of the PET

radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in R9-7-449.

3. A licensee that is a pharmacy authorized under this Section to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual who prepares PET radioactive drugs be an:
    a. Authorized nuclear pharmacist that meets the requirements in R9-7-712, or
    b. Individual under the supervision of an authorized nuclear pharmacist as specified in R9-7-706.
4. A pharmacy, authorized under this Section to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of R9-7-712.

H. The Department shall grant a specific license to manufacture and distribute generators or reagent kits that contain radioactive material for preparation of radiopharmaceuticals by persons licensed according to 9 A.A.C. 7, Article 7 if:

1. The applicant satisfies the general requirements of R9-7-309;
2. The applicant submits evidence that:
    a. The generator or reagent kit is to be manufactured, labeled and packaged according to the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act, a new drug application (NDA) approved by the Food and Drug Administration (FDA), a biologic product license issued by FDA, or a "Notice of Claimed Investigational Exemption for a New Drug" (IND) that has been accepted by the FDA; or
    b. The manufacture and distribution of the generator or reagent kit are not subject to the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act-;
3. The applicant submits information on the radionuclide; chemical and physical form, packaging including maximum activity per package, and shielding provided by the packaging of the radioactive material contained in the generator or reagent kit;
4. The label affixed to the generator or reagent kit contains information on the radionuclide, including quantity, and date of assay; and
5. The label affixed to the generator or reagent kit, or the leaflet or brochure that accompanies the generator or reagent kit, contains:
    a. Adequate information, from a radiation safety standpoint, on the procedures to be

followed and the equipment and shielding to be used in eluting the generator or processing radioactive material with the reagent kit; and

b. A statement that this generator or reagent kit (as appropriate) is approved for use by persons licensed by the Department under 9 A.A.C. 7, Article 7, or equivalent licenses of the U.S. Nuclear Regulatory Commission or an Agreement State or Licensing State. The labels, leaflets, or brochures required by this subsection supplement the labeling required by FDA, and they may be separate from or, with the approval of FDA, combined with the labeling required by FDA.

I. The Department shall grant a specific license to manufacture and distribute sources and devices that contain radioactive material to a person licensed in accordance with Article 7 of this Chapter for use as a calibration, transmission, or reference source or for medical purposes, if the applicant meets all of the requirements in 10 CFR 32.74, revised ~~January 1, 2015~~ July 25, 2012, incorporated by reference, ~~and~~ available under R9-7-101~~. This incorporated material contains~~, and containing no future editions or amendments.

J. Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass volume applications.

1. The Department shall grant a specific license to manufacture industrial products and devices that contain depleted uranium for use under ~~R9-7-305(C)~~ R9-7-305(F) or equivalent regulations of the ~~U.S. Nuclear Regulatory Commission~~ NRC or ~~an~~ another Agreement State if:
   a. The applicant satisfies the general requirements in R9-7-309;
   b. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive a radiation dose in excess of 10 percent of the limits specified in R9-7-408; and
   c. The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.
2. In the case of an industrial product or device whose unique benefits are questionable, the Department shall approve an application for a specific license under this subsection only if the product or device is found to combine a high degree of utility and low probability

of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

3. The Department may deny any application for a specific license under this subsection if the end use or uses of the industrial product or device cannot be reasonably foreseen.
4. Each person licensed under subsection (J)(1) shall:
    a. Maintain the level of quality control required by the license in the manufacture of the industrial product or device and the installation of the depleted uranium into the product or device;
    b. Label or mark each unit to:
        i. Identify the manufacturer of the product or device, the number of the license under which the product or device was manufactured or initially transferred, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and
        ii. State that the receipt, possession, use, and transfer of the product or device are subject to a general license or the equivalent ~~and the~~ regulations of the U.S. Nuclear Regulatory Commission or an Agreement State;
    c. Assure that the depleted uranium, before being installed in each product or device, has been impressed with the following legend, clearly legible through any plating or other covering: "Depleted Uranium";
    d. Furnish a copy of the general license contained in ~~R9-7-305(C)~~ R9-7-305(F) and a copy of ARRA-23 to each person to whom depleted uranium in a product or device is transferred for use under a general license contained in ~~R9-7-305(C)~~ R9-7-305(F); or
    e. Furnish a copy of the general license contained in the ~~U.S. Nuclear Regulatory Commission's~~ NRC's or Agreement State's regulation equivalent to ~~R9-7-305(C)~~ R9-7-305(F) and a copy of the ~~U.S. Nuclear Regulatory Commission's~~ NRC's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in ~~R9-7-305(C)~~ R9-7-305(F) and a copy of ARRA-23 to each person to whom depleted uranium in a product or device is transferred for use under a general license of the ~~U.S. Nuclear Regulatory Commission~~ NRC or an Agreement State, with a document explaining that use of the product or device is regulated by the ~~U.S. Nuclear Regulatory Commission~~ NRC or an Agreement State under requirements substantially the same as those in ~~R9-7-305(C)~~

R9-7-305(F);

f. Report to the Department all transfers of industrial products or devices to persons for use under the general license in ~~R9-7-305(C)~~ R9-7-305(F). The report shall identify each general licensee by name and address, an individual by name or position who serves as the point of contact person for the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under ~~R9-7-305(C)~~ R9-7-305(F) during the reporting period, the report shall so indicate;

i. Report to the U.S. Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the ~~U.S. Nuclear Regulatory Commission~~ NRC general license in 10 CFR 40.25; or

ii. Report to the responsible state agency all transfers of devices manufactured and distributed under subsection (J)(4)(f) for use under a general license in that state's regulations equivalent to ~~R9-7-305(C)~~ R9-7-305(F);

iii. The report required in subsection (J)(4)(f)(i) or (ii) shall identify each general licensee by name and address, an individual by name or position who serves as the contact person for the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person;

iv. If no transfers have been made to ~~U.S. Nuclear Regulatory Commission~~ NRC licensees during the reporting period, this information shall be reported to the ~~U.S. Nuclear Regulatory Commission~~ NRC;

v. If no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement state agency; and

vi. ~~Keep records~~ Records showing the name, address, and contact person for each general licensee to whom depleted uranium in industrial products or devices is transferred for use under a general license provided in

~~R9-7-305(C)~~ R9-7-305(F) or equivalent regulations of the ~~U.S. Nuclear Regulatory Commission~~ NRC or of ~~an~~ another Agreement State~~. The records~~ shall be maintained for a period of at least three years and show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the reporting requirements of this Section.

K. A licensee who manufactures nationally tracked sources, as defined in Article 4, shall:

1. Serialize the sources in accordance with 10 CFR 32.201, revised ~~January 1, 2013~~ November 8, 2006, incorporated by reference, ~~and~~ available under R9-7-101~~. This incorporated material contains~~, and containing no future editions or amendments; and
2. Report manufacturing activities in accordance with R9-7-454.

R9-7-313. Specific Terms and Conditions

A. Each license issued under this Article is subject to all provisions of A.R.S. Title 30, Chapter 4 and to all rules, regulations, and orders of the Department.

B. A licensee shall not transfer, assign, or in any manner dispose of a license issued or granted under this Article or a right to possess or utilize radioactive material granted by any license issued under this Article unless the Department finds that the transfer is consistent with the Department's statutes and rules, and gives its consent in writing. An application for transfer of license must include:

1. The identity, technical and financial qualifications of the proposed transferee; and
2. Financial assurance for decommissioning information required by R9-7-323.

C. Each person licensed by the Department under this Article shall confine the use and possession of the material licensed to the locations and purposes authorized in the license.

D. Each license issued pursuant to the rules in Articles 3, 5, 7, and 15 of this Chapter shall be deemed to contain the provisions set forth in the Act, whether or not these provisions are expressly set forth in the license.

E. The Department may incorporate, in any license issued pursuant to the rules in this Chapter, at the time of issuance, or thereafter by ap-propriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of byproduct material as it deems appropriate or necessary in order to:

1. Promote the common defense and security;
2. Protect health or to minimize danger to life or property;
3. Protect restricted data; or
4. Require such reports and the keeping of such records, and to provide for such inspections of

activities under the license as may be necessary or appropriate to effectuate the purposes of the Act and rules thereunder.

F. Licensees required to submit emergency plans in accordance with R9-7-322 shall follow the emergency plan approved by the Department. The licensee may change the approved plan without Department approval only if the changes do not reduce the commitment of the plan. The licensee shall furnish the change to the Department and to affected offsite response organizations within six months after the change is made. Proposed changes that reduce, or potentially reduce, the commitment of the approved emergency plan may not be implemented without prior application to and prior approval by the Department.

G. Each person licensed under this Section and each general licensee that is required to register under R9-7-306(A)(4)(o) shall notify the Department in writing if the licensee decides to permanently discontinue any or all activities involving materials authorized under the li-cense. A specific licensee or general licensee shall notify the Department, in writing:

1. Immediately following the filing of a petition for bankruptcy under any Chapter of Title 11 of the United States Code if the petition for bankruptcy is by or against:
    a. The licensee;
    b. An entity (as defined in the bankruptcy code) controlling the licensee or listing the license or licensee as property of the estate; or
    c. An affiliate (as defined in the bankruptcy code) of the licensee; and
2. Providing the following information:
    a. The bankruptcy court in which the petition for bankruptcy was filed, and
    b. The bankruptcy case title and number, and
    c. The date the petition was filed.

H. Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with R9-7-720. The licensee shall record the results of each test and retain each record for <u>at least</u> three years after the record is made. The licensee shall report the results of any test that exceeds the permissible concentration listed in R9-7-720 at the time of generator elution, in accordance with ~~10 CFR 35.3204~~ <u>R9-7-720(E) and (F)</u>.

I. Inalienability of Licenses

1. No license issued or granted pursuant to the regulations in this part shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or

indirectly, through transfer of control of any license to any person, unless the Department, after securing full information, finds that the transfer is in accordance with the provisions of this ~~act~~ Act and gives its consent in writing.

2. An application for transfer of license must include:
    a. The identity, technical and financial qualifications of the proposed transferee; and
    b. Financial assurance for decommissioning information required by R9-7-323, 10 CFR 40.3 and 10 CFR 70.25.

R9-7-318. Transfer of Radioactive Material

A. A licensee shall not transfer radioactive material except as authorized under this Section.

B. Except as otherwise provided in the license and subject to the provisions of subsections (C) and (D), any licensee may transfer radioactive material:

1. To the Department, after receiving prior approval from the Department;
2. To the Department of Energy;
3. To any person exempt from the rules in this Article to the extent permitted under the exemption;
4. To any person authorized to receive radioactive material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the Department, the ~~U.S. Nuclear Regulatory Commission~~ NRC, or any Agreement State or Licensing State, or to any person otherwise authorized to receive radioactive material by the Federal Government or any agency of the Federal Government, the Department, any Agreement State or Licensing State; or
5. As otherwise authorized by the Department in writing.

C. Before transferring radioactive material to a specific licensee of the Department, the ~~U.S. Nuclear Regulatory Commission~~ NRC, or ~~an~~ another Agreement State or Licensing State, or to a general licensee who is required to register with the Department, the ~~U.S. Nuclear Regulatory Commission~~ NRC, or ~~an~~ another Agreement State or Licensing State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

D. The transferor shall use one or more of the following methods for the verification required by subsection (C):

1. The transferor shall possess, and read, a current copy of the transferee's specific license or registration certificate;
2. The transferor shall possess a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of

radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

3. For emergency shipments the transferor shall accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date; provided the oral certification is confirmed in writing within 10 days;
4. The transferor shall obtain information equivalent to that in subsection (D)(1) to (3) compiled by a reporting service from official records of the Department, the ~~U.S. Nuclear Regulatory Commission~~ NRC, or the licensing agency of ~~an~~ another Agreement State or Licensing State regarding the identity of any licensee and the scope and expiration date of any license, registration, or certificate; or
5. When none of the methods of verification described in subsections (D)(1) to (4) are readily available or when a transferor desires to verify that information received by one of the above methods is correct or up-to-date, the transferor shall obtain and record confirmation from the Department, the ~~U.S. Nuclear Regulatory Commission~~ NRC, or the licensing agency of ~~an~~ another Agreement State or Licensing State that the transferee is licensed to receive the radioactive material.

E. A transferor shall prepare and transport radioactive material as prescribed in the provisions of 9 A.A.C. 7, Article 15.

F. The Department shall approve an application for a specific license to initially transfer source material for use under R9-7- 305, or equivalent regulations of the NRC or another Agreement State, if:

1. The applicant satisfies the general requirements specified in R9-7-309; and
2. The applicant submits adequate information on, and the Department approves, the methods to be used for quality control, labeling, and providing safety instructions to recipients.

G. Each person licensed under ~~this Section~~ subsection (F) shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, “RADIOACTIVE MATERIAL.”

H. Each person licensed under ~~this Section~~ subsection (F) shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

I. Each person licensed under ~~this Section~~ subsection (F) shall provide the information specified in subsections (I)(1) and (2) to each person to whom source material is transferred for use under

R9-7- 305 or equivalent provisions in the NRC or Agreement State regulations. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

1. A copy of R9-7-305 and ~~R9-7-318~~ this Section, or relevant equivalent regulations of the NRC or another Agreement State; and
2. Appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the source material.

J. Each person licensed under ~~10 CFR 40.54~~ subsection (F) shall ~~file a report with the Department that includes the following information~~ report transfers as follows:

1. File a report with the Department, as specified in R9-7-1907(1) through (3), that includes the following information:
   - ~~1.~~a. The name, address, and license number of the person who transferred the source material;
   - ~~2.~~b. For each general licensee under R9-7-305 or equivalent NRC or Agreement State regulations to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and
   - ~~3.~~c. The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.
2. File a report with the Department and each responsible NRC and/or Agreement State agency that identifies all persons, operating under provisions equivalent to R9-7-305, to whom greater than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the NRC or another Agreement State being reported to:
   - a. The name, address, and license number of the person who transferred the source material;
   - b. For each general licensee under R9-7-305 or equivalent NRC or Agreement State regulations to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material

was sent; and the type, physical form, and quantity of source material transferred; and

c. The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients with the NRC or another Agreement State.

3. Submit each report by January 31 of each year covering all transfers for the previous calendar year. If no transfers were made to persons generally licensed under R9-7-305 or equivalent NRC or another Agreement State provisions during the current period, a report shall be submitted to the Department indicating so. If no transfers have been made to general licensees in NRC jurisdiction or a particular Agreement State during the reporting period, this information shall be reported to the NRC or responsible Agreement State upon request of the Agency.

K. Each person licensed under ~~this Section~~ subsection (F) shall maintain all information that supports the reports required by this Section concerning each transfer to a general licensee for a period of one year after the event is included in a report to the Department, the NRC, or another Agreement State.

ARTICLE 7. MEDICAL USES OF RADIOACTIVE MATERIAL

R9-7-709. Sealed Sources or Devices for Medical Use

~~A~~ For medical use, a licensee may only use:

1. Sealed sources~~, including teletherapy sources~~, or devices manufactured, labeled, packaged, and distributed in accordance with a license issued under Article 3 of this Chapter~~, equivalent regulations of the NRC~~ or equivalent requirements of ~~an~~ the NRC or another Agreement State; ~~or~~
2. Sealed sources or devices noncommercially transferred from another ~~medical~~ licensee under this Article or a licensee under equivalent requirements of the NRC or another Agreement State; or
3. Teletherapy sources manufactured and distributed in accordance with a license issued by the Department~~;~~ under Article 3 of this Chapter or the equivalent requirements of the NRC~~;~~ or another Agreement State.

R9-7-710. Radiation Safety Officer and Associate Radiation Safety Officer Training

A. A licensee shall require an individual fulfilling the responsibilities of the Radiation Safety Officer, described in R9-7-705, to be an individual who:

1. Is certified by a specialty board whose certification process includes all of the requirements in subsection (A)(2)(a) and (B) and whose certification has been recognized by the Department, the NRC, or ~~an~~ another Agreement State. To have its certification process recognized, a specialty board shall require all candidates for certification to:
    a. Meet the following minimum requirements:
        i. Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;
        ii. Have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience), including at least three years in applied health physics; and
        iii. Pass an examination administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

b. Meet the following minimum requirements:

i. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

ii. Have at least two years of full-time practical training and/or supervised experience in medical physics;

(1) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the Department, the NRC, or another Agreement State; or

(2) In clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users qualified under subsection (B), R9-7-721, or R9-7-723; and

iii. Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety;

2. Has:

a. Completed a structured educational program consisting of both:

i. 200 hours of didactic and laboratory training in the following areas:

(1) Radiation physics and instrumentation;

(2) Radiation protection;

(3) Mathematics pertaining to the use and measurement of radioactivity;

(4) Radiation biology; and

(5) Radiation dosimetry; and

ii. One year of full-time radiation safety experience under the supervision of the individual identified as the Radiation Safety Officer on a Department, a NRC, or ~~an~~ another Agreement State license or permit issued by a NRC master material licensee that authorizes similar type(s) of use(s) of radioactive material involving the following:

(1) Shipping, receiving, and performing related radiation surveys;

(2) Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;

(3) Securing and controlling radioactive material;

(4) Using administrative controls to avoid mistakes in the administration of radioactive material;

(5) Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

(6) Using emergency procedures to control radioactive material; and

(7) Disposing of radioactive material; and

b. Obtained written certification, signed by a preceptor Radiation Safety Officer or Associate Radiation Safety Officer, that the individual has satisfactorily completed the requirements in subsection (A)(2)(a) and has achieved a level of radiation safety knowledge sufficient to function independently as a Radiation Safety Officer or as an Associate Radiation Safety Officer for a medical use licensee;

3. Is:

a. A medical physicist who has been certified by a specialty board whose certification process has been recognized by the Department, the NRC, or another Agreement State under R9-7-711(A) or equivalent, has experience with radiation safety aspects of similar types of use of radioactive material for which the licensee seeks the approval of the individual as Radiation Safety Officer or an Associate Radiation Safety Officer, and meets the requirements in subsection (B); or

b. An authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has Radiation Safety Officer responsibilities; or

4. Has experience with the radiation safety aspects of the types of use of radioactive material for which the individual is seeking simultaneous approval both as the Radiation Safety Officer and the authorized user on the same new medical license and meets the requirements in subsection (B).

B. A licensee shall require an individual fulfilling the responsibilities of the Radiation Safety Officer to have training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which the licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a Radiation Safety Officer, an Associate Radiation Safety Officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as

appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

~~C.~~ ~~Exceptions.~~

~~1. An individual identified as a Radiation Safety Officer or as an Associate Radiation Safety Officer on a Department, a NRC, or another Agreement State license or a permit issued by the NRC or an Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope May 5, 2007 need not comply with the training requirements in subsections (A)(1) through (4).~~

~~2. A physician, dentist, or podiatrist identified as an authorized user for the medical use of radioactive material on a license issued by the Department, the NRC, or an Agreement State, a permit issued by a NRC master material licensee, a permit issued by the Department, the NRC, or an Agreement State broad scope licensee, or a permit issued by a NRC master material license broad scope permittee May 5, 2007 need not comply with the training requirements in this Article.~~

~~D.~~**C.** The training and experience required in this Section shall be obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

~~E.~~**D.** Individuals who, under ~~subsection (C)~~ R9-7-712.01, need not comply with training requirements described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department licenses for the same uses for which these individuals are authorized.

~~F.~~**E.** Records Retention.

1. The licensee shall retain both a copy of the authority, duties, and responsibilities of the Radiation Safety Officer, as required by this Section, and a signed copy of each Radiation Safety Officer's agreement to be responsible for implementing the radiation safety program for the duration of the license. The records must include the signature of the Radiation Safety Officer and licensee management.
2. For each Associate Radiation Safety Officer appointed under this Section, the licensee shall retain, for at least five years after the Associate Radiation Safety Officer is removed from the license, a copy of the written document appointing the Associate Radiation Safety Officer, signed by the licensee's management.

R9-7-711. Authorized Medical Physicist Training

A. A licensee shall require an authorized medical physicist to be an individual who:

1. Is certified by a specialty board whose certification process includes all of the training and experience requirements in subsections (A)(2)(a) and (B) and whose certification has

been recognized by the Department, the NRC, or ~~an~~ another Agreement State. To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

b. Have at least two years of full-time practical training and/or supervised experience in medical physics:

i. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the NRC or an Agreement State; or

ii. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in R9-7-710, R9-7-719, R9-7-721, R9-7-723, R9-7-727, R9-7-728, or R9-7-744; and

c. Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

2. Meets the following alternative training requirements:

a. Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services and must include:

i. Performing sealed source leak tests and inventories;

ii. Performing decay corrections;

iii. Performing full calibration and periodic spot checks of external beam

treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

iv. Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

b. Has obtained written attestation that the individual has satisfactorily completed the requirements in both subsections (A)(2)(a) and (B); and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in this Section, or equivalent Agreement State or NRC requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status.

B. A licensee shall require an authorized medical physicist to be an individual who has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

~~**C.** Exceptions. An individual identified as a teletherapy or medical physicist on a Department, a NRC, or another Agreement State license or a permit issued by the NRC or another Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope before May 5, 2007 need not comply with the training requirements in subsection (A).~~

~~**D.**~~**C.** The training and experience required in this Section shall be obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

~~**E.**~~**D.** Individuals who, under ~~subsection (C)~~ R9-7-712.01, need not comply with training requirements described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department licenses for the same uses for which these individuals are authorized.

R9-7-712. Authorized Nuclear Pharmacist Training

A. A licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

1. Is certified as a nuclear pharmacist by a specialty board whose certification process has

been recognized by the Department, the NRC, or ~~an~~ another Agreement State. To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

b. Hold a current, active license to practice pharmacy in Arizona;

c. Provide evidence of having acquired at least 4000 hours of training/experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2000 hours of the required training and experience; and

d. Pass an examination in nuclear pharmacy administered by diplomates of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

2. Has completed 700 hours in a structured educational program consisting of both:

a. 200 hours of classroom and laboratory training in the following areas:

i. Radiation physics and instrumentation;

ii. Radiation protection;

iii. Mathematics pertaining to the use and measurement of radioactivity;

iv. Chemistry of radioactive material for medical use; and

v. Radiation biology; and

b. Supervised practical experience in a nuclear pharmacy involving:

i. Shipping, receiving, and performing related radiation surveys;

ii. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

iii. Calculating, assaying, and safely preparing dosages for patients or human research subjects;

iv. Using administrative controls to avoid medical events in the administration of radioactive material; and

v. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

3. Has obtained written attestation, signed by a preceptor authorized nuclear pharmacist,

that the individual has satisfactorily completed the requirements in subsection (A)(2) and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

~~**B.** Exceptions. An individual identified as a nuclear pharmacist on a Department, a NRC, or an Agreement State license or a permit issued by the NRC or an Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope before the effective date of these rules need not comply with the training requirements in subsections (A)(1) through (A)(3).~~

~~**C.**~~**B.** The training and experience required in this Section shall be obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

~~**D.**~~**C.** Individuals who, under ~~subsection (B)~~ R9-7-712.01, need not comply with training requirements described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department licenses for the same uses for which these individuals are authorized.

R9-7-712.01. Training for Experienced Radiation Safety Officers, Teletherapy or Medical Physicists, Authorized Medical Physicists, Authorized Users, Nuclear Pharmacists, and Authorized Nuclear Pharmacists

A. Exemptions from required training:

1. An individual identified on a Department, a NRC, or another Agreement State license or a permit issued by the NRC or an Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope as a Radiation Safety Officer, a teletherapy or medical physicist, an authorized medical physicist, a nuclear pharmacist or an authorized nuclear pharmacist on or before January 14, 2019, need not comply with the training requirements of R9-7-710, R9-7-711, or R9-7-712, respectively, except the Radiation Safety Officers and authorized medical physicists identified in this subsection must meet the training requirements in R9-7-710(B) or R9-7-711(B), as appropriate, for any material or uses for which they were not authorized prior to January 14, 2019.
2. Any individual certified by the American Board of Health Physics in Comprehensive Health Physics; American Board of Radiology; American Board of Nuclear Medicine; American Board of Science in Nuclear Medicine; Board of Pharmaceutical Specialties in Nuclear Pharmacy; American Board of Medical Physics in radiation oncology physics; Royal College of Physicians and Surgeons of Canada in nuclear medicine; American

Osteopathic Board of Radiology; or American Osteopathic Board of Nuclear Medicine on or before October 24, 2005, need not comply with the training requirements of R9-7-710 to be identified as a Radiation Safety Officer or as an Associate Radiation Safety Officer on a Department, a NRC, or another Agreement State license or NRC master material license permit for those materials and uses that these individuals performed on or before October 24, 2005.

3. Any individual certified by the American Board of Radiology in therapeutic radiological physics, Roentgen ray and gamma ray physics, x-ray and radium physics, or radiological physics, or certified by the American Board of Medical Physics in radiation oncology physics, on or before October 24, 2005, need not comply with the training requirements for an authorized medical physicist described in R9-7-711, for those materials and uses that these individuals performed on or before October 24, 2005.

4. A Radiation Safety Officer, a medical physicist, or a nuclear pharmacist, who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses or in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of R9-7-710, R9-7-711, or R9-7-712, respectively, when performing the same uses. A nuclear pharmacist, who prepared only radioactive drugs containing accelerator-produced radioactive materials, or a medical physicist, who used only accelerator-produced radioactive materials, at the locations and during the time period identified in this subsection, qualifies as an authorized nuclear pharmacist or an authorized medical physicist, respectively, for those materials and uses performed before these dates, for the purposes of this Section.

B. Exemptions from required training for physicians, dentists, or podiatrists:

1. Physicians, dentists, or podiatrists identified as authorized users for the medical use of byproduct material on a license issued by the Department, the NRC, or another Agreement State, a permit issued by a NRC master material licensee, a permit issued by a NRC or an Agreement State broad scope licensee, or a permit issued by a NRC master material license broad scope permittee on or before January 14, 2019, who perform only those medical uses for which they were authorized on or before January 14, 2019, need not comply with the training requirements of Article 7, Exhibit A, Groups 100 through 600.

2. Physicians, dentists, or podiatrists not identified as authorized users for the medical use of

byproduct material on a license issued by the Department, the NRC, or another Agreement State, a permit issued by a NRC master material licensee, a permit issued by a NRS or an Agreement State broad scope licensee, or a permit issued in accordance with a NRC master material broad scope license on or before October 24, 2005, need not comply with the training requirements of Article 7, Exhibit A, Groups 100 through 600 for those materials and uses that these individuals performed on or before October 24, 2005, as follows:

a. For uses authorized under Article 7, Exhibit A, Group 100 or 200, or oral administration of sodium iodide I–131 requiring a written directive for imaging and localization purposes, a physician who was certified on or before October 24, 2005, in nuclear medicine by the American Board of Nuclear Medicine; diagnostic radiology by the American Board of Radiology; diagnostic radiology or radiology by the American Osteopathic Board of Radiology; nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or American Osteopathic Board of Nuclear Medicine in nuclear medicine;

b. For uses authorized under Article 7, Exhibit A, Group 300, a physician who was certified on or before October 24, 2005, by the American Board of Nuclear Medicine; the American Board of Radiology in radiology, therapeutic radiology, or radiation oncology; nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or the American Osteopathic Board of Radiology after 1984;

c. For uses authorized under Article 7, Exhibit A, Group 400 or 600, a physician who was certified on or before October 24, 2005, in radiology, therapeutic radiology or radiation oncology by the American Board of Radiology; radiation oncology by the American Osteopathic Board of Radiology; radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; and

d. For uses authorized under Article 7, Exhibit A, Group 500, a physician who was certified on or before October 24, 2005, in radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; nuclear medicine by the American Board of Nuclear Medicine; diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or nuclear medicine by the Royal College of Physicians and Surgeons

of Canada.

3. Physicians, dentists, or podiatrists who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses performed at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements Article 7, Exhibit A, Groups 100 through 600 when performing the same medical uses. A physician, dentist, or podiatrist, who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses at the locations and time period identified in this subsection, qualifies as an authorized user for those materials and uses performed before these dates, for the purposes of this Section.

C. Individuals who need not comply with training requirements as described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department or NRC licenses for the same uses for which these individuals are authorized.

R9-7-718. Mobile Medical Service

A. A licensee providing mobile medical service shall:

1. Obtain a letter signed by the management of each client for which services are rendered that permits the use of radioactive material at the client's address and clearly delineates the authority and responsibility of the licensee and the client;
2. Check instruments used to measure the activity of unsealed radioactive material for proper function before medical use at each client's address or on each day of use, whichever is more frequent. At a minimum, the check for proper function required by this sub-section shall include a constancy check;
3. Check survey instruments for proper operation with a dedicated check source before use at each client's address; and
4. Before leaving a client's address, survey all areas of use to ensure compliance with the requirements in Article 4 of this Chapter.

B. A mobile medical service may not have radioactive material delivered from the manufacturer or the distributor to the client unless the client has a license allowing its possession. If applicable, radioactive material delivered to the client shall be received and handled in conformance with the client's license.

C. A licensee providing mobile medical services shall retain ~~the letter required in subsection (A)(1) and~~ the record of each survey required in subsection (A)(4) for at least three years ~~from~~ after the date of the survey.

R9-7-719. Training for Uptake, Dilution, and Excretion Studies

A. Except as provided in ~~R9-7-710~~ R9-7-712.01, ~~the~~ a licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Group 100 in Exhibit A, Medical Use Groups of this Article to be a physician who:

1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State, ~~as~~ the names of which are specified in the NRC's Medical Uses Licensee Toolkit available through https://www.nrc.gov~~, and who meets the requirements in subsection (A)(3)~~. To have its certification process recognized, a specialty board shall require all candidates for certification to:
   a. Complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies as described in ~~subsection (A)(3)~~ subsections (A)(3)(a)(i) and (ii); and
   b. Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control;
2. Is an authorized user under R9-7-721, R9-7-723, ~~the~~ or equivalent requirements of the NRC~~,~~ or ~~equivalent~~ another Agreement State ~~requirements~~; or
3. Has:
   a. Completed 60 hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience must include:
      i. Classroom and laboratory training in the following areas:
         (1) Radiation physics and instrumentation;
         (2) Radiation protection;
         (3) Mathematics pertaining to the use and measurement of radioactivity;
         (4) Chemistry of radioactive material for medical use; and
         (5) Radiation biology; and
      ii. Work experience, under the supervision of an authorized user who meets the requirements in ~~this Article, NRC, or~~ this Section, R9-7-712.01, R9-7-721, or R9-7-723, or equivalent requirements of the NRC or another Agreement State ~~requirements~~, involving:
         (1) Ordering, receiving, and unpacking radioactive materials safely and

performing the related radiation surveys;

(2) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(3) Calculating, measuring, and safely preparing patient or human research subject dosages;

(4) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(5) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(6) Administering dosages of radioactive drugs to patients or human research subjects; and

b. Obtained written attestation that the individual has satisfactorily completed the requirements in subsection (A)(1) or subsection (A)(3)(a) and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under Group 100 in Exhibit A, Medical Use Groups of this Article. The attestation must be obtained from either:

i. A preceptor authorized user who meets the requirements in this Section, R9-7-712.01, R9-7-721, or R9-7-723~~,~~ or equivalent requirements of the NRC~~;~~ or ~~equivalent~~ another Agreement State ~~requirements~~; or

ii. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in this Section, R9-7-712.01, R9-7-721, or R9-7-723~~,~~ or equivalent requirements of the NRC~~,~~ or ~~equivalent~~ another Agreement State ~~requirements~~, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Commit-tee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in subsection (A)(3)(a).

B. The training and experience in subsections (A)(1)(a) or (3)(a) shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing

education and experience since the required training and experience was completed.

C. Individuals who, under R9-7-710(B), need not comply with training requirements described in this Section may serve as preceptors for, and supervisors of, applicants seeking authorization on Department licenses for the same uses for which these individuals are authorized.

R9-7-720. Permissible Molybdenum-99, Strontium-82, and Strontium-85 Concentrations

A. A licensee may not administer to humans a radiopharmaceutical that contains more than 0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m) or, more than 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or more than 0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of stronti-um-85 per millicurie of rubidium-82).

B. A licensee that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration ~~of the first eluate after receipt of~~ in each eluate from a generator to demonstrate compliance with subsection (A).

C. A licensee that uses a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical shall, before the first patient use of the day, measure the concentration of radionuclides strontium-82 and strontium-85 to demonstrate compliance with subsection (A).

D. A licensee shall maintain a record of each molybdenum-99 concentration measurement or strontium-82 and strontium-85 concentrations measurements for at least three years following completion of the measurement.

E. A licensee shall notify by telephone the ~~NRC Operations Center~~ Department and the distributor of the generator within seven calendar days after discovery that an eluate exceeded the permissible concentration listed in subsection (A) at the time of generator elution. The telephone report to the ~~NRC~~ Department must include the manufacturer, model number, and serial number (or lot number) of the generator; the results of the measurement; the date of the measurement; whether dosages were administered to patients or human research subjects; when the distributor was notified; and the action taken.

F. A licensee shall submit a written report, according to R9-7-1907(1) through (3), to the Department within 30 calendar days after discovery of an eluate exceeding the permissible concentration at the time of generator elution. The written report must include the action taken by the licensee; the patient dose assessment; the methodology used to make this dose assessment if the eluate was administered to patients or human research subjects; and the probable cause and an assessment of failure in the licensee's equipment, procedures, or training that contributed to the excessive

readings if an error occurred in the licensee's breakthrough determination; and the information in the telephone report required by subsection (E).

R9-7-721. Training for Imaging and Localization Studies Not Requiring a Written Directive

Except as provided in ~~R9-7-710~~ R9-7-712.01, ~~the~~ a licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Group 200 in Exhibit A, Medical Use Groups of this Article to be a physician who:

1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State, ~~as~~ the names of which are specified in the NRC's Medical Uses Licensee Toolkit available through https://www.nrc.gov~~, and who meets the requirements in subsection (3)~~. To have its certification process recognized, a specialty board shall require all candidates for certification to:
   a. Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies as described in subsection ~~(3)~~ (3)(a); and
   b. Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control;
2. Is an authorized user under R9-7-723 and meets the requirements in subsection (3)(a)(ii)(7)~~, the~~ or equivalent NRC~~,~~ or ~~equivalent~~ Agreement State requirements; or
3. Has:
   a. Completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience must include:
      i. Classroom and laboratory training in the following areas:
         (1) Radiation physics and instrumentation;
         (2) Radiation protection;
         (3) Mathematics pertaining to the use and measurement of radioactivity;
         (4) Chemistry of radioactive material for medical use; and
         (5) Radiation biology; and
      ii. Work experience, under the supervision of an authorized user who meets the requirements in this Section~~,~~; ~~R9-7-710,~~ R9-7-712.01; or both

subsection (3)(a)(ii)(7) and R9-7-723 ~~and in subsection (3)(b)(vii)~~**;** or the equivalent requirements of the NRC~~;~~ or ~~equivalent~~ another Agreement State ~~requirements~~. An authorized nuclear pharmacist who meets the requirements in R9-7-712 may provide the supervised work experience for subsection (3)(a)(ii)(7). Work experience must involve:

(1) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(2) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(3) Calculating, measuring, and safely preparing patient or human research subject dosages;

(4) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(5) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

(6) Administering dosages of radioactive drugs to patients or human research subjects; and

(7) Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the elate for radionuclide purity, and processing the elate with reagent kits to prepare labeled radioactive drugs; and

b. Obtained written attestation that the individual has satisfactorily completed the requirements in subsection (3)(a) and is able to independently fulfill the radiation safety-related duties as an authorized user for the medical uses authorized under ~~Group~~ Groups 100 and 200 in Exhibit A, Medical Use Groups of this Article. The attestation must be obtained from either:

i. A preceptor authorized user who meets the requirements in this Section~~;~~; ~~R9-7-710,~~ R9-7-712.01; or both subsection (3)(a)(ii)(7) and R9-7-723; or equivalent NRC ~~requirements;~~ or ~~equivalent~~ Agreement State requirements; or

ii. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in

this Section;; ~~R9-7-710,~~ R9-7-712.01; or both subsection (3)(a)(ii)(7) and R9-7-723; or equivalent NRC ~~requirements;~~ or ~~equivalent~~ Agreement State requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in subsection (3)(a).

R9-7-723. Training for Use of Unsealed Radioactive Material Requiring a Written Directive, Including Treatment of Hyperthyroidism, and Treatment of Thyroid Carcinoma

A. Except as provided in ~~R9-7-710~~ R9-7-712.01, ~~the~~ a licensee shall require an authorized user of unsealed radioactive material for the uses authorized under Group 300 in Exhibit A, Medical Use Groups of this Article to be a physician who:

1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State, ~~as~~ the names of which are specified in the NRC's Medical Uses Licensee Toolkit available through https://www.nrc.gov, and who meets the requirements in subsection (A)(2). To have its certification process recognized, a specialty board shall require all candidates for certification to:
   a. Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs must include 700 hours of training and experience as described in ~~(A)(2)~~ subsection (A)(2)(a). Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and
   b. Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, and quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or
2. Has:
   a. Completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling

techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience must include:

i. Classroom and laboratory training in the following areas:

(1) Radiation physics and instrumentation;

(2) Radiation protection;

(3) Mathematics pertaining to the use and measurement of radioactivity;

(4) Chemistry of radioactive material for medical use; and

(5) Radiation biology; and

ii. Work experience, under the supervision of an authorized user who meets the requirements in this ~~Article~~ Section, R9-7-712.01, or equivalent NRC; or ~~equivalent~~ Agreement State requirements~~, involving~~. A supervising authorized user, who meets the requirements in subsection (A)(2), must also have experience in administering dosages in the same dosage category or categories, as specified in subsection (A)(2)(a)(ii)(6), as the individual requesting authorized user status. The work experience must involve:

(1) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(2) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(3) Calculating, measuring, and safely preparing patient or human research subject dosages;

(4) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(5) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

(6) Administering dosages of radioactive drugs to patients or human research subjects from the following three categories, with radioactive drugs containing radionuclides in categories not included being regulated under Group 1000 in Exhibit A, Medical Use Groups of this Article. This work experience must involve ~~involving~~ a minimum of three cases in each of the

following categories for which the individual is requesting authorized user status:

(a) Oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131, for which a written directive is required (Experience with at least three cases in the Category specified in subsection (A)(2)(a)(ii)(6)(b) also satisfies this requirement;

(b) Oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Parenteral administration of any ~~beta emitter, or a photon-emitting radionuclide with a~~ radioactive drug that contains a radionuclide that is primarily used for the radionuclide's electron emission, beta radiation characteristics, alpha radiation characteristics, or photon energy less than 150 keV, for which a written directive is required; ~~and/or~~

~~(d) Parenteral administration of any other radionuclide, for which a written directive is required;~~ and

b. Obtained written attestation, that the individual has satisfactorily completed the requirements in subsection (A)(2)(a) and is able to independently fulfill the radiation safety-related duties as an authorized user for the medical uses authorized under Group 300 in Exhibit A, Medical Use Groups of this Article for which the individual is requesting authorized user status. The attestation must be obtained from either:

i. A preceptor authorized user who meets the requirements in this Section or equivalent Agreement State or NRC requirements and has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status; or

ii. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in this Section, R9-7-712.01, or equivalent Agreement State or NRC requirements, has experience in administering dosages in the same

dosage category or categories as the individual requesting authorized user status, and concurs with the attestation provided by the residency pro-gram director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in subsection (A)(2)(a).

B. Except as provided in ~~R9-7-710~~ R9-7-712.01, a licensee shall require an authorized user of iodine-131 for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries) to be a physician who has completed the training requirements in 10 CFR 35.392, ~~January 1, 2013~~ July 16, 2018, which is incorporated by reference, ~~and~~ available under R9-7-101~~. This incorporated material contains~~, and containing no future editions or amendments.

C. Except as provided in ~~R9-7-710~~ R9-7-712.01, a licensee shall require an authorized user of iodine-131 for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries) to be a physician who has completed the training requirements in 10 CFR 35.394, ~~January 1, 2013~~ July 16, 2018, which is incorporated by reference, ~~and~~ available under R9-7-101~~. This incorporated material contains~~, and containing no future editions or amendments.

D. Except as provided in ~~R9-7-710~~ R9-7-712.01, a licensee shall require an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive to be a physician who has completed the training requirements in 10 CFR 35.396, ~~January 1, 2013~~ July 16, 2018, which is incorporated by reference, ~~and~~ available under R9-7-101~~. This incorporated material contains~~, and containing no future editions or amendments.

E. The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

R9-7-727. Training for Use of Manual Brachytherapy Sources and Training for the Use of Strontium-90 Sources for Treatment of Ophthalmic Disease

A. Except as provided in ~~R9-7-710~~ R9-7-712.01, ~~the~~ a licensee shall require an authorized user of a manual brachytherapy source for the uses authorized under Group 400 in Exhibit A, Medical Use Groups of this Article to be a physician who:

1. Is certified by a medical specialty board whose certification process has been recognized

by the NRC or an Agreement State, the names of which are specified in the NRC's Medical Uses Licensee Toolkit available through https://www.nrc.gov, and who meets the requirements in subsection (A)(2). ~~The names of board certifications that have been recognized by the NRC or an Agreement State are specified in the NRC's Medical Uses Licensee Toolkit available through https://www.nrc.gov.~~ To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. Successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

b. Pass an examination, administered by diplomates of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

2. Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachy-therapy sources that includes:

a. 200 hours of classroom and laboratory training in the following areas:

i. Radiation physics and instrumentation;

ii. Radiation protection;

iii. Mathematics pertaining to the use and measurement of radioactivity;

iv. Radiation biology;

b. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in this Section, R9-7-712.01, or equivalent NRC or Agreement State requirements at a medical institution authorized to use byproduct materials under Group 400 in Exhibit A, Medical Use Groups of this Article, involving:

i. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

ii. Checking survey meters for proper operation;

iii. Preparing, implanting, and removing brachytherapy sources;

iv. Maintaining running inventories of material on hand;

v. Using administrative controls to prevent a medical event involving the use of radioactive material;

vi. Using emergency procedures to control radioactive material;

c. ~~Completing~~ At least three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in this Section, R9-7-712.01, or equivalent NRC or Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (A)(2)(b); and

d. Obtaining written attestation that the individual has satisfactorily completed the requirements in subsections (A)(2)(a) through (c) and is able to independently fulfill the radiation safety-related duties as an authorized user of manual brachytherapy sources for the medical uses authorized under Group 400 in Exhibit A, Medical Use Groups of this Article. The attestation must be obtained from either:

i. A preceptor authorized user who meets the requirements in this Section, R9-7-712.01, or equivalent Agreement State or NRC requirements; or

ii. A residency program director who affirms in writing that the attestation represents the consensus of the residency pro-gram faculty where at least one faculty member is an authorized user who meets the requirements in this Section, R9-7-712.01, or equivalent Agreement State or NRC requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in ~~subsection (A)(2)(a) and (b)~~ subsections (A)(2)(a) through (c).

B. Except as provided in R9-7-712.01, a licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

1. Is an authorized user under subsection (A) or equivalent Agreement State or NRC requirements; or

(2) Has:

a. Completed at least 24 hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy, including:
   i. Radiation physics and instrumentation,
   ii. Radiation protection,
   iii. Mathematics pertaining to the use and measurement of radioactivity, and
   iv. Radiation biology;

b. Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five individuals, including:
   i Examination of each individual to be treated,
   ii Calculation of the dose to be administered,
   iii Administration of the dose, and
   iv. Follow up and review of each individual's case history; and

c. Obtained written attestation, signed by a preceptor authorized user who meets the requirements in subsection (A) or (B), R9-7-712.01, or equivalent Agreement State or NRC requirements, that the individual has satisfactorily completed the requirements in subsections (B)(2)(a) and (b) and is able to independently fulfill the radiation safety-related duties as an authorized user of strontium-90 for ophthalmic use.

~~B.~~C. A licensee who uses strontium-90 for ophthalmic treatments must ensure that certain activities as specified in subsection ~~(C)~~ (D) are performed by either:

1. An authorized medical physicist; or
2. An individual who:
   a. Is identified as an ophthalmic physicist on a:
      i. Specific medical use license issued by the Department, the NRC, or another Agreement State,
      ii. Permit issued by the Department or an NRC or other Agreement State broad scope medical use licensee,
      iii. Medical use permit issued by an NRC master material licensee, or
      iv. Permit issued by an NRC master material licensee broad scope medical use permittee;
   b. Holds a master's or doctor's degree in physics, medical physics, other physical sciences, engineering, or applied mathematics from an accredited college or

university;

c. Has successfully completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of a medical physicist; and

d. Has documented training in:

i. The creation, modification, and completion of written directives;

ii. Procedures for administrations requiring a written directive; and

iii. Performing the calibration measurements of brachytherapy sources as detailed in R9-7-726.

~~C.~~**D.** The individuals who are identified in subsection ~~(B)(1) or (2)~~ (C)(1) or (2) shall:

1. Calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay must be based on the activity determined under R9-7-726; and

2. Assist the licensee in developing, implementing, and maintaining written procedures to provide high confidence that the administration is in accordance with the written directive. These procedures must include the frequencies that the individual meeting the requirements in ~~paragraph (a) of this Section~~ subsection (A) will observe treatments, review the treatment methodology, calculate treatment time for the prescribed dose, and review records to verify that the administrations were in accordance with the written directives.

~~D.~~**E.** Licensees shall retain a record of the activity of each strontium-90 source in accordance with R9-7-313.

~~E.~~**F.** The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

R9-7-728. Training for Use of Sealed Sources for Diagnosis

A. Except as provided in ~~R9-7-710~~ R9-7-712.01, ~~the~~ a licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized under Group 500 in Exhibit A, Medical Use Groups of this Article to be a physician, dentist, or podiatrist who:

1. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State, the names of which are specified in the NRC's Medical Uses Licensee Toolkit available through https://www.nrc.gov, and who meets the requirements in subsections (A)(3) and (B) ~~and whose certification has been recognized by the Department, the NRC, or another Agreement State as specified in the NRC's~~

~~Medical Uses Licensee Toolkit available through https://www.nrc.gov~~;

2. Is an authorized user for uses listed in Group 200 of Exhibit A, Medical Use Groups of this Article or equivalent NRC or Agreement State requirements; or

3. Has completed at least eight hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device~~. The training must include~~, including:

   a. Radiation physics and instrumentation;

   b. Radiation protection;

   c. Mathematics pertaining to the use and measurement of radioactivity;

   d. Radiation biology.

B. A licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized under Group 500 in Exhibit A, Medical Use Groups of this Article to have completed training in the use of the device for the uses requested.

C. The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

R9-7-744. Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

A. Except as provided in ~~R9-7-710~~ R9-7-712.01, a licensee shall require an authorized user of a sealed source for a use authorized under Group 600 in Exhibit A, Medical Use Groups of this Article to be a physician who:

1. Is certified by a medical specialty board whose certification process has been recognized by the Department, the NRC or another Agreement State and who meets the requirements in subsection (A)(2)(e). The names of board certifications that have been recognized by the Department, the NRC or another Agreement State are specified in the NRC's Medical Uses Licensee Toolkit available through https://www.nrc.gov. To have its certification process recognized, a specialty board shall require all candidates to:

   a. Successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

   b. Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling,

treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote after-loaders and external beam therapy; or

2. Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:
   a. 200 hours of classroom and laboratory training in the following areas:
      i. Radiation physics and instrumentation;
      ii. Radiation protection;
      iii. Mathematics pertaining to the use and measurement of radioactivity;
      iv. Chemistry of radioactive material for medical use; and
      v. Radiation biology;
   b. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in ~~this Section~~ subsection (A), R9-7-712.01, or equivalent Agreement State or NRC requirements at a medical institution, involving:
      i. Reviewing full calibration measurements and periodic spot-checks;
      ii. Preparing treatment plans and calculating treatment doses and times;
      iii. Using administrative controls to prevent a medical event involving the use of radioactive material;
      iv. Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;
      v. Checking and using survey meters; and
      vi. Selecting the proper dose and how it is to be administered;
   c. Completing at least three years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in ~~this Section~~ subsection (A), R9-7-712.01, or equivalent Agreement State or NRC requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subsection (A)(2)(b); and
   d. Obtaining written attestation that the individual has satisfactorily completed the requirements in subsections (A)(2)(a) through (c) and (B), and is able to independently fulfill the radiation safety-related duties as an authorized user of each type of therapeutic medical unit for which the individual is requesting

authorized user status. The written attestation must be obtained from either:

i. A preceptor authorized user who meets the requirements in ~~this Section~~ subsection (A), R9-7-712.01, NRC requirements, or equivalent Agreement State requirements for the type(s) of therapeutic medical unit for which the individual is requesting authorized user status; or

ii. A residency program director who affirms in writing that the attestation represents the consensus of the residency pro-gram faculty where at least one faculty member is an authorized user who meets the requirements in this Section, NRC requirements, or equivalent Agreement State requirements, for the type(s) of therapeutic medical unit for which the individual is requesting authorized user status, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in subsection (A)(2)(a) through (c).

B. A licensee shall require an authorized user of a sealed source for a use authorized under Group 600 in Exhibit A, Medical Use Groups of this Article to receive training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

C. The training and experience shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

Exhibit A. Medical Use Groups

Group 100

Included is the use of any unsealed radioactive material for use in uptake, dilution, or excretion studies and not requiring a written directive: ~~The radioactive material in this group shall be~~ Except for quantities that require a written directive under R9-7-707, a licensee may use unsealed byproduct material prepared for medical use for uptake, dilution, or excretion studies that is:

1. Obtained from:
   a. ~~a~~ A manufacturer or preparer licensed under R9-7-703(C)(2)(a), or equivalent NRC or Agreement State requirements; or
   ~~2.~~b. ~~Obtained from a~~ A PET radioactive drug producer licensed under R9-7-703 or equivalent NRC or an Agreement State license;
2. ~~excluding~~ Excluding production of PET radionuclides, prepared by:
   a. ~~an~~ An authorized nuclear pharmacist who meets the requirements in R9-7-712~~,~~;
   b. ~~a~~ A physician who is an authorized user and who meets the requirements specified in R9-7-721~~,~~ or both R9-7-721(3)(a)(ii)(7) and R9-7-723 ~~and R9-7-721(3)(b)(vii),~~; or
   c. ~~an~~ An individual under the supervision, ~~of either~~ as specified in R9-7-706, of the authorized nuclear pharmacist in subsection (2)(a) or the physician who is an authorized user in subsection (2)(b); or
3. If a research protocol:
   a. Obtained from and prepared by ~~an Agreement State or NRC~~ a Department, NRC, or another Agreement State licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or
   b. Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Group 200

Included is the use of any unsealed radioactive material for use in imaging and localization not requiring a written directive. ~~PET radiopharmaceuticals may be used if the licensee meets the requirements in R9-7-716. The radioactive material in this group shall be~~ Except for quantities that require a written directive under R9-7-707, a licensee may use unsealed byproduct material prepared for medical use for imaging and localization studies that is:

1. Obtained from:
   a. ~~a~~ A manufacturer or preparer licensed under R9-7-703(C)(2)(a), or equivalent NRC or Agreement State requirements; or
   ~~2.~~b. ~~Obtained from a~~ A PET radioactive drug producer licensed under R9-7-703 or equivalent NRC or an Agreement State license;
2. ~~excluding~~ Excluding production of PET radionuclides, prepared by:
   a. ~~an~~ An authorized nuclear pharmacist who meets the requirements in R9-7-712~~,~~;

b. ~~a~~ A physician who is an authorized user and who meets the requirements specified in R9-7-721~~;~~ or both R9-7-721(3)(a)(ii)(7) and R9-7-723 ~~and R9-7-721(3)(b)(vii);~~; or

c. ~~an~~ An individual under the supervision, ~~of either~~ as specified in R9-7-706, of the authorized nuclear pharmacist in subsection (2)(a) or the physician who is an authorized user in subsection (2)(b); or

3. If a research protocol:

a. Obtained from and prepared by ~~an Agreement State or NRC~~ a Department, NRC, or another Agreement State licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

b. Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Group 300

Included is the use of any unsealed byproduct radioactive material, identified in R9-7-723(A)(2)(a)(ii)(6), prepared for ~~medical~~ use ~~(radiopharmaceutical)~~ and for which a written directive is required~~. The radioactive material in this group shall be~~ that is:

1. Obtained from:

a. ~~a~~ A manufacturer or preparer licensed under R9-7-703(C)(2)(a), or equivalent NRC or Agreement State requirements; or

~~2.~~b. ~~Obtained from a~~ A PET radioactive drug producer licensed under R9-7-703 or equivalent NRC or an Agreement State license;

2. ~~excluding~~ Excluding production of PET radionuclides, prepared by:

a. ~~an~~ An authorized nuclear pharmacist who meets the requirements in R9-7-712~~;~~;

b. ~~a~~ A physician who is an authorized user and who meets the requirements specified in R9-7-721 or R9-7-723~~;~~; or

c. ~~an~~ An individual under the supervision, ~~of either~~ as specified in R9-7-706, of the authorized nuclear pharmacist in subsection (2)(a) or the physician who is an authorized user in subsection (2)(b); or

3. If a research protocol:

a. Obtained from and prepared by ~~an Agreement State or NRC~~ a Department, NRC, or another Agreement State licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational

New Drug (IND) protocol accepted by FDA; or

b. Prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

Group 400

Included is the use of ~~any brachytherapy source for therapeutic medical use that is manufactured in accordance with R9-7-703(C)(2)(b) and~~ sources for manual brachytherapy. A licensee must use only brachytherapy sources:

1. Approved ~~for therapeutic use~~ in the Sealed Source and Device Registry for manual brachytherapy medical use. The manual brachytherapy sources may be used for manual brachytherapy uses that are not explicitly listed in the Sealed Source and Device Registry, but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry; or
2. ~~Part of a research protocol that is approved for therapeutic use under~~ In research to deliver therapeutic doses for medical use in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA, ~~and meets~~ provided that the requirements of R9-7-709 are met.

Group 500

~~Included is the use of any sealed source that is manufactured in accordance with R9-7-703(C)(2)(b), and is approved for diagnostic use in the Sealed Source and Device Registry.~~

Included is the use of sealed sources and medical devices for diagnosis.

1. A licensee may only use sealed sources that are not in medical devices for diagnostic medical uses if the sealed sources are approved in the Sealed Source and Device Registry for diagnostic medicine. The sealed sources may be used for diagnostic medical uses that are not explicitly listed in the Sealed Source and Device Registry, but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry.
2. A licensee may only use medical devices containing sealed sources for diagnostic medical uses if both the sealed sources and medical devices are approved in the Sealed Source and Device Registry for diagnostic medical uses. The diagnostic medical devices may be used for diagnostic medical uses that are not explicitly listed in the Sealed Source and Device Registry, but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry.
3. Sealed sources and devices for diagnostic medical uses may be used in research in

accordance with an active Investigational Device Exemption (IDE) application accepted by the U.S. Food and Drug Administration provided the requirements of R9-7-709(1) are met.

Group 600

Included is the use of sealed sources in ~~photon emitting~~ remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units. ~~that are manufactured in accordance with R9-7-703(C)(2)(b) and:~~

~~1. Approved for therapeutic use in the Sealed Source and Device Registry; or~~

~~2. Part of a research protocol that is approved for therapeutic use under an active Investigational Device Exemption (IDE) application accepted by the FDA and meets the requirements of R9-7-709.~~

A. A licensee must only use sealed sources:

1. Approved and as provided for in the Sealed Source and Device Registry in photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units to deliver therapeutic doses for medical uses: or
2. In research involving photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units in accordance with an active Investigational Device Exemption (IDE) application accepted by the U.S. Food and Drug Administration provided the requirements of R9-7-709(1) are met.

B. A licensee must use photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units:

1. Approved in the Sealed Source and Device Registry to deliver a therapeutic dose for medical use. These devices may be used for therapeutic medical treatments that are not explicitly provided for in the Sealed Source and Device Registry, but must be used in accordance with radiation safety conditions and limitations described in the Sealed Source and Device Registry; or
2. In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of R9-7-709(1) are met.

Group 1000

A licensee may use ~~radioactive~~ byproduct material or a radiation source approved for medical use which is not specifically addressed in ~~R9-7-309(4)~~ this Article if:

1. The applicant or licensee has submitted the information required by this Article; and
2. The applicant or licensee has received written approval from the Department in a license or license amendment and uses the material in accordance with the rules and specific conditions the Department considers necessary for the medical use of the material.

ARTICLE 19. PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

R9-7-1909. ~~Interpretations~~ Renumbered

R9-7-1943. General Security Program Requirements

A. Security plan:

1. Each licensee identified in R9-7-1941(A) shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this Article. The security plan shall, at a minimum:
    a. Describe the measures and strategies used to implement the requirements of this Article; and
    b. Identify the security resources, equipment, and technology used to satisfy the requirements of this Article.
2. The security plan shall be reviewed and approved by the individual with overall responsibility for the security program.
3. A licensee shall revise its security plan as necessary to ensure the effective implementation of Department requirements. The licensee shall ensure that:
    a. The revision has been reviewed and approved by the individual with overall responsibility for the security program; and
    b. The affected individuals are instructed on the revised plan before the changes are implemented.
4. The licensee shall retain a copy of the current security plan as a record for ~~3~~ at least three years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for ~~3~~ at least three years after the record is superseded.

B. Implementing procedures:

1. The licensee shall develop and maintain written procedures that document how the requirements of this Article and the security plan will be met.
2. The implementing procedures and revisions to these procedures shall be approved in writing by the individual with overall responsibility for the security program.
3. The licensee shall retain a copy of the current procedure as a record for ~~3~~ at least three years after the procedure is no longer needed. Superseded portions of the procedure shall be retained for ~~3~~ at least three years after the record is superseded.

C. Training:

1. Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training shall include instruction in:
    a. The licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material, and in the purposes and functions of the security measures employed;
    b. The responsibility to report promptly to the licensee any condition that causes or may cause a violation of Department requirements;
    c. The responsibility of the licensee to report promptly to the local law enforcement agency and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and
    d. The appropriate response to security alarms.
2. In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training shall be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.
3. Refresher training shall be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training shall include:
    a. Review of the training requirements of subsection (c) and any changes made to the security program since the last training;
    b. Reports on any relevant security issues, problems, and lessons learned;
    c. Relevant results of Department inspections; and
    d. Relevant results of the licensee's program review and testing and maintenance.
4. The licensee shall maintain records of the initial and refresher training for ~~3~~ at least three years ~~from~~ after the date of the training. The training records shall include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

D. Protection of information:

1. Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.
2. Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan, ~~and~~ implementing procedures, and the list of individuals that have been approved for unescorted access.
3. Before granting an individual access to the security plan or implementing procedures, licensees shall:
    a. Evaluate an individual's need to know the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access; and
    b. If the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee shall complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in R9-7-1925(A)(2) through (A)(7).
4. Licensees need not subject the following individuals to the background investigation elements for protection of information:
    a. The categories of individuals listed in R9-7-1929(A); or
    b. Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in R9-7-1925(A)(2) through (A)(7), has been provided by the security service provider.
5. The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.
6. Licensees shall maintain a list of persons currently approved for access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access. When a licensee determines that a person no longer needs access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access, or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list

as soon as possible, but no later than ~~7~~ seven working days, and take prompt measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

7. When not in use, the licensee shall store its security plan, ~~and~~ implementing procedures, and the list of individuals that have been approved for unescorted access in a manner to prevent unauthorized access. Information stored in non-removable electronic form shall be password protected.
8. The licensee shall retain as a record for ~~3~~ at least three years after the document is no longer needed:
    a. A copy of the information protection procedures; and
    b. The list of individuals approved for access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.
9. State officials, State employees, and other individuals, whether or not licensees of the Commission or an Agreement State, who receive schedule information of the kind specified in subsection (D)(1) shall protect that information against unauthorized disclosure as specified in subsection (D)(2).

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30-654. Powers and duties of the department

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.

2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.

3. Conduct an information program, including:

(a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.

(b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.

(c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.

(d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.

2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.

3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.

4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.

5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.

6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.

7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.

8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.

9. By rule, require adequate training and experience of persons using sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.

10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.

11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States department of the treasury and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.

16. Develop and utilize information resources concerning radiation and radioactive sources.

17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.

18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.

C. The department shall deposit, pursuant to sections 35-146 and 35-147, ninety percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the health services licensing fund established by section 36-414 and ten percent of the monies received from fees collected pursuant to subsection B, paragraph 17 of this section and section 32-2805 in the state general fund.**30-**

30-657. <u>Records</u>

A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.

B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.

C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.

D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

30-671. Radiation protection standards

A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

30-672. Licensing and registration of sources of radiation; exemptions

A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.

2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropodist or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

30-673. Unlawful acts

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

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 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 to promote 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 educating 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 coordinating 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 enforcing 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 and behavioral-supported 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 a licensing period shall not 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; definition

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.

The links to the federal regulations are given below:
10 CFR 20.1906 at:
https://www.govinfo.gov/content/pkg/CFR-2013-title10-vol1/pdf/CFR-2013-title10-vol1-sec20-1905.pdf
10 CFR 20.2201; 10 CFR 20.2202; 10 CFR 20.2207 at
https://www.nrc.gov/reading-rm/doc-collections/cfr/part020/index.html
10 CFR 30.50 at: https://www.nrc.gov/reading-rm/doc-collections/cfr/part030/part030-0050.html
10 CFR 34.47 at: https://www.nrc.gov/reading-rm/doc-collections/cfr/part034/part034-0047.html
10 CFR 34.83 at:
https://www.nrc.gov/reading-rm/doc-collections/cfr/part034/full-text.html#part034-0083
10 CFR 35.50; 10 CFR 35.55; 10 CFR 35.57; 10 CFR 35.390; 10 CFR 35.490; 10 CFR 35.690; 10 CFR 35.3045; 10 CFR 35.3047 at:
https://www.nrc.gov/reading-rm/doc-collections/cfr/part035/full-text.html
10 CFR 37.27 at:
https://www.govinfo.gov/content/pkg/CFR-2014-title10-vol1/pdf/CFR-2014-title10-vol1-sec37-27.pdf
10 CFR 39.65 at: https://www.nrc.gov/reading-rm/doc-collections/cfr/part039/part039-0065.html
Appendix A to 10 CFR part 37 at:
https://www.nrc.gov/reading-rm/doc-collections/cfr/part037/part037-appa.html
10 CFR 71.4 at: https://www.nrc.gov/reading-rm/doc-collections/cfr/part071/part071-0004.html
10 CFR 71.97 at:
https://www.govinfo.gov/content/pkg/CFR-2014-title10-vol2/pdf/CFR-2014-title10-vol2-sec71-97.pdf

E-4.

DEPARTMENT OF ADMINISTRATION
Title 2, Chapter 5

Amend: R2-5A-101, R2-5A-104, R2-5A-105, R2-5A-305, R2-5A-402, R2-5A-403, R2-5A-405, R2-5A-502, R2-5A-504, R2-5A-B603, R2-5A-B606, R2-5A-B611, R2-5A-D601, R2-5A-D602, R2-5A-D603, R2-5A-701, R2-5A-702, R2-5A-803, R2-5B-403

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: July 15, 2024

SUBJECT: **DEPARTMENT OF ADMINISTRATION**
Title 2, Chapter 5

Amend: R2-5A-101, R2-5A-104, R2-5A-105, R2-5A-305, R2-5A-402, R2-5A-403, R2-5A-405, R2-5A-502, R2-5A-504, R2-5A-B603, R2-5A-B606, R2-5A-B611, R2-5A-D601, R2-5A-D602, R2-5A-D603, R2-5A-701, R2-5A-702, R2-5A-803, R2-5B-403

Summary:

This regular rulemaking from the Arizona Department of Administration (Department) seeks to amend nineteen (19) rules in Title 2, Chapter 5, Subchapter A regarding Covered and Uncovered Employees. Specifically, the Department indicates it is amending rules to address issues identified during the preceding Five-year Review Report, as approved by the Council on July 12, 2018. The Department is also amending several other rules to align with statutory requirements, implement the directives outlined in Executive Order 2023-24, improve the effectiveness of the rules and make them less burdensome, and make the rules consistent with other sections of the Chapter. Section 7 of the Department's Notice of Final Rulemaking Preamble provides a rule-by-rule description of the proposed changes.

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

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

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

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

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

The Department indicates it did not review any study relevant to this rulemaking.

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

The Department indicates, because the State Personnel System (SPS) does not issue permits or licenses, charge fees, and its rules have little to no economic impact on small businesses or other consumers, the rulemaking has little to no economic, small business, or consumer impact, other than the minimal cost to the Department to prepare the rule package. Any financial impact or administrative expenses associated with the rules will be covered by ordinary operating funds.

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

The Department has determined that there is no less intrusive or less costly alternative to the Rulemaking currently.

6. What are the economic impacts on stakeholders?

The rulemaking applies only to SPS agencies and employees and applicants to positions within the SPS. The Department believes that an increased clarity in the rules will result in a reduction of costs for providing guidance and technical assistance on an ongoing basis; additionally, the elimination of various reporting requirements will reduce a regulatory burden on state agencies. Wholly, the Department anticipates that the rulemaking will have minimal economic impact on state agencies and will increase productivity.

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

Between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking, the Department indicates it made one change to the rules. Specifically, in rule R2-5A-101, the Department supplemented the definition of "Disabled veteran" by adding the phrase, "for the purposes of R2-5A-302, pertaining to preferences" to provide additional clarity. The Department

does not consider the change to be substantially different from the proposed rule within the meaning of A.R.S. § 41-1025(B). Council staff is in agreement.

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

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

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

The Department indicates 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 Department indicates there are no corresponding federal laws.

11. Conclusion

This regular rulemaking from the Department seeks to amend nineteen (19) rules in Title 2, Chapter 5, Subchapter A regarding Covered and Uncovered Employees. Specifically, the Department indicates it is amending rules to address issues identified during the preceding Five-year Review Report, as approved by the Council on July 12, 2018. The Department is also amending several other rules to align with statutory requirements, implement the directives outlined in Executive Order 2023-24, improve the effectiveness of the rules and make them less burdensome, and make the rules consistent with other sections of the Chapter.

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

Katie Hobbs
Governor

Elizabeth Alvarado-Thorson
Cabinet Executive Officer
Executive Deputy Director

ARIZONA DEPARTMENT OF ADMINISTRATION

OFFICE OF THE DIRECTOR
100 NORTH FIFTEENTH AVENUE • SUITE 302
PHOENIX, ARIZONA 85007
(602) 542-1500

May 31, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Regular Rulemaking - Arizona Department of Administration, 2 A.A.C. 5
Subchapter A; Articles 1, 3, 4, 5, 6, 7 and 8
Subchapter B; Article 4

Dear Ms. Klein:

The Arizona Department of Administration (Department) is submitting the attached final rulemaking package for review and approval by the Governor's Regulatory Review Council.

As required under A.R.S. § 41-1039, approval for this rulemaking was obtained from John Owens, Operations & Policy Advisor in the Governor's Office, in an email dated January 9, 2024. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by Mr. Owens in an email dated May 24, 2024.

Pursuant to A.A.C. R1-6-201, the following information is provided for Council's use in reviewing the enclosed rulemaking package:

1. The close of record date: The rulemaking record was closed on March 21, 2024, at 5:00 p.m., following a period for public comment and an oral proceeding.

2. 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 2 A.A.C. 5 primarily relates to a five-year-review report approved by the Council on July 12, 2018. In addition, the rulemaking amends several rules to align with statutory requirements, implement the directives outlined in Executive Order 2023-24, improve the effectiveness of the rules and make them less burdensome, and make the rules consistent with other sections of the Chapter.

3. Whether the rulemaking establishes a new fee and, if so, the statute authorizing the fee:
The rulemaking does not establish a new fee.

4. Whether the rulemaking contains a fee increase:
The rulemaking does not contain a fee increase.

5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:
The Department is not requesting an immediate effective date.

6. Certification regarding studies:
I certify that the Department did not rely on any studies for this rulemaking.

7. Certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees necessary to implement and enforce the rule:
I certify that the rules in this rulemaking will not require one or more full-time employees to implement and enforce the rule. As such, no notification was provided to the JLBC.

8. List of documents enclosed:
   - Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule;
   - An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055; and,
   - The general and specific statutes authorizing the rule, including relevant statutory definitions.

The Department's point of contact for questions about this rulemaking package is Christine Bronson at Christine.Bronson@azdoa.gov.

Sincerely,

Elizabeth Alvarado-Thorson
Cabinet Executive Officer
Executive Deputy Director

c: Nicole Sornsin, State Human Resources Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION

STATE PERSONNEL SYSTEM

SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES

SUBCHAPTER B. COVERED EMPLOYEES

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039(B) by the governor on:

May 24, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R2-5A-101	Amend
R2-5A-104	Amend
R2-5A-105	Amend
R2-5A-305	Amend
R2-5A-402	Amend
R2-5A-403	Amend
R2-5A-405	Amend
R2-5A-502	Amend
R2-5A-504	Amend
R2-5A-B603	Amend
R2-5A-B606	Amend
R2-5A-B611	Amend
R2-5A-D601	Amend
R2-5A-D602	Amend
R2-5A-D603	Amend
R2-5A-701	Amend
R2-5A-702	Amend
R2-5A-803	Amend
R2-5B-403	Amend

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

Authorizing statute: A.R.S. §§ 41-703(3), 41-743(B)(3) and 41-771

Implementing statute: A.R.S. §§ 38-611, 41-742, 41-745, 41-746, 41-747, 41-748, 41-754, 41-772 and 41-773

4. The effective date of the rule:

The Arizona Department of Administration (Department) requests the standard 60-day delayed effective date for this rulemaking. This rule shall become effective 60 days after a certified original and preamble are filed in the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A). The effective date is (to be filled in by *Register* editor).

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 327, February 16, 2024

Notice of Proposed Rulemaking: 30 A.A.R. 295, February 16, 2024

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

Name:	Christine Bronson, HR Consultant
Address:	Arizona Department of Administration Human Resources Division 100 N. 15th Ave., Suite 301 Phoenix, AZ 85007
Telephone:	(602) 619-6360
E-mail:	Christine.Bronson@azdoa.gov
	or
Name:	Kerry Schleappe, HR Deputy Director
Address:	Arizona Department of Administration Human Resources Division 100 N. 15th Ave., Suite 301 Phoenix, AZ 85007
Telephone:	(602) 540-8309
E-mail:	Kerry.Schleappe@azdoa.gov

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

The Department is amending the rules in 2 A.A.C. Chapter 5, Department of Administration - State Personnel System (SPS), to address issues identified during the preceding Five-year Review Report, as approved by the Governor's Regulatory Review Council on July 12, 2018. The Department is also amending several other rules to align with statutory requirements, implement the directives outlined in

Executive Order 2023-24, improve the effectiveness of the rules and make them less burdensome, and make the rules consistent with other sections of the Chapter. The amended rules will conform to the rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

Section by Section Explanation of the Rulemaking:

R2-5A-101. Definitions. The rule is being amended to address issues identified during the preceding Five-year Review Report by amending the definitions of "child" and, by adding definitions of "disciplinary action" and "protected category." The Department further proposes to add a definition of "disabled veteran" which is used in R2-5A-302, in order to provide additional clarity.

R2-5A-104. Prohibition Against Discrimination, Harassment and Retaliation. The rule is being amended to address issues identified during the preceding Five-year Review Report and to improve the rule by removing repetitive language and adding the term "protected category" to the definitions listed in R2-5A-101, as described above. The Department further proposes to add clarifying language regarding "sex" to clarify that sex includes sexual orientation and gender identity.

R2-5A-105. Records. The rule is being amended to clarify references to "disciplinary action"; this is also consistent with the Department's proposal to add the definition of "disciplinary action" in R2-5A-101, Definitions, as described above.

R2-5A-305. Employment of Relatives. The rule is being amended to address issues identified during the preceding Five-year Review Report by allowing for an exception for relationship to an interviewer or panel member.

R2-5A-402. Salary Administration. The rule is being amended to address issues identified during the preceding Five-year Review Report by removing the current or former salary from the factors that must be considered when setting an employee's salary. The Department also proposes to eliminate a reporting requirement, which will reduce a regulatory burden on SPS agencies; the same regulatory objective can be achieved by auditing an agency's actions, as authorized by R2-5A-102(A)(2).

R2-5A-403. Supplemental Pay. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding covered positions that require full authority peace officer certification to the exception and will also resolve the conflict between the rule and the current version of the compensation guidelines. The Department also proposes to eliminate a reporting requirement, which

will reduce a regulatory burden on SPS agencies; the same regulatory objective can be achieved by auditing an agency's actions, as authorized by R2-5A-102(A)(2).

R2-5A-405. Tuition Reimbursement for Education. The rule is being amended to expand the rule to "Education Assistance" and add a new subsection for student loan repayment assistance. Student loan repayment assistance may be utilized as a recruitment and retention tool when the employee's current position requires a degree or a degree is a selective preference for the position, because tuition reimbursement would not be applicable. The proposed amendment requires an agency to develop a written policy prior to granting this assistance and also requires that the policy be submitted to ADOA for review and approval.

R2-5A-502. Hours of Work. The rule is being amended to expand this rule to "Hours and Location of Work." The increase in remote work since the COVID pandemic has made it necessary to address the location of work in rule. The proposed amendments stipulate that every employee shall have a designated State of Arizona worksite, which shall be the geographic location of the position for the purposes of determining agency employees impacted by a furlough or a reduction in force. The proposed amendments provide that an agency head may allow an employee to work from an alternate location (remote work), subject to the stated conditions.

R2-5A-504. Alcohol and Drug-free Workplace. The rule is being amended by adding a requirement for each agency to adopt a written policy for testing or retesting for the presence of alcohol or drugs of its employees and if applicable, prospective employees. The proposed amendment also requires the agency to submit its policy to ADOA for approval, similar to the wording in existing rules requiring other agency policies to be submitted to ADOA.

R2-5A-B603. Sick Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding the ability of an employee to use sick leave for the purposes of victim leave pursuant to R2-5A-D604.

R2-5A-B606. Civic Duty Leave. This rule is being amended pursuant to Executive Order 2023-24, Ensuring Adequate Staffing of Voting Locations, which directs the Department to conduct rulemaking to provide for civic duty leave for the purpose of serving at a voting location during a statewide election in this State.

R2-5A-B611. Meritorious Service Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding covered positions that require full authority peace officer certification to the exceptions. The Department also proposes to eliminate a reporting requirement, which

will reduce a regulatory burden on SPS agencies; the same regulatory objective can be achieved by auditing an agency's actions, as authorized by R2-5A-102(A)(2).

R2-5A-D601. Family and Medical Leave Act (FMLA) Leave. The rule is being amended to eliminate the combined total of FMLA leave if both spouses work for the State, thus allowing each spouse to take the full amount of FMLA leave (up to 12 or 26 workweeks, as applicable). This amendment also serves to further advance Governor Hobbs' initiative to expand family sick leave benefits to state employees (email from Governor Hobbs dated January 3, 2023).

R2-5A-D602. Industrial Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by revising the language in subsection B to "gross salary" in order to be consistent with the terminology in subsection A, paragraph 3.

R2-5A-D603. Military Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding language to allow an employee who has not received their military orders at the time the leave is requested to submit a copy of their orders at a later date. The Department also proposes to amend the rule to comply with a new or existing state statutory requirement. Laws 2021, Ch. 193 (HB2297) amended A.R.S. § 38-610(C)(3) by modifying the calculation of military leave of absence for public employees from days to hours.

R2-5A-701. General. This rule is being amended to address issues identified during the preceding Five-year Review Report by codifying into rule the temporary procedures initially implemented in 2015, to extend the performance appraisal exemption to all uncovered employees in political appointment positions (i.e., positions listed in A.R.S. § 41-742(F)).

R2-5A-702. Performance Management Process. This rule is being amended to conform with the temporary procedures identified in the preceding Five-year Review Report, and ensure the rule is effective for the performance management procedures being used currently.

R2-5A-803. Employee Request for Review of Disciplinary Action. The rule is being amended to address issues identified during the preceding Five-year Review Report by replacing "a state merit board or council" with "the State Personnel Board or the Law Enforcement Merit System Council" to improve clarity and eliminate any potential confusion.

R2-5B-403. Grievance Procedures. This rule is applicable only to covered employees. The rule is being amended to address issues raised by the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR), which has employees statutorily required to be covered, and the most covered employees of any

agency. The current rule requires that the grievant have an oral discussion with the immediate supervisor; however, the immediate supervisor is frequently not in a position of authority to make disciplinary decisions. The Department is proposing to revise the rule to require that the oral discussion be held instead with the individual designated as the first step in the agency's grievance procedure.

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

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

9. 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

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

The Department promulgates rules that provide for the direction and control of the State Personnel System (SPS). The SPS is the largest personnel system in state government, encompassing over 100 state agencies, boards, commissions and offices, and approximately 34,000 employees. SPS rules affect SPS agencies, employees, and applicants for positions within the SPS. As such, the SPS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on small businesses or other consumers. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the Department to prepare the rule package. Any financial impact or administrative expenses associated with the rules will be covered by ordinary operating funds.

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

Between the proposed rulemaking and the final rulemaking, the Department made one change to the rules. In R2-5A-101, the Department supplemented the definition of "Disabled veteran" by adding the phrase, "for the purposes of R2-5A-302, pertaining to preferences" to provide additional clarity. The Department does not consider the change to be substantially different from the proposed rule within the meaning of A.R.S. § 41-1025(B).

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

During the public comment period for the Notice of Proposed Rulemaking, the Department did not receive any written public comments. An oral proceeding was held on March 21, 2024, via Google Meet, and although several individuals attended the proceeding, there were no oral comments made during the

proceeding. The record closed at 5:00 p.m. on March 21, 2024.

13. 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 statutes 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:

Not applicable

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

Not applicable

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

No business competitiveness analysis was received by the Department.

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

29 CFR 825.100 through 29 CFR 825.800, Family and Medical Leave Act (FMLA), are incorporated by reference in Section R2-5A-D601.

20 CFR 1002.1 through 20 CFR 1002.314, Uniformed Services Employment and Reemployment Rights Act (USERRA), are incorporated by reference in Section R2-5A-D603.

15. 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

16. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION

STATE PERSONNEL SYSTEM

SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES

ARTICLE 1. GENERAL

ARTICLE 3. RECRUITMENT, SELECTION AND APPOINTMENT

ARTICLE 4. COMPENSATION SYSTEM

ARTICLE 5. CONDITIONS OF EMPLOYMENT

ARTICLE 6. LEAVE

PART B. PAID LEAVE

PART D. LEAVE THAT COULD BE EITHER PAID OR UNPAID

SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES

ARTICLE 1. GENERAL

R2-5A-101. Definitions

In this subchapter, the following words and phrases have the defined meanings unless otherwise clearly indicated by the context:

"Agency head" means the chief executive officer of a state agency, or designee.

"Appeal" means a covered employee's request for a review of a disciplinary action by the State Personnel Board under A.R.S. § 41-782 or the Law Enforcement Merit System Council under A.R.S. § 41-1830.16, as applicable.

"Applicant" means a person who seeks appointment to a position in state employment.

"Appointing authority" means the person or group of persons authorized by law or delegated authority to make appointments to fill positions. A.R.S. § 41-741(1)

"Appointment" means the offer to and the acceptance by a candidate of a position in a state agency.

"At will" means an employment relationship where either party to the relationship may sever the relationship at any time for any reason other than an unlawful reason. A.R.S. § 41-741(2)

"Base salary" means an employee's salary excluding supplemental pay provided by R2-5A-403, overtime pay or other pay allowance provided by law.

"Break in service" means a separation from state employment, regardless of the reason for separation. A.R.S. § 41-741(3)

"Business day" means the hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding observed state holidays.

"Candidate" means a person whose education, experience, competencies and other qualifications meet the requirements of a position and who may be considered for employment.

"Cause" means any of the reasons for disciplinary action provided by A.R.S. § 41-773 or these rules.

"Change in assignment" means movement of an employee to a different position in the same state agency or another state agency. A.R.S. § 41-741(4)

"Child" means~~, for purposes of R2-5A-B603, pertaining to sick leave, and R2-5A-B605 pertaining to bereavement leave,~~ a natural child, adopted child, foster child, or stepchild.

"Class" means a group of positions with the same title and grade because each position in the group has similar duties, scope of discretion and responsibility, required qualifications, or other job-related characteristics.

"Class series" means a group of related classes as listed by the Arizona Department of Administration, Human Resources Division.

"Class specification" means a description of the type and level of duties and responsibilities of the positions assigned to a class.

"Competencies" means knowledge, skills, abilities, behaviors and other characteristics that contribute to successful job performance and the achievement of organizational results.

"Covered employee" means an employee who:

(a) Before September 29, 2012, is in the state service, is not uncovered pursuant to section 41-742, subsection A, and has remained in covered status without a break in service since that date.

(b) Before September 29, 2012, is in the state service, is employed as a Correctional Officer I, Correctional Officer II, Correctional Officer III or Community Corrections Officer and has remained in covered status without a break in service since that date.

(c) Before September 29, 2012, is in the state service, is a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and has remained in that status without a break in service since that date.

(d) On or after September 29, 2012, is a Correctional Officer I, Correctional Officer II, Correctional Officer III or Community Corrections Officer and is appointed to a position in the covered service, but does not include a position in any other class in the correctional officer class series or the community correctional officer class series or in any other correctional class series.

(e) On or after September 29, 2012, is a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and is appointed to a position that requires such a certification in the covered service. A.R.S. § 41-741(5)

"Covered position" means a position in the covered service.

"Covered service" is defined in A.R.S. § 41-741 and means that employment status conferring rights of appeal as prescribed in A.R.S. §§ 41-782 and 41-783 or A.R.S. § 41-1830.16, as applicable.

"Days" means calendar days, unless otherwise stated.

"Demotion" means a change in the assignment of an employee from a position in one class to a position in another class that has a lower grade.

"Department" means the Arizona Department of Administration.

"Director" means the Director of the Arizona Department of Administration, or the Director's designee, who is responsible for administering the state personnel system pursuant to applicable state and federal laws. A.R.S. § 41-741(7)

"Disabled veteran" means, for the purposes of R2-5A-302, pertaining to preferences, an honorably separated veteran who served on active duty in the armed forces of the United States at any time and who has a service-connected disability.

"Disciplinary action" means a letter of reprimand, suspension, involuntary demotion, or dismissal.

"Employee" means all officers and employees of this state, whether in covered service or uncovered service, unless otherwise prescribed. A.R.S § 41-741(8)

"Employing agency" means the agency where the employee is employed or, if an applicant, the agency to which the person has applied.

"Essential job function" means a fundamental job duty of a position that an applicant or employee must be able to perform, with or without a reasonable accommodation.

"FLSA" means the federal Fair Labor Standards Act.

"FLSA exempt" means a position that is not entitled to overtime compensation under the FLSA.

"FLSA non-exempt" means a position that is entitled to overtime compensation under the FLSA.

"FMLA" means the federal Family and Medical Leave Act.

"Full authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by the Arizona Peace Officer Standards and Training Board. A.R.S. § 41-741(9)

"Grade" means the numeric identifier associated with one or more pay ranges, used to determine the internal worth of a class relative to other classes.

"Manifest error" means an act or failure to act that is, or clearly has caused, a mistake.

"Parent" means, for purposes of R2-5A-B602, pertaining to annual leave, R2-5A-B603, pertaining to sick leave, and R2-5A-B605, pertaining to bereavement leave, a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or anyone who can be considered "in loco parentis."

"Part-time" means employment scheduled for less than 40 hours per week.

"3/4 time" means employment regularly scheduled for at least 30 hours but fewer than 40 hours per week.

"1/2 time" means employment regularly scheduled for at least 20 hours but fewer than 30 hours per week.

"1/4 time" means employment regularly scheduled for at least 10 hours but fewer than 20 hours per week.

"Pay status" means an employee is receiving pay for work or for a compensated absence.

"Premium/contribution" means the amount paid in exchange for insurance coverage. Depending on the type of coverage, the premium/contribution is paid by the employee, the state, or a combination of both.

"Promotion" means a change in assignment of an employee from a position in one class to a position in another class that has a higher grade.

"Protected category" means race, color, national origin, religion, age, disability, genetic information, sex (including sexual orientation and gender identity), pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation.

"Reallocation" means changing the allocation of a position to a different class if a material and permanent change in duties or responsibilities occurs.

"Reversion" means the return of a covered employee on promotional probation to a position in the class in which the employee held permanent status immediately before the promotion or to a similar position in another class at the same grade as the class the employee held permanent status if the employee possesses the qualifications for that position.

"Rules" means the rules adopted by the Department of Administration, Human Resources Division. A.R.S. § 41-741(13)

"Special assignment" means the temporary assignment, for up to six months, of the duties and responsibilities of another position to an employee in the same agency.

"State agency" means a department, board, office, authority, commission or other governmental budget unit of this state and includes an agency assigned to a department for administrative purposes. State agency does not include the legislative and judicial branches, the Arizona Board of Regents, state universities, the Arizona State Schools for the Deaf and the Blind, the Department of Public Safety, the Arizona Peace Officer Standards and Training Board, the Cotton Research and Protection Council or public corporations. A.R.S. § 41-741(14)

"State Personnel Board" is defined in A.R.S. § 41-741 and means the board established by A.R.S. Title 41, Chapter 4, Article 6.

"State Personnel System" is defined in A.R.S. § 41-741 and means all state agencies and employees of those agencies that are not exempted by the provisions of A.R.S. Title 41, Chapter 4, Article 4.

"State service" is defined in A.R.S. § 41-741 and means all offices and positions of employment in state government that, before September 29, 2012, were subject to the provisions of A.R.S. Title 41, Chapter 4, Articles 5 and 6 that were in effect before September 29, 2012.

"Supervisor" means a state employee who has one or more other state employees reporting directly to the person and, for those state employees, typically has the authority to:

(a) Approve sick or annual leave.

(b) Recommend hiring, discipline or dismissal.

(c) Assign or schedule daily work.

(d) Complete a performance evaluation. A.R.S. § 41-741(18)

"Temporary appointment" means an appointment made for a maximum of 1,500 hours worked in any agency in each calendar year.

"Transfer" means the movement of an employee from one position to another position in the same or an equivalent grade.

"Uncovered employee" means an employee in uncovered service. A.R.S. § 41-741(19)

"Uncovered service" means employment at will and includes all state employees except those in covered service. A.R.S. § 41-741(20)

"Working day" or "working hours" means a day or the hours an employee is regularly scheduled to work.

R2-5A-104. Prohibition Against Discrimination, Harassment and Retaliation

A. General. Agencies shall comply with all federal and state anti-discrimination laws. Agencies shall not unlawfully discriminate against any individual with regard to the terms and conditions of employment, including hiring, pay, leave, insurance benefits, retention, and rehiring. The information provided in this rule is intended to serve as a summary of agencies' and employees' obligations with regard to compliance with applicable federal and state laws, rules and regulations. Nothing in these rules shall be construed as providing rights in excess of, or in addition to those authorized under federal laws and Arizona Revised Statutes.

B. Equal Employment Opportunity. Each agency shall provide equal employment opportunity for all individuals regardless of race, color, national origin, religion, age, disability, genetic information, sex (including sexual orientation and gender identity), pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation. It is the policy of this state that all individuals are treated in a fair and non-discriminatory manner throughout the application and employment process.

C. Harassment Prohibited. Harassment of a sexual nature or harassment based on ~~race, color, national origin, religion, age, disability, genetic information, sex, pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation~~ any protected category is prohibited. An agency shall prohibit the unlawful harassment of any employee in the course of the employee's work by supervisors, coworkers, or third parties, such as vendors or customers. Any employee who engages in unlawful harassment may be subject to disciplinary action, up to and including termination of employment.

D. Protection from Retaliation. The state prohibits retaliation against anyone for raising a concern about, assisting in an investigation of, or filing a complaint concerning unlawful discrimination or unlawful harassment.

E. Complaints.

1. An applicant for state employment who has a complaint alleging discrimination or harassment may file a complaint under the procedures in R2-5A-308.
2. It is every employee's responsibility to promptly bring any allegation of discrimination, harassment or retaliation to the attention of the employing agency. Such complaints shall be filed under the procedures established under Article 9.

R2-5A-105. Records

A. Definitions. For the purposes of this Section, "record" generally refers to a paper document; however, a document may be maintained electronically.

B. Application Materials.

1. An agency head shall maintain and keep confidential all resumés, applications, tests, test results, records, correspondence, and other documents used to seek state employment. The agency head shall not release

any materials that the agency head determines would compromise the application process for future applicants and shall restrict the review of the applicant's application materials to:

a. The applicant,

b. An individual who has written authorization from the applicant,

c. State officials in the normal line of duty, or,

d. Officials acting in response to court orders or subpoenas.

2. The Director, or designee, shall ensure that when a person makes a public records request under A.R.S. Title 39, Chapter 1, Article 2 for applicant information:

a. Information shall only be provided if the position under recruitment is a high-level position and the public has a legitimate interest in the names of persons being seriously considered for the position, as determined by the Director; and

b. Only the names and resumés of the final candidates for the position as determined by the Director shall be released.

C. Official Personnel File.

1. An employee's official personnel file is the official record and documentation of the employee's employment.

2. An agency head shall, for each agency employee, maintain an official personnel file that contains:

a. A copy of the job application for the employee's current position;

b. A copy of all performance appraisals completed as required by Article 7;

c. Personnel action forms that authorize changes in employment status, position, classification, pay, or leave status;

d. Letters of commendation as established by agency policy; and

e. Correspondence consisting of:

i. ~~Letters of reprimand, suspension, demotion or dismissal~~ Disciplinary actions;

ii. Acknowledgments of receipt of ~~letters of reprimand or other~~ disciplinary ~~communications~~ actions; and

iii. Employee objections or responses to correspondence described in subsection (C)(2)(e)(i) that are not filed as complaints under Article 9 or grievances under Subchapter B, Article 4, if the objection or response is received within 30 calendar days of the date of the disciplinary action ~~or letter of reprimand~~.

3. For the purpose of this subsection, an official is an individual who provides identification verifying that the individual is exercising powers and duties on behalf of the chief administrative head of a public body. An agency head shall limit access to an employee's official personnel file to:

a. The employee;

b. The employee's attorney or an individual who has written authorization from the employee to review the personnel file;

c. Agency personnel designated by the agency head as having a need for the information;

d. A Department official in the normal line of duty;

e. An official acting in response to a court order or subpoena;

f. An official of an agency to which the employee has applied; and

g. An official of an agency of the federal government, state government, or political subdivision, if the agency head of the employing agency deems access to the file to be appropriate.

4. When an employee moves from one state agency to another, the gaining agency shall request that the losing agency forward the employee's official personnel file to the gaining agency. The losing agency shall forward the file within 20 business days of the receipt of the request.

5. When a former employee returns to state employment within five years of the former employee's separation to an agency other than the agency in which the employee was last employed, the gaining agency shall request that the last agency forward the employee's official personnel file. The last agency shall forward the file within 20 business days of the receipt of the request.

D. Disclosure of information.

1. Definitions. For the purposes of this subsection:

~~a. "Disciplinary actions" means letters of reprimand, suspension, demotion or dismissal.~~

~~b.~~a. "Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions" ~~means the correspondence listed in subsection (D)(1)(a) and~~ includes disciplinary actions, an official notice of charges of misconduct as applicable to covered employees, the final disciplinary letter, and any responses related to complaints, grievances or appeals upholding, amending, or overturning the discipline.

~~c.~~b. "Employee responses" means any written documents, submitted and signed by the employee, either:

i. In response to an official notice of charges of misconduct;

ii. As a formal complaint filed under the provisions of Article 9 or a formal grievance under Subchapter B, Article 4, of these rules pertaining to a specific disciplinary action; or

iii. As an objection to a specific disciplinary action and contained in the employee's official personnel file under subsection (C)(2)(e)(iii).

2. Personnel records are confidential and an agency head shall ensure that except as provided in subsection (C)(3), only the following information about a current or former employee is provided to any person making a public records request under A.R.S. Title 39, Chapter 1, Article 2.

a. Name of employee;

b. Date of employment;

c. Current and previous class titles and dates of appointment to the class;

d. Current and previous agencies to which the employee has been assigned and the location of the main office for each agency;

e. Current and previous salaries and dates of each change;

f. Name of employee's current or last known supervisor; and

g. Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions, including the employee responses to all disciplinary actions, unless providing this information is contrary to law.

E. Insurance and medical records. An agency head:

1. May maintain group insurance enrollment forms in an employee's official personnel file for an employee hired prior to September 29, 2012.
2. Shall maintain in a separate file that is not part of the employee's official personnel file:
   a. Medical records, and
   b. Group insurance enrollment forms for an employee hired on or after September 29, 2012.

F. Employment eligibility records. An agency head shall retain I-9 forms and other documents required by law to prove employment eligibility in a separate file that is not part of the employee's official personnel file.

G. Employee access to files. An employee has the right to review only the employee's official personnel file.

H. Recordkeeping Requirements. An agency head shall ensure that agency recruitment and employee records are maintained in accordance with the General Records Retention Schedule for Human Resources/Personnel Records published by and on file with the Secretary of State, Arizona State Library, Archives and Public Records.

ARTICLE 3. RECRUITMENT, SELECTION AND APPOINTMENT

R2-5A-305. Employment of Relatives

A. Relationship to supervisors. An individual shall not be employed in a position if the immediate supervisor of the individual is related within the third degree of affinity (marriage) or consanguinity (blood), or by adoption.

B. Relationship to other employees. An individual shall not be employed in a position if the individual is related within the third degree to an employee who currently occupies a position under the same immediate supervisor.

C. Exceptions. The Director may grant an exception to the prohibitions in subsections (A) and (B) if there is no other qualified person for the position at the location.

D. Relationship to subordinate employees. A supervisor or manager at any level shall not make an employment decision specifically benefitting any individual who is related within the third degree, unless an exception under subsection (C) has been granted.

E. Relationship to interviewer or interview panel members. An employee shall not interview or serve on an interview panel of any job candidate if the candidate is related within the third degree. An agency head may authorize an exception in an individual case. Any exception shall be documented by the agency head and subject to audit by the Director.

F. Definition. For the purpose of this Section, persons related within the third degree include a spouse, child, parent, grandchild, grandparent, sister, brother, great grandchild, great grandparent, aunt, uncle, niece, nephew or first cousin.

ARTICLE 4. COMPENSATION SYSTEM

R2-5A-402. Salary Administration

A. General. The Director shall develop procedures for salary administration for use by all agencies when setting the salary of an employee. In setting an employee's salary, an agency head shall consider such factors as the employee's education, experience, skills, performance, and ~~current or former salary, as well as~~ the current salaries of employees in the same class in the agency and the relative experience and performance of those employees.

B. Classes. The Director shall assign each class to a salary range and to a grade.

C. Salary. The base salary of an employee shall be not less than the minimum nor more than the maximum of the salary range of the class to which the employee's position is allocated, except as provided by these rules.

D. Salary adjustment. The salary used to compute a salary adjustment is the employee's base salary. Following an adjustment to the base salary, an agency shall add to the new rate of pay any special pay supplement still valid.

E. New hire starting rate. An agency head may offer a salary to a new hire within the salary range of the class to which the employee is being appointed in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.

F. Promotion. An employee who has a change in assignment from a position in one class to a position in another class having a higher grade shall receive a salary increase as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.

G. Demotion.

1. An employee who has a change in assignment from a position in one class to a position in another class having a lower grade, whether voluntary or involuntary, shall receive a salary decrease as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
2. A demoted employee shall not be eligible for an increase to base salary for six months after the effective date of the demotion to the new position, other than a salary increase that is legislatively mandated. After six months, the employee may become eligible for a salary increase only after a performance evaluation in the new position for which the employee received an overall rating of "meets expectations" or higher.

H. Lateral transfer. An employee who has a change in assignment from a position in one class to a position in <u>the same class or in</u> another class having the same grade shall receive no increase in salary, unless an exception is approved by the Director. The Director may approve a salary increase based upon documentation of recruitment difficulties to fill the position, specific needs identified by the agency, or the employee's qualifications. Transferred employees are not eligible for increases to base salary during their first six months in the new job unless approved by the Director. An employee who transfers to another agency may become eligible for a salary increase only after a performance evaluation in the new position for which the employee received an overall rating of "meets expectations" or higher.

I. Reversion of covered employee. A covered employee who is reverted under the rules in Subchapter B shall be paid the same salary as that paid prior to the promotion, plus the percentage or dollar amount of increase of an intervening general salary adjustment for which the employee was eligible.

J. Job reallocation.

1. The base salary of an employee in a position that is reallocated to a class in a higher pay range may receive a salary increase in accordance with the procedures and guidelines published by the Director. If increasing the base salary of an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.
2. The base salary of an employee in a position that is reallocated to a class with the same or lower pay range shall remain the same provided that the employee's salary is within the pay range of the position. If the employee's salary is less than the minimum of the salary range or greater than the maximum salary of the new pay range, the employee's salary shall be the minimum salary or the maximum salary of the new pay range, respectively.

K. Job regrade.

1. The base salary of an employee in a class that is reassigned to a higher grade shall be adjusted by the amount determined by the Director. If adjusting the base salary of an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.
2. The base salary of an employee in a class that is reassigned to a lower grade shall remain the same provided that the employee's salary is at or above the minimum salary of the new pay range of the class, and may be greater than the maximum salary of the pay range. If the employee's salary is greater than the maximum, the employee is not eligible for an increase to base pay until the employee's salary is less than the maximum salary of the new pay range.

L. Merit increases.

1. The Director shall establish guidelines for merit increases to base pay.
2. Merit increases shall be available:
    a. To uncovered employees.
    b. To covered employees only if such increases are legislatively appropriated.
3. Subject to the guidelines established by the Director:
    a. Merit increases may be implemented at the discretion of the agency head.
    b. Merit increases are subject to the availability of funding and must be within an agency's appropriation unless otherwise legislatively appropriated.
4. ~~An agency head shall report to the Director on the utilization of merit increases pursuant to the reporting requirements in the guidelines established by the Director.~~

M. Legislatively-appropriated salary adjustments. Subject to legislative appropriation, the Director shall determine employee eligibility and criteria for salary adjustments.

R2-5A-403. Supplemental Pay

A. General. Supplemental pay is in addition to an employee's base pay. The salary of an employee may exceed the maximum salary of the pay range for the employee's class if the excess amount is due to the receipt of supplemental pay.

B. Shift differential. The Director may authorize a shift differential to be paid to an employee on other than a day shift. The Director shall establish a competitive shift differential rate periodically based on an annual survey of the market place. Employees in the same class in the same agency who work on the same shift shall receive the same shift differential pay.

C. Special assignment. An employee on a special assignment shall remain in the employee's current position with no change to base salary. If the classification to which the employee is on a special assignment is a higher grade, the employee shall be provided a conditional pay supplement in an amount that, when added to the employee's base salary, would be within the range of the higher classification. If the classification to which the employee is on a special assignment is the same or a lower grade, the employee shall not be eligible for a conditional pay supplement while on special assignment. Any conditional pay supplement received by the employee for the special assignment shall be discontinued at the conclusion of the special assignment.

D. Conditional pay supplements. The Director may establish conditional pay supplements. A conditional pay supplement provides additional compensation to an eligible employee and shall be discontinued when the qualifying conditions no longer apply. An employee may be awarded multiple conditional pay supplements. A conditional pay supplement does not:

1. Change base salary;
2. Provide a basis for the computation of a salary increase; or
3. Provide a basis for the computation of pay upon an employee's promotion, demotion or transfer.

E. Variable pay.

1. The Director may establish variable pay strategies determined to be the prevailing practices in the market and in the best interest of the state.
2. If the Director establishes variable pay strategies, the Director shall establish guidelines for the administration of variable pay.
3. Variable pay shall be available only to uncovered employees, except for employees in covered positions classified as Correctional Officers I, II, or III, or Community Corrections Officers, or covered positions that require full authority peace officer certification, as specified in the guidelines established by the Director.
4. Subject to the guidelines established by the Director:
   a. Variable pay strategies may be implemented at the discretion of the agency head.
   b. Variable pay strategies are subject to the availability of funding and must be within an agency's appropriation unless otherwise legislatively appropriated.
5. ~~An agency head shall report to the Director on the utilization of variable pay strategies pursuant to the reporting requirements in the guidelines established by the Director.~~

R2-5A-405. ~~Tuition Reimbursement for~~ Education Assistance

A. General. A state agency may assist an employee in the pursuit of educational goals by providing tuition reimbursement and student loan repayment assistance.

B. ~~Procedures~~Tuition reimbursement. Prior to granting tuition reimbursement, an agency shall establish a policy which shall include the following conditions:

1. The educational program will provide a benefit to the state.
2. The employee shall successfully complete the required course work or the educational requirements of the program in order to receive reimbursement.
3. Education assistance may not exceed $5,250 per employee in any one calendar year unless approved in advance by the Director.
4. An employee who receives education assistance may be required to return all or a portion of the amount received if the employee does not remain employed with the agency for a defined period of time, as specified in the agency's policy.

C. Student loan repayment assistance. An agency that provides tuition reimbursement may also provide student loan assistance to an eligible employee in the repayment of student loans obtained by the employee and used for the actual costs paid for educational expenses and living expenses that occurred during the employee's undergraduate, graduate or professional education if the education is required or a selective preference for the employee's current position. Before granting student loan repayment assistance, an agency head shall develop a written policy that provides for equal consideration of all employees similarly situated. The policy will describe the need being addressed, and the benefit expected to be gained. The agency head shall submit the proposed policy and any subsequent changes to the Director for approval, and include at a minimum:

1. Eligibility requirements;
2. Request and approval procedures;
3. Documentation required to support the request for repayment assistance;
4. The monthly limit on student loan repayment assistance and a specified lifetime cap;
5. A requirement that the employee receiving student loan repayment assistance must provide to the agency monthly proof of payment of the monthly repayment amount for each active student loan approved for assistance;
6. Information regarding how an employee's leave of absence or separation affects student loan repayment assistance.

ARTICLE 5. CONDITIONS OF EMPLOYMENT

R2-5A-502. Hours and Location of Work

A. State work week. The state work week is the period of seven consecutive days starting Saturday at 12:00 a.m. and ending Friday at 11:59 p.m. An agency head may apply to the Director for an exception from the work

week period for all or part of an agency workforce. The Director may grant an exception from the work week period to promote efficiency in the State Personnel System.

B. Hours of ~~employment~~ work.

1. An agency head shall determine the hours of employment in the work week for each agency employee.
2. ~~2.~~ a. An agency head may provide for breaks during the work period consistent with carrying out the duties of the agency.
3. ~~3.~~ b. An agency head may require an employee to work overtime.

~~**C. Flexible work options.**~~ 2. An agency head may offer a flexible 40-hour work week option to an employee if the agency head determines the agency's services can be maintained.

~~**D. Attendance standards**~~. 3. An agency head may establish a standard of attendance.

C. Location of work. Every employee shall have a designated work location in the State of Arizona.

1. An agency head shall determine the work location for each agency employee.
2. An agency head may allow an employee to work from an alternate location, subject to the employee's position requirements, the business needs of the agency, and in accordance with the procedures established by the Director. An employee who is authorized to work from an alternate location may be required to report to the employee's designated State of Arizona work location when directed.
3. The employee's designated State of Arizona work location shall be the geographic location of the position for the purposes of R2-5A-C601, pertaining to furlough, and R2-5B-602, pertaining to reduction in force.

R2-5A-504. Alcohol and Drug-free Workplace

A. General. State agencies shall prohibit the manufacture, distribution, dispensation, possession or use of alcohol, illegal drugs, unauthorized drugs, inhalants, or other unauthorized controlled substances during an employee's working hours or while on state premises or worksites, including state vehicles and property leased to the state. A state employee shall not be impaired by alcohol or drugs while on duty.

B. Written policy. Each agency head shall adopt a written policy to address testing or retesting for the presence of alcohol or drugs of its employees and if applicable, prospective employees. The policy shall include all of the requirements listed in A.R.S. § 23-493.04. The agency head will submit its proposed alcohol and drug-free workplace policy and any subsequent changes to the Director for approval.

ARTICLE 6. LEAVE

PART B. PAID LEAVE

R2-5A-B603. Sick Leave

A. Definition. "Sick leave" is any approved period of paid absence granted an employee due to:

1. Illness or injury that renders the employee unable to perform the duties of the employee's position.
2. Disability of the employee that is caused by pregnancy, childbirth, miscarriage, or abortion.
3. Examination or treatment of the employee by a licensed health care practitioner.

4. Illness, injury, disability caused by pregnancy or childbirth, or examination or treatment by a licensed health care practitioner of an employee's spouse, dependent child, or parent. Sick leave granted for this purpose shall be charged to the employee's sick leave account and shall not exceed 40 hours per calendar year. For the purposes of this Section:
    a. The term "dependent child" means a natural child, an adopted child, a foster child, or a stepchild, more than one-half of whose support is received from the employee.
    b. The term "parent" means a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or an individual who stood "in loco parentis."
5. Attendance at court-related proceedings by the employee under A.R.S. § 8-420 or A.R.S. § 13-4439.

B. Accrual.

1. All state employees, except temporary and part-time employees, shall accrue sick leave at the rate of 3.70 hours bi-weekly.
2. Temporary employees shall not accrue sick leave.
3. Part-time employees who:
    a. Work 1/4 time, 1/2 time, or 3/4 time shall accrue a proportional amount of sick leave;
    b. Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time will accrue sick leave at the next lower rate;
    c. Work less than 1/4 time shall not accrue sick leave.
4. Except as provided by R2-5A-D602 for an employee on industrial leave, an eligible employee accrues sick leave each bi-weekly pay period if the employee has been in a pay status for at least one-half of the employee's scheduled work hours in that pay period or month.
5. A sick leave accrual is credited on the last day of the bi-weekly pay period or month in which the accrual is earned and is available for use on the first day of the following pay period or month. An employee who is separating from state employment accrues leave through the employee's last date of employment for the purpose of determining the employee's accumulated sick leave at the time of the employee's separation pursuant to subsection (F).

C. Accumulation. Sick leave accumulates without limit.

D. Use of sick leave.

1. Sick leave may be taken when approved by the agency head.
2. The agency head may require submission of evidence substantiating the need for sick leave. If the agency head determines the evidence is inadequate, the absence shall be charged to another category of leave or considered absence without leave.
3. An agency head may require an employee to be examined by a licensed health care practitioner designated by the agency head.
    a. If the licensed health care practitioner determines that the employee should not work due to illness or injury, the agency head may place the employee on sick leave or, if the employee's sick leave is exhausted, charge the absence to another category of leave or leave without pay.

b. The agency head may require the employee to obtain approval from the licensed health care practitioner before returning to work.

c. The agency shall pay for all examinations required pursuant to this subsection. The employee shall not be charged any leave while participating in or traveling to or from any examination required pursuant to this subsection.

E. Movement to another state agency. An employee who moves to another state agency shall transfer all accumulated and unused sick leave to the employee's sick leave account in the new state agency.

F. Separation. All sick leave credits are forfeited upon separation from state employment except as provided in A.R.S. § 38-615 or otherwise provided by law. However, an employee who returns to state employment within two years after separation shall be credited with all unused sick leave accumulated at the time of separation if the employee was not paid for accumulated sick leave pursuant to A.R.S. § 38-615.

R2-5A-B606. Civic Duty Leave

A. General. Upon substantiated application, an employee shall receive absence with pay as civic duty leave while serving as a juror, complying with a subpoena, voting, serving as a voting location worker, or serving as a member of a governmental board, commission, or similarly constituted governmental body, subject to the conditions set forth in this rule and the limitations in R2-5A-A601(B).

B. Use of civic duty leave. Except for voting pursuant to A.R.S. § 16-401 (primary elections) or A.R.S. § 16-402 (general elections), an employee granted civic duty leave shall report for duty with the employing agency whenever the employee's presence is not required for the civic duty, unless:

1. The distance to the work location would preclude timely reporting for the civic duty, or
2. The employee cannot return to work at least one hour before the end of the work shift.

C. Appearance as a witness. An employee who is subpoenaed as a witness by any court or administrative, executive, or judicial body in this state may be absent with pay unless the testimony or evidence to be given relates to the employee's commercial, business, or personal matters.

D. Jury and witness fees. Employees who are granted civic duty leave when called for jury duty or subpoenaed as a witness shall remit any fees to the employing agency, except for mileage allowance.

E. Membership on a public service body. An employee serving as a member of a governmental board, commission, or similarly constituted governmental body may be absent with pay while performing official duties with the body.

F. Serving as a voting location worker. Subject to the guidelines established by the Director and following written approval from the employee's supervisor, an employee may be absent with pay during a statewide election in this State for the purpose of serving at a voting location and completing the required associated training. An employee who is granted civic duty leave for serving as a voting location worker shall remit to the employing agency any fees paid by the county administering the election for work performed while the employee is on civic duty leave.

R2-5A-B611. Meritorious Service Leave

A. The Director shall establish guidelines for meritorious service leave.

B. Except for employees in covered positions classified as Correctional Officers I, II, or III, ~~or~~ Community Corrections Officers, or positions that require full authority peace officer certification, meritorious service leave is only available to uncovered employees.

C. The guidelines established by the Director shall include at a minimum:

1. The maximum number of hours of meritorious service leave that may be awarded to an employee per calendar year;
2. The maximum percentage of agency employees eligible for meritorious service leave;
3. A requirement that an employee shall use meritorious service leave within 12 months of receipt of the leave;
4. A requirement that if the employee does not use the meritorious service leave within 12 months of receipt, that the leave is forfeited; and
5. A statement that unused meritorious service leave is forfeited upon separation from state employment.

D. Subject to the guidelines established by the Director, a meritorious service leave program may be implemented at the discretion of the agency head.

~~**E.** An agency head shall report to the Director on the utilization of meritorious service leave pursuant to the reporting requirements in the guidelines established by the Director.~~

PART D. LEAVE THAT COULD BE PAID OR UNPAID

R2-5A-D601. Family and Medical Leave Act (FMLA) Leave

A. General. All state agencies are responsible for complying with the federal Family and Medical Leave Act (FMLA) of 1993 and all applicable revisions. FMLA Regulations, 29 CFR 825.100 through 29 CFR 825.800 (July 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments. Any interference with, restraint of, or denial of an employee's rights provided by the FMLA is strictly prohibited.

B. Eligible employee.

1. An eligible employee for the purposes of the FMLA is an employee who:
   a. Is an employee of the state of Arizona;
   b. Has been employed by the state of Arizona for at least 12 months; and
   c. Worked for at least 1,250 hours of service during the 12 months immediately preceding commencement of the leave.
2. An agency head shall not extend FMLA benefits to an ineligible employee.

C. Situations covered by the FMLA. A state agency shall grant an eligible employee FMLA leave when the employee takes leave for one or more of the following reasons:

1. The birth of a child or placement of a child with the employee for adoption or foster care, provided the leave concludes within 12 months of the birth or placement.
2. To care for the employee's spouse, child or parent with a serious health condition.
3. The employee is unable to work because of the employee's own serious health condition.
4. Any qualifying exigency arising out of the fact that the employee's spouse, child or parent is a covered military member on active duty or call to active duty status in support of a contingency operation.
5. To care for a covered service member with a serious injury or illness when the covered service member is the employee's spouse, child, parent or next of kin.

D. Amount of FMLA leave.

1. An employee who takes FMLA leave for any of the situations described in subsections (C)(1), (2), (3) or (4) may take a maximum of 12 workweeks of leave during any rolling 12-month period, measured backward from the first day of each approved period of FMLA leave.
2. An employee who takes FMLA leave for the situation described in subsection (C)(5) may take up to 26 workweeks of leave in a single 12-month period.
3. During a 12-month period, an eligible employee is able to take no more than 12 workweeks of FMLA leave for any of the situations described in subsections (C)(1), (2), (3) or (4) and a combined total of 26 workweeks of FMLA leave if the leave includes the situation described in subsection (C)(5).
4. ~~If a husband and wife are both state employees, the husband and wife are limited in the amount of FMLA leave taken to a combined total of:~~
   a. ~~12 workweeks of leave for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.~~
   b. ~~26 workweeks of leave to care for a covered service member with a serious injury or illness.~~

E. Designation of FMLA leave. An employee need not specifically request FMLA leave to be placed on FMLA leave. If an eligible employee takes leave for any reason covered by the FMLA and has not already exhausted the employee's available FMLA leave, the agency head shall designate the employee's leave as FMLA leave.

F. Use of paid leave. Except for portions of industrial leave, an employee on FMLA leave shall be required to use the employee's available paid leave while on FMLA leave as follows and in the following order:

1. Sick leave or, as applicable, family sick leave subject to the provisions of R2-5A-B603.
2. Compensatory leave subject to the provisions of R2-5A-B607.
3. Annual leave subject to the provisions of R2-5A-B602.
4. Leave without pay subject to the provisions of R2-5A-C602.

G. Insurance benefits continuation. An employee who is using leave with pay remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay while on FMLA leave may continue to participate in the employee insurance plans as follows:

1. Health benefit plan participation. An employee is eligible to continue to participate in the health benefit plan for the duration of the FMLA leave by paying the employee premium/contribution. An agency head

may recover the state's portion of premium/contributions paid to maintain health coverage for an employee if the employee fails to return from FMLA leave under certain circumstances, in accordance with FMLA regulations incorporated by reference in subsection (A).

2. Life insurance plan participation. An employee continues to participate in the Basic Life and Accidental Death and Dismemberment Insurance Plan and may continue to participate in the supplemental life and dependent life insurance coverage by paying the full premium/contribution.
3. Termination of insurance. The insurance coverage of an employee on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.

H. Return from FMLA leave. An agency head shall restore an employee returning from FMLA leave to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. The provisions of the FMLA, not the provisions of R2-5A-C602(C), shall govern return to work from leave without pay granted to complete an FMLA-qualified leave.

I. Employee responsibilities. An employee is required to adhere to the employing agency's call-in procedures, give the agency 30 days' notice in the event of a foreseeable leave, provide requested documentation, and periodic updates of the employee's status and intent to return to work as requested by the agency.

J. Agency rights. Nothing in the FMLA or this rule should be construed as limiting an agency's right to manage, discipline or terminate an employee, including an employee's failure to comply with the agency's request for appropriate documentation to substantiate the employee's need for the leave. However, an employee's use of FMLA leave cannot be considered as a negative factor in any employment decision.

K. Conflict. If there is a conflict between the provisions of these rules and the FMLA, the provisions of the FMLA govern.

R2-5A-D602. Industrial Leave

A. Use of leave.

1. An agency head shall place an employee who sustains a job-related illness or injury that is compensable under the Workers' Compensation Law, A.R.S. Title 23, Chapter 6 on sick leave.
2. If an employee who is on leave under the Worker's Compensation laws meets Family and Medical Leave Act (FMLA) eligibility requirements and the leave qualifies for FMLA leave, an agency head shall count it as FMLA leave. An agency head shall apply industrial leave and FMLA concurrently.
3. An employee shall use leave in an amount necessary to receive total payments (leave payments plus Workers' Compensation payments) that do not exceed the gross salary of the employee.
4. If an employee exhausts all sick leave, compensatory leave and annual leave, an agency head shall place the employee on leave without pay.

B. Payments. If an employee receives a retroactive Workers' Compensation payment for any period of industrial illness or injury for which leave payments were received, the employee shall reimburse the agency for Workers'

Compensation payments that exceed 100% of the employee's ~~base pay~~ gross salary before the illness or injury, and the agency head shall restore the equivalent value of leave to the employee's appropriate leave account.

C. Light duty. If an employee has a job-related illness or injury that impairs performance on the former job, the agency head shall make every effort to place the employee in a suitable position within the agency, including a light duty assignment.

D. Restriction. An agency head shall not grant sick leave or leave without pay to an employee who fails to accept compensation available under the industrial injury and disease provisions of A.R.S. §§ 23-901 to 23-1091.

E. Insurance benefits continuation. An employee who is using leave with pay in accordance with subsection (A) remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay due to an industrial illness or injury may continue to participate in the employee insurance plans as follows:

1. Health benefit plan participation.
    a. An employee may continue to participate in the health benefit plan for a maximum of six months from the date of illness or injury by paying the employee premium/contribution.
    b. At the end of the six-month period, an employee who remains on leave without pay due to industrial illness or injury may continue to participate in the health benefit plan by paying both the state and employee premiums/contributions, until the employee returns to work or is determined to be eligible for Medicare coverage or Long-term Disability, whichever occurs first.
2. Life insurance plan participation. An employee who is on leave without pay continues to participate in the basic life and accidental death and dismemberment insurance plan without cost for six months after the month in which the illness or injury occurs. During this six-month period, the employee may continue supplemental life and dependent life coverages that were in effect at the start of the leave by paying the applicable premium/contribution.
3. Termination of insurance. The insurance coverage of an employee on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.

F. Accrual of leave. An employee shall continue to receive full leave accrual as long as the employee uses two or more hours of paid leave each day.

R2-5A-D603. Military Leave

An employee who requests absence with pay on military leave under A.R.S. § 26-168, 26-171, or 38-610 shall submit a copy of the orders for duty with the request for military leave. An employee who has not received the orders for duty prior to the start of the military leave shall submit a copy of the orders within five workdays of receipt. An employee may be absent with pay for military purposes for up to ~~thirty days~~ three times the average of regularly scheduled work hours in a weekly work period each year and up to six times the average of regularly scheduled work hours in a weekly work period in any two consecutive federal fiscal years. All state agencies are responsible for complying with the federal Uniformed Services Employment and Reemployment Rights Act

(USERRA) of 1994 and all applicable revisions. USERRA Regulations, 20 CFR 1002.1 through 20 CFR 1002.314 (April 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.

ARTICLE 7. PERFORMANCE MANAGEMENT

R2-5A-701. General

A. Performance management system. The Director shall establish a performance management system to evaluate the job performance of state employees. The performance management system established by the Director shall contain performance rating levels and shall contain numerical points to apply to each performance rating level established.

B. Administration. The Director shall develop an administrative manual and training on the performance management system.

C. Exceptions. The performance management system may be used:

1. As determined by the appointing authority for the agency head, to evaluate the job performance of the agency head.
2. As determined by the agency head, to evaluate the job performance of~~:~~
   ~~a. Each deputy director, or equivalent, of the agency.~~
   ~~b. Each assistant director, or equivalent, of the agency~~ each subordinate uncovered employee in a position listed in A.R.S. § 41-742(F).

R2-5A-702. Performance Management Process

A. Performance plan. For the purposes of this subsection, "performance plan" means ~~a document prepared~~ a communication by an employee's supervisor that outlines what is expected of the employee and how the employee's performance will be measured. Subject to review by agency management, a supervisor:

1. Shall ~~administer a performance plan for~~ communicate performance expectations with each employee within 30 days of becoming the employee's supervisor.
2. May modify a performance plan at any time during a performance period.
3. Shall modify a performance plan when significant responsibilities or expectations are added to or removed from a position.
4. Shall notify the affected employee of any modifications made to a performance plan under subsection (A)(2) or (3).

B. Performance evaluation requirements.

1. Informal evaluation. A supervisor shall:
   a. Monitor and evaluate an employee's performance throughout the rating period,
   b. Provide feedback to the employee on a regular basis, and

c. Attempt to correct inadequate performance where possible and appropriate.

2. Formal evaluation. A supervisor shall:
   a. Formally evaluate, document and rate the performance of each employee at least annually.
   b. Submit the evaluation to agency management for review prior to the evaluation being administered to the employee.
3. Covered probationary employees. Prior to granting a covered probationary employee permanent status, a supervisor shall evaluate a probationary employee at least once prior to the end of the employee's probationary period.

C. Responsibilities.

1. An employee shall comply with the performance plan established by the supervisor.
2. A supervisor shall comply with performance evaluation requirements.
3. An agency head shall ensure that all performance evaluations are completed as required by this Section.

ARTICLE 8. DISCIPLINARY ACTIONS

R2-5A-803. Employee Request for Review of Disciplinary Action

A. A covered employee who is issued a disciplinary action may have grievance or appeal rights, as applicable.

B. An uncovered employee does not have grievance rights or the right of appeal to ~~a state merit board or council~~ the State Personnel Board or the Law Enforcement Merit System Council.

C. A covered employee who files a complaint on a disciplinary action alleging discrimination or harassment is precluded from also filing a grievance through the agency's grievance procedure on the same disciplinary action that is the subject of the employee's complaint.

SUBCHAPTER B. COVERED EMPLOYEES

ARTICLE 4. GRIEVANCES

R2-5B-403. Grievance Procedures

Content. The grievance procedure established in each state agency shall include as a minimum:

1. An initial statement that any complaint alleging unlawful discrimination or unlawful harassment will be reviewed or investigated according to the provisions of the separate complaint process outlined in Subchapter A, Article 9, and not the grievance system.
2. A requirement that the grievant have an oral discussion with the ~~immediate supervisor~~ individual designated as the first step in the agency's grievance procedure in an attempt to resolve the employee's disagreement with the disciplinary action, prior to initiating the written grievance procedure.
3. A requirement that the employee file the grievance in writing with the agency grievance coordinator, within 10 business days after the occurrence of the action being grieved. The date of occurrence of a:

a. Reprimand is the date the reprimand was issued to the employee.
b. Suspension is the first day of suspension.

4. A requirement that the grievance contain a complete statement of all the facts and circumstances involved and the specific redress sought.
5. A provision that the grievant may select a representative at any step in the procedure after the oral discussion with the immediate supervisor.
6. A requirement that another state employee who serves as the representative of a grievant must receive approval for annual or compensatory leave to represent the grievant.
7. A requirement that the grievant must have a minimum of five business days after receipt of a response to forward the grievance at any step, must sign the grievance at each step, and must state the reasons why the response at the previous step was unsatisfactory.
8. A requirement that the agency head will respond to the grievant not later than 30 business days after receipt of the grievance at the first step. Within the 30 business day period, the time for any step may be extended by the agency head with the concurrence of the grievant.
9. A statement that the decision of the agency head is the final step in the grievance process.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION

STATE PERSONNEL SYSTEM

SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES

SUBCHAPTER B. COVERED EMPLOYEES

April 2024

1. Identification of the rulemaking:

A.R.S. § 41-703 provides general authority for the Director of the Arizona Department of Administration (ADOA) to adopt rules. A.R.S. § 41-743 provides specific authority for the ADOA Director to adopt rules and procedures relating to personnel and personnel administration. This rulemaking amends the rules in 2 A.A.C. Chapter 5, Department of Administration - State Personnel System (SPS), to address issues identified during the preceding Five-year Review Report, as approved by the Governor's Regulatory Review Council on July 12, 2018. The Department is also amending several other rules to align with statutory requirements, implement the directives outlined in Executive Order 2023-24, improve the effectiveness of the rules and make them less burdensome, and make the rules consistent with other sections of the Chapter.

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

The current rules relating to personnel administration contain some outdated terms and provisions that do not completely align with statutory amendments, other rules and current Department guidelines. The rules are designed to bring clarity and consistency to the areas identified during the preceding Five-year Review Report and also include the following amendments:

- R2-5A-402 and R2-5A-403 are amended to eliminate a reporting requirement, which will reduce a regulatory burden on SPS agencies.
- R2-5A-405 is amended to expand the rule, which has provided only tuition reimbursement, by adding a new subsection for student loan repayment assistance, when the employee's current position requires a degree or a degree is a selective preference for the position.
- R2-5A-502 is amended by expanding the rule to also include location of work. The increase in remote work since the COVID pandemic has made it necessary to address the location of work in rule. The proposed amendments stipulate that every SPS employee shall have a designated State of Arizona worksite.

- R2-5A-504 is amended by adding a requirement for each agency to adopt a written policy for testing or retesting for the presence of alcohol or drugs of its employees and if applicable, prospective employees.
- R2-5A-B606 is amended pursuant to Executive Order 2023-24, Ensuring Adequate Staffing of Voting Locations, which directed the Department to conduct rulemaking to provide for civic duty leave for the purpose of serving at a voting location during a statewide election in this State.
- R2-5A-D601 is amended to eliminate the combined total of federal Family and Medical Leave Act (FMLA) leave if both spouses work for the State. This amendment also serves to comply with Governor Hobbs' directive regarding changes to the family leave offerings for state employees.
- R2-5A-D603 is amended to comply with a new or existing state statutory requirement. Laws 2021, Ch. 193 (HB2297) amended A.R.S. § 38-610(C)(3) by modifying the calculation of military leave of absence for public employees from days to hours.
- R2-5B-403 (applicable only to covered employees) is amended to address issues raised by the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR), which has employees statutorily required to be covered, and the most covered employees of any agency. The current rule requires that the grievant have an oral discussion with the immediate supervisor; however, the immediate supervisor is frequently not in a position of authority to make disciplinary decisions. The Department is amending the rule to require that the oral discussion be held instead with the individual designated as the first step in the agency's grievance procedure.

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>:

If the areas identified in the preceding Five-year Review Report are not amended, several of the rules will lack clarity and may be inconsistent with statutes, other rules and Department processes. Further:

- Requirements for agencies to submit reports under current R2-5A-402 and R2-5A-403 pose an unnecessary burden on agencies and are in conflict with current Department procedures; these requirements would remain in rule creating unnecessary confusion if the rules are not changed.
- Leaving R2-5A-405 unchanged by continuing to offer only tuition reimbursement does not provide any education assistance for state positions with a degree requirement or positions where a degree is a selective preference for the position.
- Not amending the rules to require every state employee to have a designated State of Arizona worksite will result in a lack of clarity when determining the geographic location of a position.
- If R2-5A-504 is not amended to require each agency to adopt a written policy for drug and alcohol testing to include the requirements listed in A.R.S. § 23-493.04, agencies without such a policy could be limited in their ability to conduct such tests and the protection provided by the statutes.
- Leaving R2-5A-B606 unchanged will result in the Department failing to comply with a directive issued by the Governor.

- Not eliminating the combined total of FMLA leave if both spouses work for the State as currently prescribed in R2-5A-D601 will result in the Department failing to comply with a directive issued by the Governor.
- Leaving R2-5A-D603 unchanged will result in the rule being unclear and inconsistent with statute.
- Requiring a grievant to have an oral discussion with the immediate supervisor when the immediate supervisor is not in a position of authority to make or change disciplinary decisions is an unnecessary step in the grievance process that would remain in place if R2-5B-403 is not amended.

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

The Department anticipates some changes in the frequency of the targeted conduct because of the rulemaking. There will be an increase in the number of agency policies submitted to the Department for review and approval because of the amendments to R2-5A-405 and R2-5A-504. There may be a slight increase in the utilization of sick leave, civic duty leave, FMLA leave and military leave because of the rulemaking.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rulemaking:

The SPS is the largest personnel system in state government, encompassing over 100 state agencies, boards, commissions and offices, and approximately 34,000 employees. SPS rules affect SPS agencies, employees, and applicants for positions within the SPS. The SPS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on small businesses or other consumers. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the Department to prepare the rule package. Any financial impact or administrative expenses associated with the rules will be covered by ordinary operating funds.

3. Cost benefit analysis:

Annual costs/revenues changes are designated as minimal when more than $0 and $2,000 or less, moderate when between $2,000 and $20,000, and substantial when $20,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

a. The probable costs and benefits to the implementing agency and other agencies directly affected by the rulemaking, including the number of new full-time employees necessary to implement and enforce the proposed rule:

Neither the Department nor any other state agencies will require new full-time employees nor any contractor expenditures to implement these amended rules.

The Department believes that making changes to clarify the rules may make the rules easier to understand, improve compliance, and may provide a significant benefit to all state agencies, including the Department. With the improved clarity and specificity in the rules, the Department may receive a minimal-to-moderate reduction in costs for providing guidance and technical assistance on an ongoing basis to agency personnel offices, employees and applicants regarding elements of the rules. Further, the elimination of various reporting requirements will reduce a regulatory burden on state agencies.

In addition to addressing issues identified in the Department's preceding Five-year Review Report, the rulemaking includes amendments to three (3) rules in Article 4, Compensation System. The SPS Rules contain a provision that the granting of any compensation under the Rules is contingent upon the availability of funds (R2-5A-102(B)). The Compensation Guidelines published by the Department also address the availability of funds and states in pertinent part: "All compensation strategies are subject to the availability of funding, and must be managed within the agency's appropriation. The availability of these strategies does not obviate the need for agencies to manage within their budget. Agencies shall not implement compensation strategies that create new future fiscal obligations that will require additional appropriations, unless (1) the Legislature has approved such funding in advance of the implementation; or (2) agency spending reductions have freed up funds sufficient to eliminate the need for new monies to implement the strategy (near and long-term) without any degradation to customer service. Agencies shall remain mindful of their obligations to be fiscally responsible and to manage spending within their own budgets, while contemplating compensation strategies." Thus, the economic impact of the amendments to these rules is expected to be minimal:

- The amendments to R2-5A-402 and R2-5A-403 eliminate reporting requirements and obsolete language referencing the guidelines. It is anticipated that removal of this language will benefit agencies by improving clarity and consistency with the guidelines.
- The expansion of R2-5A-405 to add a new subsection for student loan repayment assistance will allow an agency to use this strategy when the agency has professional positions that require a degree in order to qualify for the position, so tuition reimbursement would not apply. An agency that utilizes this option must develop a written policy for review and approval by the Department, and must still manage spending within the agency's budget. The anticipated benefits to an implementing agency are attracting more candidates and increasing retention.

The amendments to R2-5A-502 are intended to address remote work especially, and adds a requirement that every employee have a designated work location in the State of Arizona. There may be a one-time, minimal cost to state agencies as agency staff identify these worksites for every employee within the agency. The benefits to state agencies are in the form of adding clarity regarding the geographic location of the position if the agency is faced with a furlough or a reduction in force, both of which can be limited to agency operations in a geographic area.

R2-5A-504 adds a requirement for each agency to adopt a written policy for testing or retesting for the presence of alcohol or drugs of its employees and if applicable, prospective employees. There may be administrative costs to agencies associated with the development of policy; however, the Department provides a template policy for utilization by agencies, so any costs should be minimal. The submission of the agency's policy to the Department for approval is similar to the wording in other rules requiring other agency policies to be submitted for approval. The benefit of having a policy that includes the requirements listed in A.R.S. § 23-493.04 will offer the agency protections provided by the statutes.

The rulemaking also includes amendments to six (6) rules in Article 6, Leave. Several of these amendments address areas identified during the preceding Five-year Review Report, and also include the following amendments:

- R2-5A-B606 is amended pursuant to Executive Order 2023-24, Ensuring Adequate Staffing of Voting Locations, which directed the Department to conduct rulemaking to provide for a State employee to utilize civic duty leave for the purpose of serving at a voting location during a statewide election in this State. Although this amendment expands the utilization of civic duty leave, the cost to the State is anticipated to be minimal because using the leave to serve at a voting location requires written approval from the employee's supervisor and leave used for this purpose is limited to statewide elections. During calendar year 2024, there are three (3) statewide elections: the Presidential Preference Election, the Primary Election and the General Election. The voting public and the counties will primarily benefit from this amended rule, as the Executive Order cites that the counties have struggled in recent election cycles to recruit sufficient numbers of poll workers, often resulting in long lines at the polls. The rule includes a provision for the State to recoup some of the costs of the leave by requiring an employee who is paid by the county while on civic duty leave from the State to remit those fees to the State.
- Under the FMLA, when both spouses work for the same employer, the employer may limit their FMLA leave to a combined total of 12 workweeks or 26 workweeks, as applicable. The amendments to R2-5A-D601 will eliminate the combined total of FMLA leave, allowing each spouse to use their full 12 or 26 workweeks of FMLA leave. The probable costs to agencies are anticipated to be minimal, as employees must use their available paid leave while on FMLA, and that leave is already budgeted as part of an employee's annual salary. The anticipated benefits to state agencies will include a reduction in recordkeeping and tracking of leave, which is particularly difficult when spouses work for different agencies. This amendment also serves to comply with Governor Hobbs' directive regarding changes to the family leave offerings for state employees.
- R2-5A-D603 is amended to comply with A.R.S. § 38-610(C)(3), as amended by Laws 2021, Ch. 193 (HB2297). HB2297 modified the calculation of military leave hours for public employees

from a specified number of days to the average total of regularly scheduled hours in a weekly work period. A Fact Sheet for HB2297 prepared by Senate Research staff on March 5, 2021, indicated that there was no anticipated fiscal impact to the state General Fund associated with the legislation. The costs to the Department will be the cost of this rulemaking package as well as programming costs to modify the calculation and are anticipated to be minimal. There may also be minimal costs to state agencies associated with modifying agency policies. The Department will benefit by being in compliance with the statute and State employees will benefit by being granted the appropriate calculation of military leave, as intended by the Legislature.

R2-5B-403 is applicable only to covered employees and is amended to require that the oral discussion (required prior to filing a formal grievance) be held with the individual designated as the first step in the agency's grievance procedure instead of the employee's immediate supervisor. There may be administrative costs to agencies associated with policy revisions and submission to the Department for review and approval; however, any such costs should be minimal. The benefits to state agencies will occur in cases where an immediate supervisor is not in a position of authority to make disciplinary decisions, which has resulted in an unnecessary step in the process. This amendment will serve to streamline the grievance process, and is anticipated to result in minimal-to-moderate reduction in costs.

b. <u>The probable costs and benefits to political subdivisions of this state directly affected by the rulemaking</u>:

No political subdivisions are directly affected by the rulemaking.

c. <u>The probable costs and benefits to businesses directly affected by the rulemaking</u>:

No businesses are directly affected by the rulemaking.

4. <u>A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the rulemaking</u>:

These rules apply only to SPS agencies and employees and applicants for positions within the SPS. As such, there is no expected impact on private employment or on public employment in political subdivisions.

5. <u>A statement of the probable impact of the rulemaking on small businesses</u>:

These rules apply only to SPS agencies and employees and applicants for positions within the SPS. Therefore, this rulemaking will have no impact on small businesses.

a. <u>An identification of the small businesses subject to the rulemaking</u>:

Not applicable.

b. The administrative and other costs required for compliance with the rulemaking:

Not applicable.

c. A description of the methods that the agency may use to reduce the impact on small businesses:

Not applicable.

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

Not applicable.

6. A statement of the probable effect on state revenues:

The Department does not expect the rules to affect state revenues. Any financial impact or administrative expenses associated with the rules will be covered by ordinary operating funds.

7. A statement of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:

Since this rulemaking addresses issues identified during a Five-year Review Report, as well as aligning with federal and state statutory requirements and a recent Executive Order, there is not a less intrusive or less costly alternative available at this time. As a result, no alternative method was considered.

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:

Not applicable.

Supp. 17-3

Supplement to the
Arizona Administrative Code
The official compilation of Arizona Rules

Replacement Check List

For rules filed in the third quarter between
July 1 - September 30
2017

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be 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.

TITLE 02. Administration

Chapter 05. Department of Administration - State Personnel System

Section Expired
R2-5-203

☐ REMOVE Supp. 13-1
Pages: 1 - 35

☐ REPLACE with Supp. 17-3
Pages: 1 - 36

The contact person who can answer questions about the expired rules in this Chapter:

Name: Governor's Regulatory Review Council
Address: 100 N. 15th Ave #305
Phoenix, AZ 85007
Telephone: (602) 542-2058

Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.

PUBLISHER
Arizona Department of State
Office of the Secretary of State, Administrative Rules Division

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION
September 30, 2017

RULES

A.R.S. § 41-1001(17) states: "'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. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. 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 2017 is cited as Supp. 17-1.

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.

ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering system separated into subsections.

HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

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 the introduction of a chapter can be found at the Secretary of State's website, www.azsos.gov/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 Arizona Administrative Register online at www.azsos.gov/rules, click on the Administrative Register link.

In the Administrative Code the Office includes editor's notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

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.

Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION - STATE PERSONNEL SYSTEM

(Authority: A.R.S. § 41-761 et seq.)

Editor's Note: The Chapter Title was amended from Department of Administration, Personnel Administration to Department of Administration, State Personnel System. All Articles 1 through 9 repealed under exempt rulemaking at 18 A.A.R. 2782 effective September 29, 2012 (Supp. 12-4).

Editor's Note: Because the rules in this Chapter that were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) have been repealed, the Chapter is printed on white paper (Supp. 99-3).

Editor's Note: This Chapter contains rules which were repealed and adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1997, Ch. 288, § 10. Exemption from A.R.S. Title 41, Chapter 6 means the Department of Administration did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Department was not required to hold public hearings on these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.

Article 1 consisting of Sections R2-5-101 through R2-5-105; Article 2 consisting of Sections R2-5-201 through R2-5-210 and R2-5-213; Article 3 consisting of Sections R2-5-301 through R2-5-306; Article 4 consisting of Sections R2-5-401 through R2-5-411 and R2-5-413 through R2-5-418; Article 5 consisting of Sections R2-5-501 through R2-5-503; Article 6 consisting of Sections R2-5-601 through R2-5-605; Article 7 consisting of Sections R2-5-701 and R2-5-702; Article 8 consisting of Sections R2-5-801 through R2-5-803; and Article 9 consisting of Sections R2-5-901 and R2-5-902 adopted effective December 31, 1986 (Supp. 86-6).

Former Article 1 consisting of Sections R2-5-101 and R2-5-102; former Article 2 consisting of Sections R2-5-201 through R2-5-205; former Article 3 consisting of Sections R2-5-301 and R2-5-302; former Article 4 consisting of Sections R2-5-401 through R2-5-403; former Article 5 consisting of Sections R2-5-501 and R2-5-502; and former Article 6 consisting of Sections R2-5-601 through R2-5-605 repealed effective December 31, 1986 (Supp. 86-6).

ARTICLE 1. REPEALED

Article 1, consisting of Sections R2-5-101 through R2-5-105 repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

Section

ARTICLE 2. REPEALED

Section

ARTICLE 3. REPEALED

Section

ARTICLE 4. REPEALED

Section

ARTICLE 5. REPEALED

Article 5, consisting of Sections R2-5-501 through R2-5-503 repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

Section

ARTICLE 6. REPEALED

Article 6, consisting of Sections R2-5-601 through R2-5-605, repealed by final rulemaking at 6 A.A.R. 4572, effective November

13, 2000 (Supp. 00-4).

ARTICLE 7. REPEALED

Article 7, consisting of Sections R2-5-701 through R2-5-702, repealed by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4).

ARTICLE 8. REPEALED

Article 8, consisting of Sections R2-5-801 through R2-5-803, repealed by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4).

ARTICLE 9. REPEALED

SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES

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ARTICLE 6. REDUCTION IN FORCE

Editor's Note: Articles 1 through 9, under Chapter 5, Department of Administration, Personnel Administration repealed at 18 A.A.R. 2782 effective September 29, 2012 (Supp. 12-4).

ARTICLE 1. REPEALED

R2-5-101. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective August 2, 1989 (Supp. 89-3). Subsection (48) corrected to read "without prejudice" (Supp. 95-2). Subsection (55) amended to correct a printing error (Supp. 99-3). Amended by final rulemaking at 9 A.A.R. 1040, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 4357, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1420, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 14 A.A.R. 2924, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 15 A.A.R. 207, effective March 7, 2009 (Supp. 09-1). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-102. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Correction to subsection (A) as certified effective December 31, 1986 (Supp. 87-3). Amended by final rulemaking at 9 A.A.R. 1040, effective May 4, 2003 (Supp. 03-1). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-103. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended by final rulemaking at 9 A.A.R. 1040, effective May 4, 2003 (Supp. 03-1). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-104. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section heading amended by final rulemaking at 9 A.A.R. 1040, effective May 4, 2003 (Supp. 03-1). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-105. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective August 2, 1989 (Supp. 89-3). Amended by final rulemaking at 9 A.A.R. 1040, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 16 A.A.R. 685, effective June 5, 2010 (Supp. 10-2). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 2. REPEALED

R2-5-201. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective September 15, 1994 (Supp. 94-3). Amended by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-202. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-203. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Subsection (G) corrected to add omitted text following the word "error" (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-204. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-205. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-206. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective September 15, 1994 (Supp. 94-3). Amended by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-207. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective August 2, 1989 (Supp. 89-3). Amended by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-208. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-209. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6).

Repealed effective August 2, 1989 (Supp. 89-3).

R2-5-210. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4).

R2-5-211. Repealed

Historical Note
Adopted effective August 2, 1989 (Supp. 89-3). Amended effective September 15, 1994 (Supp. 94-3). Amended by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-212. Repealed

Historical Note
Reserved Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-213. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Subsection (C)(2) corrected to read "job-related" in line 2; Amended effective April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 3. REPEALED

R2-5-301. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended by final rulemaking at 7 A.A.R. 2724, effective June 6, 2001 (Supp. 01-2). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-302. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended by final rulemaking at 7 A.A.R. 2724, effective June 6, 2001 (Supp. 01-2). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-303. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective August 2, 1989 (Supp. 89-3). Amended effective September 15, 1994 (Supp. 94-3). Amended effective March 4, 1997 (Supp. 97-1). Amended effective August 5, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 2724, effective June 6, 2001 (Supp. 01-2). Amended by final rulemaking at 16 A.A.R. 1129, effective August 7, 2010 (Supp. 10-2). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-304. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended by final rulemaking at 5 A.A.R. 4417, effective November 2, 1999 (Supp. 99-4). Amended by final rulemaking at 7 A.A.R. 2724, effective June 6, 2001 (Supp. 01-2). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-305. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 2724, effective June 6, 2001 (Supp. 01-2). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-306. Expired

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended by final rulemaking at 7 A.A.R. 2724, effective June 6, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1143, effective May 31, 2006 (Supp. 07-1).

R2-5-307. Expired

Historical Note
Adopted as an emergency effective February 22, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. New Section adopted effective March 10, 1993 (Supp. 93-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3483, effective July 19, 2002 (Supp. 02-3).

ARTICLE 4. REPEALED

R2-5-401. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended by final rulemaking at 14 A.A.R. 4309, effective November 4, 2008 (Supp. 08-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-402. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective July 6, 1993 (Supp. 93-3). Amended effective April 20, 1995 (Supp. 95-2). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-403. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended as an emergency effective August 19, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Amended effective September 12, 1989 (Supp. 89-3). Amended effective September 14, 1990 (Supp. 90-3). Amended effective August 5, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 2082, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1635, effective June 30, 2007 (Supp. 07-2). Amended by final rulemaking at 14 A.A.R. 4309, effective November 4, 2008 (Supp. 08-4). Section

repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-404. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective August 2, 1989 (Supp. 89-3). Amended effective September 15, 1994 (Supp. 94-3). Amended by final rulemaking at 14 A.A.R. 4309, effective November 4, 2008 (Supp. 08-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-405. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 14 A.A.R. 4309, effective November 4, 2008 (Supp. 08-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-406. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-407. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-408. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-409. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-410. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective August 2, 1989 (Supp. 89-3). Amended effective April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 14 A.A.R. 4309, effective November 4, 2008 (Supp. 08-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-411. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective August 2, 1989 (Supp. 89-3). Amended effective April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 14 A.A.R. 4309, effective November 4, 2008 (Supp. 08-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-412. Repealed

Historical Note
Adopted as an emergency effective August 19, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Amended and adopted as a permanent rule effective September 12, 1989 (Supp. 89-3). Rule citation in subsection (B) corrected (Supp. 95-2). Former Section R2-5-412 renumbered to R2-5-413; new Section R2-5-412 adopted by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-413. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective August 2, 1989 (Supp. 89-3). Amended effective April 20, 1995 (Supp. 95-2). Former Section R2-5-413 renumbered to R2-5-414; new Section R2-5-413 renumbered from R2-5-412 and amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 14 A.A.R. 4309, effective November 4, 2008 (Supp. 08-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-414. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Former Section R2-5-414 renumbered to R2-5-415; new Section R2-5-414 renumbered from R2-5-413 and amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 14 A.A.R. 4309, effective November 4, 2008 (Supp. 08-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-415. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective August 2, 1989 (Supp. 89-3). Former Section R2-5-415 renumbered to R2-5-416; new Section R2-5-415 renumbered from R2-5-414 and amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Section repealed; new Section R2-5-415 renumbered from R2-5-423 and amended by final rulemaking at 15 A.A.R. 207, effective March 7, 2009 (Supp. 09-1). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-416. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6) Amended effective August 2, 1989 (Supp. 89-3). Former Section R2-5-416 renumbered to R2-5-417; new Section

R2-5-416 renumbered from R2-5-415 and amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4357, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1420, effective May 31, 2008 (Supp. 08-2). Section repealed by final rulemaking at 15 A.A.R. 207, effective March 7, 2009 (Supp. 09-1).

R2-5-417. Repealed

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Amended effective August 2, 1989 and September 12, 1989 (Supp. 89-3). Former Section R2-5-417 renumbered to R2-5-418; new Section R2-5-417 renumbered from R2-5-416 and amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4357, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1420, effective May 31, 2008 (Supp. 08-2). Section repealed by final rulemaking at 15 A.A.R. 207, effective March 7, 2009 (Supp. 09-1). New Section made by final rulemaking at 17 A.A.R. 650, effective June 4, 2011 (Supp. 11-2). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-418. Repealed

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Amended effective August 2, 1989 (Supp. 89-3). Former Section R2-5-418 renumbered to R2-5-419; new Section R2-5-418 renumbered from R2-5-417 and amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 14 A.A.R. 1420, effective May 31, 2008 (Supp. 08-2). Section repealed by final rulemaking at 15 A.A.R. 207, effective March 7, 2009 (Supp. 09-1).

R2-5-419. Repealed

Historical Note

Adopted effective August 2, 1989 (Supp. 89-3). Former Section R2-5-419 renumbered to R2-5-421; new Section R2-5-419 renumbered from R2-5-418 and amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 14 A.A.R. 1420, effective May 31, 2008 (Supp. 08-2). Section repealed by final rulemaking at 15 A.A.R. 207, effective March 7, 2009 (Supp. 09-1).

R2-5-420. Repealed

Historical Note

Adopted effective August 2, 1989 (Supp. 89-3). Former Section R2-5-420 renumbered to R2-5-422; new Section R2-5-420 adopted by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Section repealed by final rulemaking at 15 A.A.R. 207, effective March 7, 2009 (Supp. 09-1).

R2-5-421. Repealed

Historical Note

Adopted effective February 28, 1991 (Supp. 91-1). Former Section R2-5-421 renumbered to R2-5-423; new Section R2-5-421 renumbered from R2-5-419 and amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 14 A.A.R. 1420, effective May 31, 2008 (Supp. 08-2). Section repealed by final rulemaking at 15 A.A.R. 207, effective March 7, 2009 (Supp. 09-1).

R2-5-422. Repealed

Historical Note

New Section R2-5-422 renumbered from R2-5-420 and amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Amended by final rulemaking at 14 A.A.R. 1420, effective May 31, 2008 (Supp. 08-2). Section repealed by final rulemaking at 15 A.A.R. 207, effective March 7, 2009 (Supp. 09-1).

R2-5-423. Renumbered

Historical Note

New Section R2-5-423 renumbered from R2-5-421 and amended by final rulemaking at 6 A.A.R. 4093, effective October 3, 2000 (Supp. 00-4). Former R2-5-423 renumbered to R2-5-415 by final rulemaking at 15 A.A.R. 207, effective March 7, 2009 (Supp. 09-1).

ARTICLE 5. REPEALED

R2-5-501. Repealed

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Amended effective April 20, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 5811, effective December 6, 2001 (Supp. 01-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-502. Repealed

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Amended effective September 15, 1994 (Supp. 94-3). Amended by final rulemaking at 7 A.A.R. 5811, effective December 6, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 1733, effective July 1, 2006 (Supp. 06-2). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-503. Repealed

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Amended effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 5811, effective December 6, 2001 (Supp. 01-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 6. REPEALED

R2-5-601. Repealed

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4).

R2-5-602. Repealed

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4).

R2-5-603. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4).

R2-5-604. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4).

R2-5-605. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 6 A.A.R. 4572, effective November 13, 2000 (Supp. 00-4).

ARTICLE 7. REPEALED

R2-5-701. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective September 15, 1994 (Supp. 94-3). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-702. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective September 15, 1994 (Supp. 94-3). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 8. REPEALED

R2-5-801. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Amended effective July 25, 1994 (Supp. 94-3). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-802. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-803. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

Editor's Note: Article 9 contained rules which were repealed and adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1997, Ch. 288, § 10. Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Department was not required to hold public hearings on these rules. Temporary rules repealed and adopted under these Sections are repealed from and after June 30, 1999 (Supp. 98-2). Temporary rules repealed and adopted pursuant to Laws 1997, Ch. 288, § 10 were repealed from and after June 30, 1999 and the rule in effect before the adoption of the temporary rules became effective again upon the repeal of the temporary rules (Supp. 99-3).

ARTICLE 9. REPEALED

R2-5-901. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

Editor's Note: The following Section R2-5-902 was temporarily repealed and a new Section was temporarily adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1997, Ch. 288, § 10. Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Department was not required to hold public hearings on these rules. Temporary rules adopted are repealed effective June 30, 1999 (Supp. 98-2). The temporary rules were repealed from and after June 30, 1999, pursuant to Laws 1997, Ch. 288, § 10; the rule in effect before the adoption of the temporary rules became effective again upon the repeal of the temporary rules (Supp. 99-3). Section R2-5-902 was repealed and a new Section was adopted by final rulemaking (Supp. 99-4).

R2-5-902. Repealed

Historical Note
Adopted effective December 31, 1986 (Supp. 86-6). Section R2-5-902 temporarily repealed; new Section temporarily adopted effective April 23, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1997, Ch. 288, § 10. Rules adopted under this temporary Section are repealed effective June 30, 1999 (Supp. 98-2). Section repealed from and after June 30, 1999, pursuant to Laws 1997, Ch. 288, § 10; the rule in effect before the adoption of the temporary rules became effective again upon the repeal of the temporary rules (Supp. 99-3). Section repealed by final rulemaking at 5 A.A.R. 4529, effective November 2, 1999; new Section adopted by final rulemaking at 6 A.A.R. 20, effective December 7, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 958, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 16 A.A.R. 2379, effective January 15, 2011 (Supp. 10-4). Section repealed by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5-903. Repealed

Historical Note
Emergency rule adopted effective January 4, 1996, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 86-6). Adopted with changes effective June 7, 1996 (Supp. 96-2). Section repealed by final rulemaking at 17 A.A.R. 650, effective June 4, 2011 (Supp. 11-2).

Editor's Note: The following Section was temporarily adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1997, Ch. 288, § 10. Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Department was not

required to hold public hearings on these rules. Temporary rules adopted are repealed effective June 30, 1999 (Supp. 98-2). Section repealed from and after June 30, 1999, pursuant to Laws 1997, Ch. 288, § 10 (Supp. 99-3). New Section R2-5-904 adopted by final rulemaking (99-4).

R2-5-904. Repealed

Historical Note

New Section adopted effective April 23, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1997, Ch. 288, § 10. This Section is automatically repealed effective June 30, 1999 (Supp. 98-2). Section repealed from and after June 30, 1999, pursuant to Laws 1997, Ch. 288, § 10 (Supp. 99-3). New Section adopted by final rulemaking at 6 A.A.R. 20, effective December 7, 1999 (Supp. 99-4). Formatting errors corrected (Supp. 08-3). Section repealed by final rulemaking at 16 A.A.R. 2379, effective January 15, 2011 (Supp. 10-4).

SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES

ARTICLE 1. GENERAL

R2-5A-101. Definitions

In this subchapter, the following words and phrases have the defined meanings unless otherwise clearly indicated by the context:

"Agency head" means the chief executive officer of a state agency, or designee.

"Appeal" means a covered employee's request for a review of a disciplinary action by the State Personnel Board under A.R.S. § 41-782 or the Law Enforcement Merit System Council under A.R.S. § 41-1830.16, as applicable.

"Applicant" means a person who seeks appointment to a position in state employment.

"Appointing authority" means the person or group of persons authorized by law or delegated authority to make appointments to fill positions. A.R.S. § 41-741(1)

"Appointment" means the offer to and the acceptance by a candidate of a position in a state agency.

"At will" means an employment relationship where either party to the relationship may sever the relationship at any time for any reason other than an unlawful reason. A.R.S. § 41-741(2)

"Base salary" means an employee's salary excluding supplemental pay provided by R2-5A-403, overtime pay or other pay allowance provided by law.

"Break in service" means a separation from state employment, regardless of the reason for separation. A.R.S. § 41-741(3)

"Business day" means the hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding observed state holidays.

"Candidate" means a person whose education, experience, competencies and other qualifications meet the requirements of a position and who may be considered for employment.

"Cause" means any of the reasons for disciplinary action provided by A.R.S. § 41-773 or these rules.

"Change in assignment" means movement of an employee to a different position in the same state agency or another state agency. A.R.S. § 41-741(4)

"Child" means, for purposes of R2-5A-B603, pertaining to sick leave, and R2-5A-B605 pertaining to bereavement leave, a natural child, adopted child, foster child, or stepchild.

"Class" means a group of positions with the same title and grade because each position in the group has similar duties, scope of discretion and responsibility, required qualifications, or other job-related characteristics.

"Class series" means a group of related classes as listed by the Arizona Department of Administration, Human Resources Division.

"Class specification" means a description of the type and level of duties and responsibilities of the positions assigned to a class.

"Competencies" means knowledge, skills, abilities, behaviors and other characteristics that contribute to successful job performance and the achievement of organizational results.

"Covered employee" means an employee who:

(a) Before September 29, 2012, is in the state service, is not uncovered pursuant to section 41-742, subsection A, and has remained in covered status without a break in service since that date.

(b) Before September 29, 2012, is in the state service, is employed as a Correctional Officer I, Correctional Officer II, Correctional Officer III or Community Corrections Officer and has remained in covered status without a break in service since that date.

(c) Before September 29, 2012, is in the state service, is a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and has remained in that status without a break in service since that date.

(d) On or after September 29, 2012, is a Correctional Officer I, Correctional Officer II, Correctional Officer III or Community Corrections Officer and is appointed to a position in the covered service, but does not include a position in any other class in the correctional officer class series or the community correctional officer class series or in any other correctional class series.

(e) On or after September 29, 2012, is a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and is appointed to a position that requires such a certification in the covered service. A.R.S. § 41-741(5)

"Covered position" means a position in the covered service.

"Covered service" is defined in A.R.S. § 41-741 and means that employment status conferring rights of appeal as prescribed in A.R.S. §§ 41-782 and 41-783 or A.R.S. § 41-1830.16, as applicable.

"Days" means calendar days, unless otherwise stated.

"Demotion" means a change in the assignment of an employee from a position in one class to a position in another class that has a lower grade.

"Department" means the Arizona Department of Administration.

"Director" means the Director of the Arizona Department of Administration, or the Director's designee, who is responsible for administering the state personnel system pursuant to applicable state and federal laws. A.R.S. § 41-741(7)

"Employee" means all officers and employees of this state, whether in covered service or uncovered service, unless otherwise prescribed. A.R.S § 41-741(8)

"Employing agency" means the agency where the employee is employed or, if an applicant, the agency to which the person has applied.

"Essential job function" means a fundamental job duty of a position that an applicant or employee must be able to perform, with or without a reasonable accommodation.

"FLSA" means the federal Fair Labor Standards Act.

"FLSA exempt" means a position that is not entitled to overtime compensation under the FLSA.

"FLSA non-exempt" means a position that is entitled to overtime compensation under the FLSA.

"FMLA" means the federal Family and Medical Leave Act.

"Full authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by the Arizona Peace Officer Standards and Training Board. A.R.S. § 41-741(9)

"Grade" means the numeric identifier associated with one or more pay ranges, used to determine the internal worth of a class relative to other classes.

"Manifest error" means an act or failure to act that is, or clearly has caused, a mistake.

"Parent" means, for purposes of R2-5A-B602, pertaining to annual leave, R2-5A-B603, pertaining to sick leave, and R2-5A-B605, pertaining to bereavement leave, a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or anyone who can be considered "in loco parentis."

"Part-time" means employment scheduled for less than 40 hours per week.

"3/4 time" means employment regularly scheduled for at least 30 hours but fewer than 40 hours per week.

"1/2 time" means employment regularly scheduled for at least 20 hours but fewer than 30 hours per week.

"1/4 time" means employment regularly scheduled for at least 10 hours but fewer than 20 hours per week.

"Pay status" means an employee is receiving pay for work or for a compensated absence.

"Premium/contribution" means the amount paid in exchange for insurance coverage. Depending on the type of coverage, the premium/contribution is paid by the employee, the state, or a combination of both.

"Promotion" means a change in assignment of an employee from a position in one class to a position in another class that has a higher grade.

"Reallocation" means changing the allocation of a position to a different class if a material and permanent change in duties or responsibilities occurs.

"Reversion" means the return of a covered employee on promotional probation to a position in the class in which the employee held permanent status immediately before the promotion or to a similar position in another class at the same grade as the class the employee held permanent status if the employee possesses the qualifications for that position.

"Rules" means the rules adopted by the Department of Administration, Human Resources Division. A.R.S. § 41-741(13)

"Special assignment" means the temporary assignment, for up to six months, of the duties and responsibilities of another position to an employee in the same agency.

"State agency" means a department, board, office, authority, commission or other governmental budget unit of this state and includes an agency assigned to a department for administrative purposes. State agency does not include the legislative and judicial branches, the Arizona Board of Regents, state universities, the Arizona State Schools for the Deaf and the Blind, the Department of Public Safety, the Arizona Peace Officer Standards and Training Board, the Cotton Research and Protection Council or public corporations. A.R.S. § 41-741(14)

"State Personnel Board" is defined in A.R.S. § 41-741 and means the board established by A.R.S. Title 41, Chapter 4, Article 6.

"State Personnel System" is defined in A.R.S. § 41-741 and means all state agencies and employees of those agencies that are not exempted by the provisions of A.R.S. Title 41, Chapter 4, Article 4.

"State service" is defined in A.R.S. § 41-741 and means all offices and positions of employment in state government that, before September 29, 2012, were subject to the provisions of A.R.S. Title 41, Chapter 4, Articles 5 and 6 that were in effect before September 29, 2012.

"Supervisor" means a state employee who has one or more other state employees reporting directly to the person and, for those state employees, typically has the authority to:

(a) Approve sick or annual leave.

(b) Recommend hiring, discipline or dismissal.

(c) Assign or schedule daily work.

(d) Complete a performance evaluation. A.R.S. § 41-741(18)

"Temporary appointment" means an appointment made for a maximum of 1,500 hours worked in any agency in each calendar year.

"Transfer" means the movement of an employee from one position to another position in the same or an equivalent grade.

"Uncovered employee" means an employee in uncovered service. A.R.S. § 41-741(19)

"Uncovered service" means employment at will and includes all state employees except those in covered service. A.R.S. § 41-741(20)

"Working day" or "working hours" means a day or the hours an employee is regularly scheduled to work.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-102. General Provisions

A. Authority of Director.

1. The Director may approve, modify or deny a request, plan or proposal submitted by a state agency for review or when the Director's approval is required by rule.
2. The Director may audit an agency's personnel policies and procedures at any time. If the Director determines that the agency's policies or procedures are inconsistent with these rules or are inconsistent with the procedures or

guidelines issued by the Director, the Director may direct the agency head to modify them to achieve consistency or to discontinue them.

B. Delegation of authority.
1. The Director may, in writing, delegate authority to an agency head as consistent with legal requirements.
2. The Director may review or audit delegated authority to determine compliance with laws, rules, and policies.
3. Unless otherwise stated by law, or in these rules, an agency head may delegate authority granted to the agency head in these rules.

C. Availability of funds. The granting of any compensation under these rules is contingent upon the availability of funds, as determined by an agency head and the Director.

D. Service of notice. If a notice or document is to be given to a person or agency, the notice or document may be served personally or mailed to the last known residence or current business address of the person or agency. Unless otherwise provided by law or these rules, service is complete upon personal delivery or mailing.

E. Employee handbook. The Director may publish an employee handbook outlining pertinent rules and regulations and make the handbook available to all employees. If published, the employee handbook shall serve as the official handbook for all employees in the State Personnel System. An agency head may supplement the employee handbook with agency specific policies and directives.

F. Employment contracts. Unless otherwise provided by law, an appointing authority shall not execute an employment contract with any state employee.

G. Correction of errors. Only the Director, or designee, has authority to determine whether a manifest error exists and to correct the manifest error.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-103. Applicability

A. General. Except as provided in A.R.S., Title 41, Chapter 4, Article 4 and Article 5, or otherwise stated in rule, the rules in this subchapter are applicable to covered and uncovered positions, applicants for covered and uncovered positions and covered and uncovered employees in the State Personnel System. An employee who violates or fails to comply with these rules may be disciplined or separated from state employment. Any such actions involving a covered employee shall be in accordance with the rules in Subchapter B, Article 3.

B. Temporary procedures. The Director may:
1. Unless otherwise prescribed by statute, waive any rule and implement temporary procedures if the Director determines that essential public services are being hampered or it is in the best interest of the state.
2. Implement a temporary pilot project to improve efficiency, productivity, or accountability in the State Personnel System. The project may include an activity or procedure that is not in accordance with these rules and shall not exceed two years in duration.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-104. Prohibition Against Discrimination, Harassment and Retaliation

A. General. Agencies shall comply with all federal and state anti-discrimination laws. Agencies shall not unlawfully discriminate against any individual with regard to the terms and conditions of employment, including hiring, pay, leave, insurance benefits, retention, and rehiring. The information provided in this rule is intended to serve as a summary of agencies' and employees' obligations with regard to compliance with applicable federal and state laws, rules and regulations. Nothing in these rules shall be construed as providing rights in excess of, or in addition to those authorized under federal laws and Arizona Revised Statutes.

B. Equal Employment Opportunity. Each agency shall provide equal employment opportunity for all individuals regardless of race, color, national origin, religion, age, disability, genetic information, sex, pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation. It is the policy of this state that all individuals are treated in a fair and non-discriminatory manner throughout the application and employment process.

C. Harassment Prohibited. Harassment of a sexual nature or harassment based on race, color, national origin, religion, age, disability, genetic information, sex, pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation is prohibited. An agency shall prohibit the unlawful harassment of any employee in the course of the employee's work by supervisors, coworkers, or third parties, such as vendors or customers. Any employee who engages in unlawful harassment may be subject to disciplinary action, up to and including termination of employment.

D. Protection from Retaliation. The state prohibits retaliation against anyone for raising a concern about, assisting in an investigation of, or filing a complaint concerning unlawful discrimination or unlawful harassment.

E. Complaints.
1. An applicant for state employment who has a complaint alleging discrimination or harassment may file a complaint under the procedures in R2-5A-308.
2. It is every employee's responsibility to promptly bring any allegation of discrimination, harassment or retaliation to the attention of the employing agency. Such complaints shall be filed under the procedures established under Article 9.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-105. Records

A. Definitions. For the purposes of this Section, "record" generally refers to a paper document; however, a document may be maintained electronically.

B. Application Materials.
1. An agency head shall maintain and keep confidential all resumés, applications, tests, test results, records, correspondence, and other documents used to seek state employment. The agency head shall not release any materials that the agency head determines would compromise the application process for future applicants and shall restrict the review of the applicant's application materials to:
   a. The applicant,
   b. An individual who has written authorization from the applicant,
   c. State officials in the normal line of duty, or,
   d. Officials acting in response to court orders or subpoenas.
2. The Director, or designee, shall ensure that when a person makes a public records request under A.R.S. Title 39, Chapter 1, Article 2 for applicant information:

a. Information shall only be provided if the position under recruitment is a high-level position and the public has a legitimate interest in the names of persons being seriously considered for the position, as determined by the Director; and
b. Only the names and resumés of the final candidates for the position as determined by the Director shall be released.

C. Official Personnel File.
1. An employee's official personnel file is the official record and documentation of the employee's employment.
2. An agency head shall, for each agency employee, maintain an official personnel file that contains:
   a. A copy of the job application for the employee's current position;
   b. A copy of all performance appraisals completed as required by Article 7;
   c. Personnel action forms that authorize changes in employment status, position, classification, pay, or leave status;
   d. Letters of commendation as established by agency policy; and
   e. Correspondence consisting of:
      i. Letters of reprimand, suspension, demotion or dismissal;
      ii. Acknowledgments of receipt of letters of reprimand or other disciplinary communications; and
      iii. Employee objections or responses to correspondence described in subsection (C)(2)(e)(i) that are not filed as complaints under Article 9 or grievances under Subchapter B, Article 4, if the objection or response is received within 30 calendar days of the date of the disciplinary action or letter of reprimand.
3. For the purpose of this subsection, an official is an individual who provides identification verifying that the individual is exercising powers and duties on behalf of the chief administrative head of a public body. An agency head shall limit access to an employee's official personnel file to:
   a. The employee;
   b. The employee's attorney or an individual who has written authorization from the employee to review the personnel file;
   c. Agency personnel designated by the agency head as having a need for the information;
   d. A Department official in the normal line of duty;
   e. An official acting in response to a court order or subpoena;
   f. An official of an agency to which the employee has applied; and
   g. An official of an agency of the federal government, state government, or political subdivision, if the agency head of the employing agency deems access to the file to be appropriate.
4. When an employee moves from one state agency to another, the gaining agency shall request that the losing agency forward the employee's official personnel file to the gaining agency. The losing agency shall forward the file within 20 business days of the receipt of the request.
5. When a former employee returns to state employment within five years of the former employee's separation to an agency other than the agency in which the employee was last employed, the gaining agency shall request that the last agency forward the employee's official personnel file. The last agency shall forward the file within 20 business days of the receipt of the request.

D. Disclosure of information.
1. Definitions. For the purposes of this subsection:
   a. "Disciplinary actions" means letters of reprimand, suspension, demotion or dismissal.
   b. "Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions" means the correspondence listed in subsection (D)(1)(a) and includes an official notice of charges of misconduct as applicable to covered employees, the final disciplinary letter, and any responses related to complaints, grievances or appeals upholding, amending, or overturning the discipline.
   c. "Employee responses" means any written documents, submitted and signed by the employee, either:
      i. In response to an official notice of charges of misconduct;
      ii. As a formal complaint filed under the provisions of Article 9 or a formal grievance under Subchapter B, Article 4, of these rules pertaining to a specific disciplinary action; or
      iii. As an objection to a specific disciplinary action and contained in the employee's official personnel file under subsection (C)(2)(e)(iii).
2. Personnel records are confidential and an agency head shall ensure that except as provided in subsection (C)(3), only the following information about a current or former employee is provided to any person making a public records request under A.R.S. Title 39, Chapter 1, Article 2.
   a. Name of employee;
   b. Date of employment;
   c. Current and previous class titles and dates of appointment to the class;
   d. Current and previous agencies to which the employee has been assigned and the location of the main office for each agency;
   e. Current and previous salaries and dates of each change;
   f. Name of employee's current or last known supervisor; and
   g. Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions, including the employee responses to all disciplinary actions, unless providing this information is contrary to law.

E. Insurance and medical records. An agency head:
1. May maintain group insurance enrollment forms in an employee's official personnel file for an employee hired prior to September 29, 2012.
2. Shall maintain in a separate file that is not part of the employee's official personnel file:
   a. Medical records, and
   b. Group insurance enrollment forms for an employee hired on or after September 29, 2012.

F. Employment eligibility records. An agency head shall retain I-9 forms and other documents required by law to prove employment eligibility in a separate file that is not part of the employee's official personnel file.

G. Employee access to files. An employee has the right to review only the employee's official personnel file.

H. Recordkeeping Requirements. An agency head shall ensure that agency recruitment and employee records are maintained

in accordance with the General Records Retention Schedule for Human Resources/Personnel Records published by and on file with the Secretary of State, Arizona State Library, Archives and Public Records.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 2. CLASSIFICATION SYSTEM

R2-5A-201. Classification Plan

A. General. The Director shall group positions into classes based on similarities of duties and responsibilities. All positions are assigned a class specification with a specific title. An agency head may not appoint, transfer, promote, or demote an employee, or make any change in salary for any position until the position is allocated to a class.

B. Class title. An agency head shall use the class title of a position to designate the position in all budget estimates, payrolls, vouchers, and communications in connection with personnel processes.

C. Class specification. A class specification indicates the kinds of positions to be allocated to the class, as determined by the duties and responsibilities described for that class. Each class specification shall contain a statement of the minimum education, experience, competencies, and other qualifications required to perform the work. Required postsecondary education shall be attained in an institution that meets the standards established by an accrediting agency recognized by the U.S. Department of Education.

D. Position description. An agency head shall ensure that every position in the agency has a completed position description describing the current duties, responsibilities, and essential job functions specific to the position.

E. Allocation. The Director shall place every position in a class based on its duties and responsibilities.

F. Reallocation. Upon completion of a review of a position, the Director may determine that the position should be placed in a different class.

G. Regrade. Upon completion of a review of a classification, the Director may determine that the class should be placed in a different grade.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-202. Change in Classification

A. Change in classification plan. The Director may establish new classes and divide, combine, alter, or abolish existing classes, grades, or both, in consultation with affected agency heads.

B. Change in job duties.
1. An employee in a position or the agency head may file a written request with the Director for review of the classification of the position. The request shall contain an updated position description, a specific explanation of how and when the position's duties and responsibilities have changed and the reasons why the current classification does not match these job duties.
2. If a material and permanent change takes place in the duties and responsibilities of a position, the agency head shall report this change to the Director in an updated position description. The Director may order a reallocation of the position. The employee in the position at the time of reallocation shall continue to serve in the position.

C. Effective date. The effective date of a change in classification shall be the first day of the pay period immediately following the Director's determination, unless the Director authorizes an exception.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-203. Expired

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2489, effective August 8, 2017 (Supp. 17-3).

ARTICLE 3. RECRUITMENT, SELECTION AND APPOINTMENT

R2-5A-301. General

An agency head shall follow the requirements outlined in this Article to identify and appoint qualified candidates to fill vacancies. The Director shall establish and maintain a centralized employment system that includes a job board for announcing vacancies in state employment, applicant tracking and candidate identification. The Director shall establish procedures for state agencies to request approval for transportation or other travel expenses or moving expenses provided by A.R.S. § 35-196.01 for out of state candidates.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Amended by exempt rulemaking at 19 A.A.R. 717 effective April 13, 2013 (Supp. 13-1).

R2-5A-302. Recruitment

A. Job posting.
1. Unless exempted by A.R.S. Title 41, Chapter 4, Article 4, an appointing authority shall post an open position to the state's centralized job board. This includes recruitments open to only employees currently employed by the agency, to state employees currently employed in any state agency, or the general public. An agency head may authorize an exception to the job posting requirement for a position in an individual case. Any exceptions shall be documented by the agency head and subject to audit by the Director.
2. In addition to posting to the state's centralized job board, an appointing authority may post an open position in a publication or to a commercial job posting board or both, in compliance with applicable procurement rules.

B. Application form.
1. A candidate for a position shall complete the standardized application form developed by the Director.
2. In addition to the standardized application form, an agency head may develop supplemental application procedures and forms specific to the agency or to a certain class or classes within the agency.

C. Preferences.
1. The state will provide preference to qualified veterans and disabled veterans seeking employment with the state.
2. For positions in the covered service, preference points authorized by A.R.S. § 38-492 shall be added to an applicant's grade on any assessment or evaluation that results in a numeric grade after the final grade is determined, if a passing grade is earned without the addition of preference points. Preference points shall not be applied to promotional examinations. If an evaluation does not result in a numeric grade, preference shall be given by granting applicable preference codes to qualified applicants.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-303. Reference and Background Checks
A candidate may be required to furnish, at the candidate's own expense, evidence of education or other qualification. The appointing authority is responsible for verifying education, work experience, applicable license or licenses and references provided by candidates on the application form and in interviews. An appointing authority shall not conduct a criminal background check or a credit check on a candidate unless the agency has statutory or executive order authority to conduct such a check.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-304. Qualifications of Selected Candidate
An agency head shall ensure that any candidate selected for hire meets the established qualifications for the position filled.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-305. Employment of Relatives
A. Relationship to supervisors. An individual shall not be employed in a position if the immediate supervisor of the individual is related within the third degree of affinity (marriage) or consanguinity (blood), or by adoption.
B. Relationship to other employees. An individual shall not be employed in a position if the individual is related within the third degree to an employee who currently occupies a position under the same immediate supervisor.
C. Exceptions. The Director may grant an exception to the prohibitions in subsections (A) and (B) if there is no other qualified person for the position at the location.
D. Relationship to subordinate employees. A supervisor or manager at any level shall not make an employment decision specifically benefitting any individual who is related within the third degree, unless an exception under subsection (C) has been granted.
E. Relationship to interviewer or interview panel members. An employee shall not interview or serve on an interview panel of any job candidate if the candidate is related within the third degree.
F. Definition. For the purpose of this Section, persons related within the third degree include a spouse, child, parent, grandchild, grandparent, sister, brother, great grandchild, great grandparent, aunt, uncle, niece, nephew or first cousin.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-306. Hiring Requirements
Agencies shall comply with federal and state law, including the verification of employment eligibility pursuant to A.R.S. § 23-214. An agency head shall ensure the completion of the Form I-9 and the employment eligibility verification process for all new hires.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-307. Appointment
A. General. Except as provided in A.R.S. Title 41, Chapter 4, Articles 4 and 5, all appointments shall be at will uncovered. An agency head may appoint a current state employee who accepts a change in assignment or an external candidate in accordance with these rules and the procedures established by the Director.
B. Types of Appointment.
1. A regular appointment may be:
   a. Full-time employment;
   b. Part-time employment;
   c. Subject to funding availability, such as federal or grant funding; or
   d. To a trainee position.
2. A temporary appointment may be made for a recurring period of time up to a maximum of 1500 hours in any one position per agency each calendar year. A temporary appointment employee may work full time for a portion of the year, intermittently, on a seasonal basis, or on an as needed basis. An employee in a pool classification is considered a temporary appointment.
3. An agency head may place an employee on special assignment within the agency. A special assignment may be made non-competitively and for up to 6 months with the concurrence of the agency head of the employing agency and the Director. A special assignment shall not exceed 6 months unless extended by the Director. An agency head shall not make successive special assignments of the same person to the same class.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Amended by exempt rulemaking at 19 A.A.R. 717 effective April 13, 2013 (Supp. 13-1).

R2-5A-308. Applicant Complaint
An applicant who has a complaint alleging discrimination or harassment relating to the procedures used in the selection or evaluation process shall submit the applicant complaint to the agency human resources representative within 90 days of the action giving rise to the complaint. The agency human resources representative shall evaluate the complaint and notify the applicant of the final action to be taken.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 4. COMPENSATION SYSTEM

R2-5A-401. Salary Plans
A. General. The Director shall establish a salary plan. The salary plan shall allow for the following:
1. Minimum and maximum rates of pay for classes outlined in the classification plan.
2. Salary adjustments, including adjustments to base salary and pay supplements and incentives, including add-ons to base salary.
B. Alternative salary plan. The Director may establish a special salary plan or pay practice determined to be the prevailing practice in the labor market and in the best interest of the state.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-402. Salary Administration
A. General. The Director shall develop procedures for salary administration for use by all agencies when setting the salary of an employee. In setting an employee's salary, an agency head shall consider such factors as the employee's education, experience, skills, performance, and current or former salary, as well as the current salaries of employees in the same class in

the agency and the relative experience and performance of those employees.

B. Classes. The Director shall assign each class to a salary range and to a grade.

C. Salary. The base salary of an employee shall be not less than the minimum nor more than the maximum of the salary range of the class to which the employee's position is allocated, except as provided by these rules.

D. Salary adjustment. The salary used to compute a salary adjustment is the employee's base salary. Following an adjustment to the base salary, an agency shall add to the new rate of pay any special pay supplement still valid.

E. New hire starting rate. An agency head may offer a salary to a new hire within the salary range of the class to which the employee is being appointed in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.

F. Promotion. An employee who has a change in assignment from a position in one class to a position in another class having a higher grade shall receive a salary increase as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.

G. Demotion.

1. An employee who has a change in assignment from a position in one class to a position in another class having a lower grade, whether voluntary or involuntary, shall receive a salary decrease as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
2. A demoted employee shall not be eligible for an increase to base salary for six months after the effective date of the demotion to the new position, other than a salary increase that is legislatively mandated. After six months, the employee may become eligible for a salary increase only after a performance evaluation in the new position for which the employee received an overall rating of "meets expectations" or higher.

H. Lateral transfer. An employee who has a change in assignment from a position in one class to a position in another class having the same grade shall receive no increase in salary, unless an exception is approved by the Director. The Director may approve a salary increase based upon documentation of recruitment difficulties to fill the position, specific needs identified by the agency, or the employee's qualifications. Transferred employees are not eligible for increases to base salary during their first six months in the new job unless approved by the Director. An employee who transfers to another agency may become eligible for a salary increase only after a performance evaluation in the new position for which the employee received an overall rating of "meets expectations" or higher.

I. Reversion of covered employee. A covered employee who is reverted under the rules in Subchapter B shall be paid the same salary as that paid prior to the promotion, plus the percentage or dollar amount of increase of an intervening general salary adjustment for which the employee was eligible.

J. Job reallocation.

1. The base salary of an employee in a position that is reallocated to a class in a higher pay range may receive a salary increase in accordance with the procedures and guidelines published by the Director. If increasing the base salary of an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.
2. The base salary of an employee in a position that is reallocated to a class with the same or lower pay range shall remain the same provided that the employee's salary is within the pay range of the position. If the employee's salary is less than the minimum of the salary range or greater than the maximum salary of the new pay range, the employee's salary shall be the minimum salary or the maximum salary of the new pay range, respectively.

K. Job regrade.

1. The base salary of an employee in a class that is reassigned to a higher grade shall be adjusted by the amount determined by the Director. If adjusting the base salary of an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.
2. The base salary of an employee in a class that is reassigned to a lower grade shall remain the same provided that the employee's salary is at or above the minimum salary of the new pay range of the class, and may be greater than the maximum salary of the pay range. If the employee's salary is greater than the maximum, the employee is not eligible for an increase to base pay until the employee's salary is less than the maximum salary of the new pay range.

L. Merit increases.

1. The Director shall establish guidelines for merit increases to base pay.
2. Merit increases shall be available:
   a. To uncovered employees.
   b. To covered employees only if such increases are legislatively appropriated.
3. Subject to the guidelines established by the Director:
   a. Merit increases may be implemented at the discretion of the agency head.
   b. Merit increases are subject to the availability of funding and must be within an agency's appropriation unless otherwise legislatively appropriated.
4. An agency head shall report to the Director on the utilization of merit increases pursuant to the reporting requirements in the guidelines established by the Director.

M. Legislatively-appropriated salary adjustments. Subject to legislative appropriation, the Director shall determine employee eligibility and criteria for salary adjustments.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Amended by exempt rulemaking at 19 A.A.R. 717 effective April 13, 2013 (Supp. 13-1).

R2-5A-403. Supplemental Pay

A. General. Supplemental pay is in addition to an employee's base pay. The salary of an employee may exceed the maximum salary of the pay range for the employee's class if the excess amount is due to the receipt of supplemental pay.

B. Shift differential. The Director may authorize a shift differential to be paid to an employee on other than a day shift. The Director shall establish a competitive shift differential rate periodically based on an annual survey of the market place. Employees in the same class in the same agency who work on the same shift shall receive the same shift differential pay.

C. Special assignment. An employee on a special assignment shall remain in the employee's current position with no change to base salary. If the classification to which the employee is on

a special assignment is a higher grade, the employee shall be provided a conditional pay supplement in an amount that, when added to the employee's base salary, would be within the range of the higher classification. If the classification to which the employee is on a special assignment is the same or a lower grade, the employee shall not be eligible for a conditional pay supplement while on special assignment. Any conditional pay supplement received by the employee for the special assignment shall be discontinued at the conclusion of the special assignment.

D. Conditional pay supplements. The Director may establish conditional pay supplements. A conditional pay supplement provides additional compensation to an eligible employee and shall be discontinued when the qualifying conditions no longer apply. An employee may be awarded multiple conditional pay supplements. A conditional pay supplement does not:
1. Change base salary;
2. Provide a basis for the computation of a salary increase; or
3. Provide a basis for the computation of pay upon an employee's promotion, demotion or transfer.

E. Variable pay.
1. The Director may establish variable pay strategies determined to be the prevailing practices in the market and in the best interest of the state.
2. If the Director establishes variable pay strategies, the Director shall establish guidelines for the administration of variable pay.
3. Variable pay shall be available only to uncovered employees, except for employees in covered positions classified as Correctional Officers I, II, or III, or Community Corrections Officers, as specified in the guidelines established by the Director.
4. Subject to the guidelines established by the Director:
   a. Variable pay strategies may be implemented at the discretion of the agency head.
   b. Variable pay strategies are subject to the availability of funding and must be within an agency's appropriation unless otherwise legislatively appropriated.
5. An agency head shall report to the Director on the utilization of variable pay strategies pursuant to the reporting requirements in the guidelines established by the Director.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-404. Overtime

A. Approval of overtime work. An agency head may require that an employee work overtime and:
1. Shall approve in advance all work in excess of 40 hours per workweek or in excess of a work period as defined by the Fair Labor Standards Act (FLSA). FLSA Regulations 29 CFR 553 and 778 (July 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments; and
2. May assign an employee who volunteers for overtime before mandatory overtime is required.

B. Exemptions. The Director shall determine exemptions from minimum wage and maximum hour requirements in accordance with the Fair Labor Standards Act, 29 U.S.C. 213, January 2004, incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.

C. Non-exempt employees.
1. An agency shall compensate an employee in a non-exempt position who works in excess of 40 hours per workweek or in excess of a work period as defined by the FLSA by either:
   a. Additional pay at the rate of 1 1/2 times the employee's regular rate for each excess hour worked, or
   b. Compensatory leave at the rate of 1 1/2 hours for each excess hour worked.
2. An employee shall select either overtime pay or compensatory leave for overtime compensation. If the employee selects both overtime pay and compensatory leave, the agency head shall determine which applies. If an employee's compensatory leave balance reaches the maximum allowed in subsection (E), the agency head shall compensate the employee by overtime pay.

D. Exempt employees.
1. Unless otherwise provided by statute or as specified in subsection (D)(2), an employee who is in a position that is exempt from the FLSA is excluded from receiving either overtime pay or compensatory leave.
2. An employee who is in a position that is exempt from the FLSA who works in excess of 40 hours per workweek or in excess of an established work period shall receive for each hour of overtime worked, either one hour of additional pay or earn one hour of compensatory leave, at the option of the agency head, if the employee is either:
   a. Engaged in law enforcement activities;
   b. Engaged in firefighting activities; or
   c. A full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board, is in a position that requires such certification, and is in the covered service.
3. An exempt employee may earn compensatory leave as provided by subsection (D)(2) until the employee's compensatory leave balance reaches the maximum allowed in subsection (E). When the maximum balance is reached, an agency head shall compensate the employee by overtime pay for excess hours worked.
4. For the purposes of this subsection, "engaged in law enforcement activities" has the same meaning as defined in A.R.S. Title 23, Chapter 2, Article 9.

E. Maximum accumulation. The maximum number of hours of accumulated compensatory leave is:
1. 480 hours for an employee who works in a public safety activity or an emergency response activity, or
2. 240 hours for an employee who works in any other activity.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-405. Tuition Reimbursement for Education

A. General. A state agency may assist an employee in the pursuit of educational goals by providing tuition reimbursement.

B. Procedures. Prior to granting tuition reimbursement, an agency shall establish a policy which shall include the following conditions:
1. The educational program will provide a benefit to the state.

2. The employee shall successfully complete the required course work or the educational requirements of the program in order to receive reimbursement.
3. Education assistance may not exceed $5,250 per employee in any one calendar year unless approved in advance by the Director.
4. An employee who receives education assistance may be required to return all or a portion of the amount received if the employee does not remain employed with the agency for a defined period of time, as specified in the agency's policy.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-406. Reimbursement for Relocation
An agency head may reimburse reasonable relocation expenses to a current employee for a management initiated geographical transfer of more than 50 miles from the employee's current work site in accordance with the procedures established by the Director.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 5. CONDITIONS OF EMPLOYMENT

R2-5A-501. Standards of Conduct
A. Required conduct. A state employee shall at all times:
1. Comply with federal and state laws and rules, statewide policies and employee handbook, and agency policies and directives;
2. Maintain high standards of honesty, integrity, and impartiality, free from personal considerations, or favoritism;
3. Be courteous, considerate, and prompt in interactions with and serving the public and other employees; and
4. Conduct himself or herself in a manner that will not bring discredit or embarrassment to the state.

B. Prohibited conduct. A state employee shall not:
1. Use his or her official position for personal gain, or attempt to use, or use, confidential information for personal advantage;
2. Permit himself or herself to be placed under any kind of personal obligation that could lead a person to expect official favors;
3. Perform an act in a private capacity that may be construed to be an official act;
4. Accept or solicit, directly or indirectly, anything of economic value as a gift, gratuity, favor, entertainment, or loan that is, or may appear to be, designed to influence the employee's official conduct. This provision shall not prohibit acceptance by an employee of food, refreshments, or unsolicited advertising or promotional material of nominal value;
5. Directly or indirectly use or allow the use of state equipment or property of any kind, including equipment and property leased to the state, for other than official activities unless authorized by written agency policy or as otherwise allowed by these rules;
6. Inhibit a state employee from joining or refraining from joining an employee organization; or
7. Take disciplinary or punitive action against another employee that impedes or interferes with that employee's exercise of any right granted under the law or these rules.

C. Consequences of non-compliance. An employee who violates the standards of conduct requirements listed in subsection (A) or (B) may be disciplined or separated from state employment. Any such actions involving a covered employee shall be in accordance with the rules in Subchapter B, Article 3.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Amended by exempt rulemaking at 19 A.A.R. 717 effective April 13, 2013 (Supp. 13-1).

R2-5A-502. Hours of Work
A. State work week. The state work week is the period of seven consecutive days starting Saturday at 12:00 a.m. and ending Friday at 11:59 p.m. An agency head may apply to the Director for an exception from the work week period for all or part of an agency workforce. The Director may grant an exception from the work week period to promote efficiency in the State Personnel System.

B. Hours of employment.
1. An agency head shall determine the hours of employment in the work week for each agency employee.
2. An agency head may provide for breaks during the work period consistent with carrying out the duties of the agency.
3. An agency head may require an employee to work overtime.

C. Flexible work options. An agency head may offer a flexible 40-hour work week option to an employee if the agency head determines the agency's services can be maintained.

D. Attendance standards. An agency head may establish a standard of attendance.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-503. Outside Employment
A. General. A state employee may seek employment and engage in a variety of activities outside of the employee's work for the state; however, the employee shall not engage in other employment or other activity that is not compatible with the full and proper discharge of the duties and responsibilities of state employment, or that tends to impair the employee's capacity to perform the employee's duties and responsibilities in an acceptable manner.

B. Definitions. For the purposes of this Section:
1. "Other employment" includes, but is not limited to:
   a. Working as an employee for any employer, including another state agency;
   b. Owning a business;
   c. Contracting to provide services for a fee; or
   d. Serving as a consultant for a fee or being self-employed;
   e. Holding any elected or appointed public office, whether federal, state, or local; or
   f. Holding a position in a political party or organization.
2. "Primary agency" means the agency in which the employee is employed at the time of the employee's request to obtain outside employment with another agency.
3. "Secondary agency" means the agency in which the employee is requesting to be employed while remaining employed with the primary agency.

C. Notice requirement. An employee who desires to engage in other employment shall notify the employee's supervisor and abide by the policies of the employing agency. An employee engaged in outside employment, including consultant relationships, shall inform the supervisor of the nature of the employ-

ment and corresponding work hours. An employee shall also disclose actual or potential conflicts of interest related to outside employment activities as soon as the employee becomes aware of the conflict. The determination as to whether a conflict or potential conflict exists shall be made by the agency head.

D. Outside employment with another state agency. An employee who seeks outside employment with another state agency must request approval from both the employee's primary agency and prospective secondary agency before commencing employment with the secondary agency. The primary and secondary agencies must ensure that the request complies with state and federal guidelines. Such request, if approved shall be in writing and on file with both agencies. Employment records are to be maintained in accordance with the provisions of R2-5A-105.

E. Outside employment as a paid public official or in a political party or organization. All employees shall comply with A.R.S. § 41-752 pertaining to political activities.

F. Termination of outside employment. If an agency head determines that an employee's outside employment interferes with the employee's performance or creates a conflict of interest, the employee will be required to terminate the outside employment.

G. Consequences of non-compliance. An employee who fails to make required disclosures or to take action to resolve any conflict of interest may be disciplined or separated from state employment. Any such actions involving a covered employee shall be in accordance with the rules in Subchapter B, Article 3.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-504. Alcohol and Drug-free Workplace
State agencies shall prohibit the manufacture, distribution, dispensation, possession or use of alcohol, illegal drugs, unauthorized drugs, inhalants, or other unauthorized controlled substances during an employee's working hours or while on state premises or worksites, including state vehicles and property leased to the state. A state employee shall not be impaired by alcohol or drugs while on duty.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 6. LEAVE

PART A. GENERAL

R2-5A-A601. Leave Administration

A. Leave plans. The Director shall adopt leave plans. Agency heads are responsible for administering leave for agency employees in accordance with the leave plans in this Article.

B. Eligibility for leave. All state employees, except temporary employees, are eligible for any type of leave with pay from the date of appointment. Temporary employees are eligible only for holidays subject to the provisions of R2-5A-B601, administrative leave, civic duty leave for the purpose of voting, living donor leave and military leave.

C. Amount of leave. Leave amounts are based on full-time employment and shall be pro-rated for part-time employees, even if not specified in an individual rule.

D. Family and Medical Leave Act (FMLA) leave. FMLA Regulations, 29 CFR 825.100 through 29 CFR 825.800 (July 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments. An employee who meets FMLA eligibility requirements and uses leave for any of the situations covered by the FMLA shall be subject to the following:

1. Counting FMLA leave. Periods of paid leave and periods of leave without pay shall count towards the employee's available FMLA leave.
2. Use of accrued paid leave. An employee shall use available paid leave for all or part of the employee's FMLA leave under the conditions in:
   a. R2-5A-D602 for an employee on industrial leave,
   b. R2-5A-D601 for an employee on FMLA leave for any other reason.

E. Insurance benefits continuation. An employee remains eligible for continued participation in the employee insurance plans while on leave pursuant to this Article.

F. Requests for leave. Except in an emergency, an employee shall obtain approval in advance and in writing before taking any leave.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

PART B. PAID LEAVE

R2-5A-B601. Holidays

A. State holidays.
1. January 1, "New Year's Day."
2. Third Monday in January, "Martin Luther King, Jr./Civil Rights Day."
3. Third Monday in February, "Lincoln/Washington Presidents' Day."
4. Last Monday in May, "Memorial Day."
5. July 4, "Independence Day."
6. First Monday in September, "Labor Day."
7. Second Monday in October, "Columbus Day."
8. November 11, "Veterans Day."
9. Fourth Thursday in November, "Thanksgiving Day."
10. December 25, "Christmas Day."

B. Employees scheduled to work. Unless required to work to maintain essential state services, an employee who is regularly scheduled to work on a day on which one of the holidays listed in subsection (A) is observed is entitled to be absent with pay for the number of hours regularly scheduled to work, not to exceed eight hours, provided the employee is not on leave without pay on the employee's work days immediately preceding or following the day on which the holiday is observed.
1. Part-time employees who work 1/4 time, 1/2 time, or 3/4 time are entitled to a proportional amount of holiday pay. Part-time employees who work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time are entitled to holiday pay at the next lower rate. An employee who works less than 1/4 time is not entitled to holiday pay.
2. Temporary employees shall receive holiday pay provided they are in pay status the day before and the day after the holiday.

C. Employees not scheduled to work. An employee, excluding part-time and temporary employees, who is not scheduled to work on a day on which one of the holidays listed in subsection (A) above is observed shall receive holiday compensation for the number of hours normally worked per day, not to exceed eight, provided the employee is not on leave without pay on the employee's work days immediately preceding or following the day on which the holiday is observed.

D. Employees required to work. An employee who is required to work on a day on which a holiday listed in subsection (A) is observed shall receive:

1. Both holiday compensation and one hour of pay at the employee's current salary rate for each hour worked if the employee is in a position that is either:
   a. FLSA non-exempt; or
   b. Exempt from the FLSA, but meets the conditions in R2-5A-404(D)(2).
2. No additional compensation if the employee is in a position that is exempt from the FLSA and is employed in any other capacity.

E. Holiday compensation.
1. Except as modified by subsection (E)(2), an employee who is eligible for holiday compensation pursuant to subsection (C) or (D) shall receive for each hour of holiday compensation authorized, at the option of the agency head, either:
   a. One hour of additional pay at the current salary rate; or
   b. One hour of annual leave; or
   c. One hour time off with pay on an alternate work day specified by the agency head after the holiday and during the pay period in which the holiday is observed, or the succeeding pay period.
2. Temporary employees do not accrue annual leave and shall receive either additional pay or time off as in subsection (E)(1)(c) above.
3. An employee may not receive more than eight hours of holiday compensation for any holiday.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-B602. Annual Leave

A. Definitions. For the purposes of this Section:
1. "Annual leave" means a period of approved absence with pay that is not chargeable to another category of leave.
2. "Hire date" means the employee's first day of work upon hire or, if the employee has a break in service, rehire.

B. Accrual.
1. All employees, except temporary and part-time employees shall accrue annual leave as follows:
   a. Covered employees shall accrue annual leave in accordance with the following schedule:

Credited Service	Hours Bi-weekly
Fewer than 3 years	3.70
3 years but fewer than 7 years	4.62
7 years but fewer than 15 years	5.54
15 years or more	6.47

   b. Except as provided in subsection (B)(1)(c), uncovered employees shall accrue leave based on the following schedule:

Credited Service	Hours Bi-weekly
Fewer than 3 years	4.00
3 years but fewer than 9 years	5.54
9 years or more	6.47

   c. An uncovered employee shall accrue annual leave at the rate of 6.47 hours bi-weekly if:
      i. The employee's hire date is prior to September 29, 2012, the employee has remained employed without a break in service since that date, and the employee either was uncovered prior to September 29, 2012 or became uncovered in accordance with A.R.S. Title 41, Chapter 4, Article 4; or
      ii. The employee is in a position listed in A.R.S. § 41-742(F).
2. Temporary employees shall not accrue annual leave.
3. Part-time employees who:
   a. Work 1/4 time, 1/2 time, or 3/4 time shall accrue a proportional amount of annual leave;
   b. Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time shall accrue annual leave at the next lower rate;
   c. Work less than 1/4 time shall not accrue annual leave.
4. Except as provided by R2-5A-D602 for an employee on industrial leave, an eligible employee accrues annual leave each bi-weekly pay period if the employee is in pay status for at least one-half of the employee's scheduled work hours in that pay period.
5. An annual leave accrual is credited on the last day of the bi-weekly pay period in which the accrual is earned and is available for use on the first day of the following pay period.
   a. Annual leave accrued during the last pay period that begins in a calendar year is not subject to forfeiture under subsection (D).
   b. An employee who is separating from state employment is compensated in accordance with subsection (I) for annual leave accrued through the employee's last date of employment.
6. The effective date for change in the accrual rate is the first day of the pay period immediately following the attainment of the required credited service.

C. Credited service.
1. Credited service shall be calculated from the first day of the first complete pay period worked.
2. Credited service shall include:
   a. A period of service as an employee of a state budget unit before a break in service of less than two years;
   b. A period of leave without pay of 240 hours or less;
   c. Family and Medical Leave Act (FMLA) leave;
   d. Military leave taken under A.R.S. §§ 26-168, 26-171, or 38-610; and
   e. Active military service of an employee who is restored to state employment under A.R.S. § 38-298.

D. Accumulation.
1. Except as provided in subsections (D)(2) and (3), an employee shall forfeit annual leave in excess of the accumulation limit as of the last day of the last pay period that begins in a calendar year. The accumulation limit is:
   a. 240 hours for a covered employee.
   b. 320 hours for an uncovered employee.
2. An agency head may request an exception to the accumulation limit contained in subsection (D)(1) for an employee in an individual case.
   a. An agency head seeking an exception shall submit a written request to the Director that contains a plan to use the excess hours during the following calendar year, pay the employee for the excess hours, or a combination of both.
   b. The Director may approve, modify, or deny the request.
3. Annual leave earned for working on a day on which a state holiday is observed is not included in the accumula-

tion limit specified in subsection (D)(1) and shall not be forfeited.

E. Use of annual leave.
1. An employee may take annual leave at any time approved by the agency head.
2. An agency head shall not advance annual leave to an employee.

F. Donation of annual leave.
1. Definitions. For the purposes of this subsection:
   a. *"Immediate family" means the recipient employee's parent, spouse, or child, whether natural, adopted, foster, or step.* A.R.S. § 41-748(B)(1)
   b. *"Family" means spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, or niece.* A.R.S. § 41-748(B)(2)
   c. "Disability that is caused by pregnancy or childbirth" means, as certified by a licensed health care practitioner:
      i. An employee is unable to work due to the employee's pregnancy, childbirth, or medical care associated with the pregnancy or childbirth; or
      ii. A member of the employee's immediate family requires assistance to perform regular daily activities due to the immediate family member's pregnancy, childbirth, or medical care associated with the pregnancy or childbirth.
   d. "Extended" means a period of at least three consecutive weeks.
   e. "Seriously incapacitating" means a licensed health care practitioner certifies that an illness, injury, or disability that is caused by pregnancy or childbirth:
      i. Involves in-patient care, or
      ii. Involves continuing treatment.
2. Eligibility to receive donation of annual leave. An employee who has exhausted all available leave balances is eligible to receive donations of annual leave if, as certified by a licensed health care practitioner:
   a. The employee is unable to work due to:
      i. A seriously incapacitating and extended illness or injury, or
      ii. A seriously incapacitating and extended disability that is caused by pregnancy or childbirth, or
   b. The employee needs to care for a member of the employee's immediate family who has:
      i. A seriously incapacitating and extended illness or injury, or
      ii. A seriously incapacitating and extended disability that is caused by pregnancy or childbirth.
3. Eligibility to donate annual leave. An employee may donate annual leave to another employee who has exhausted all available leave balances if:
   a. The recipient employee is employed in the same state agency as the donating employee, or
   b. The recipient employee is a family member of the donating employee and employed in another state agency.
4. Exhaustion of available leave. Before using donated annual leave, a recipient employee:
   a. Who has a qualifying illness, injury, or disability caused by pregnancy or childbirth shall exhaust all available sick leave, compensatory leave, annual leave earned for working on a day on which a state holiday is observed and accrued annual leave; or
   b. Whose immediate family member has a qualifying illness, injury, or disability caused by pregnancy or childbirth shall exhaust sick leave granted in accordance with R2-5A-B603(A)(4), if available, and all available compensatory leave, annual leave earned for working on a day on which a state holiday is observed and accrued annual leave.
5. Calculation of hours donated. An agency head shall adjust the number of hours of annual leave donated in proportion to the hourly rate of pay of the donating employee and the recipient employee. To calculate the number of hours of donated annual leave:
   a. Multiply the actual number of hours donated by the donating employee's hourly rate of pay, and
   b. Divide the result by the recipient employee's hourly rate of pay.
6. Maximum duration. A recipient employee is limited to using donated annual leave to allow the employee to be absent from work for a maximum of six consecutive months, or if the leave is intermittent, 1040 hours (the employee's available leave plus leave donated to the employee) for each qualifying occurrence. If the recipient employee has a seriously incapacitating and extended illness or injury, or a seriously incapacitating and extended disability that is caused by pregnancy or childbirth and the employee applies for Long-term Disability (LTD) by the end of the fifth month of the employee's leave, the recipient employee may continue to use donated annual leave for up to 60 additional days or until LTD benefit payments begin, whichever is sooner.
7. Unused donated leave. If the recipient employee separates from state employment, recovers before using all donated leave, attains the maximum donation of annual leave as permitted under subsection (F)(6), or the need for the donated annual leave is otherwise abated, the agency head shall return unused donated leave to employees who donated leave on a pro-rata basis.

G. Payment of annual leave. Subject to funding availability:
1. An agency head may pay an employee at any time at the employee's current rate of pay for all or any portion of the employee's annual leave that was earned as the result of working on a day on which a state holiday is observed.
2. An agency head may approve pay to a non-separating employee for all or any portion of the employee's accumulated and unused annual leave at the employee's current rate of pay subject to the following:
   a. Agency procedures. Before paying an employee under this subsection, an agency head shall develop written standards and procedures that provide for equal consideration of all employees similarly situated. The agency head shall submit proposed standards and procedures and any subsequent changes to the Director for approval. The agency's procedures shall include at minimum:
      i. Request and approval procedures;
      ii. Documentation required to support the request for payment;
      iii. Any limitations, as applicable, including, but not limited to: the maximum number of times an employee may receive payment under this subsection; the maximum number of hours an employee may be paid per occurrence; the minimum number of hours of annual leave an

employee must have used in the previous 12 months; and the minimum balance an employee is required to maintain after payout, if any.

b. Restrictions. The agency head shall obtain the employee's concurrence if the payment would reduce the employee's annual leave balance to fewer than:
   i. 240 hours for a covered employee;
   ii. 320 hours for an uncovered employee.

H. Movement.
1. To another state agency. If an employee moves from one agency to another state agency, the employee's accumulated and unused annual leave shall be transferred to the employee's annual leave account in the new state agency, unless:
   a. The provisions of subsection (H)(2) apply; or
   b. The employee's leave exceeds the accumulation limit contained in subsection (D)(1). An agency head may pay an employee who transfers to another state agency for all excess annual leave at the time of the transfer. An agency head may transfer part or all of the employee's excess annual leave accumulated by the employee who transfers to another agency with the gaining agency's concurrence. If the gaining agency does not concur, the losing agency shall pay all of the unused excess annual leave that the gaining agency will not accept.
2. To an employment status ineligible for leave accrual. If an employee becomes ineligible for accrual of annual leave under R2-5A-A601(B), the agency head or the agency head of the losing agency if the employee moves to another state agency, shall pay the employee for all unused and unforfeited annual leave at the employee's current rate of pay immediately before the change in status.

I. Separation. An agency head shall pay an employee who separates from state employment for all unused and unforfeited annual leave at the employee's current rate of pay.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Amended by exempt rulemaking at 19 A.A.R. 717 effective April 13, 2013 (Supp. 13-1).

R2-5A-B603. Sick Leave

A. Definition. "Sick leave" is any approved period of paid absence granted an employee due to:
1. Illness or injury that renders the employee unable to perform the duties of the employee's position.
2. Disability of the employee that is caused by pregnancy, childbirth, miscarriage, or abortion.
3. Examination or treatment of the employee by a licensed health care practitioner.
4. Illness, injury, disability caused by pregnancy or childbirth, or examination or treatment by a licensed health care practitioner of an employee's spouse, dependent child, or parent. Sick leave granted for this purpose shall be charged to the employee's sick leave account and shall not exceed 40 hours per calendar year. For the purposes of this Section:
   a. The term "dependent child" means a natural child, an adopted child, a foster child, or a stepchild, more than one-half of whose support is received from the employee.
   b. The term "parent" means a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or an individual who stood "in loco parentis."

B. Accrual.
1. All state employees, except temporary and part-time employees, shall accrue sick leave at the rate of 3.70 hours bi-weekly.
2. Temporary employees shall not accrue sick leave.
3. Part-time employees who:
   a. Work 1/4 time, 1/2 time, or 3/4 time shall accrue a proportional amount of sick leave;
   b. Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time will accrue sick leave at the next lower rate;
   c. Work less than 1/4 time shall not accrue sick leave.
4. Except as provided by R2-5A-D602 for an employee on industrial leave, an eligible employee accrues sick leave each bi-weekly pay period if the employee has been in a pay status for at least one-half of the employee's scheduled work hours in that pay period or month.
5. A sick leave accrual is credited on the last day of the bi-weekly pay period or month in which the accrual is earned and is available for use on the first day of the following pay period or month. An employee who is separating from state employment accrues leave through the employee's last date of employment for the purpose of determining the employee's accumulated sick leave at the time of the employee's separation pursuant to subsection (F).

C. Accumulation. Sick leave accumulates without limit.

D. Use of sick leave.
1. Sick leave may be taken when approved by the agency head.
2. The agency head may require submission of evidence substantiating the need for sick leave. If the agency head determines the evidence is inadequate, the absence shall be charged to another category of leave or considered absence without leave.
3. An agency head may require an employee to be examined by a licensed health care practitioner designated by the agency head.
   a. If the licensed health care practitioner determines that the employee should not work due to illness or injury, the agency head may place the employee on sick leave or, if the employee's sick leave is exhausted, charge the absence to another category of leave or leave without pay.
   b. The agency head may require the employee to obtain approval from the licensed health care practitioner before returning to work.
   c. The agency shall pay for all examinations required pursuant to this subsection. The employee shall not be charged any leave while participating in or traveling to or from any examination required pursuant to this subsection.

E. Movement to another state agency. An employee who moves to another state agency shall transfer all accumulated and unused sick leave to the employee's sick leave account in the new state agency.

F. Separation. All sick leave credits are forfeited upon separation from state employment except as provided in A.R.S. § 38-615 or otherwise provided by law. However, an employee who returns to state employment within two years after separation shall be credited with all unused sick leave accumulated at the time of separation if the employee was not paid for accumulated sick leave pursuant to A.R.S. § 38-615.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-B604. Administrative Leave

A. General. An agency head may authorize an employee to be absent with pay on administrative leave during a state of emergency declared by the Governor or:
1. In other emergency situations such as extreme weather conditions, fire, flood, or malfunction of publicly-owned or controlled machinery or equipment.
2. To relieve an employee of duties temporarily during the investigation of alleged wrongdoing by the employee or during a disciplinary or dismissal process, subject to the requirements outlined in subsections (B) and (C).

B. Reporting administrative leave. If an employee's administrative leave totals 80 consecutive hours, the agency head shall submit a report to the Director and for each week thereafter, until the employee's administrative leave is terminated. The report shall include:
1. The name of the agency,
2. The employee identification number (EIN) of the employee,
3. The name of the employee,
4. The employment status of the employee,
5. The date the employee was placed on administrative leave,
6. The number of hours the employee has been on administrative leave as of the date of the report, and
7. A brief description as to why the employee is on administrative leave.

C. Approval of Director. If an employee's administrative leave is anticipated to exceed 240 consecutive working hours, the agency head shall obtain the approval of the Director.
1. An agency head requesting approval to continue an employee's administrative leave for more than 240 working hours shall submit a request to the Director for approval at least five business days before the employee's administrative leave will total 240 working hours. If circumstances beyond the agency's control do not permit at least five business days' notice, the agency head shall submit the request as soon as the agency head is aware of the necessity for the request. The request shall include all of the information listed in subsection (B), the reason the administrative leave will extend beyond 240 working hours and the anticipated date the administrative leave will be terminated.
2. The Director shall review the request and approve, modify or deny the request within three business days of receipt.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Amended by exempt rulemaking at 19 A.A.R. 717 effective April 13, 2013 (Supp. 13-1).

R2-5A-B605. Bereavement Leave

A. General. An employee may be absent with pay due to the death or funeral of a spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, an individual who stood "in loco parentis," grandparent, grandchild, brother, sister, brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law, or daughter-in-law.

B. Amount of bereavement leave.
1. A full-time employee may be absent with pay for up to 24 regularly scheduled work hours. An agency head may extend the bereavement leave for up to 16 additional work hours if the employee travels out-of-state for the funeral.
2. A part-time employee who works 1/4 time, 1/2 time, or 3/4 time may be absent with pay for a proportional amount of bereavement leave. A part-time employee who works a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time may be absent with pay at the next lower rate. An employee who works less than 1/4 time is not entitled to bereavement leave.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-B606. Civic Duty Leave

A. General. Upon substantiated application, an employee shall receive absence with pay as civic duty leave while serving as a juror, complying with a subpoena, voting, or serving as a member of a governmental board, commission, or similarly constituted governmental body, subject to the conditions set forth in this rule and the limitations in R2-5A-A601(B).

B. Use of civic duty leave. Except for voting pursuant to A.R.S. § 16-401 (primary elections) or A.R.S. § 16-402 (general elections), an employee granted civic duty leave shall report for duty with the employing agency whenever the employee's presence is not required for the civic duty, unless:
1. The distance to the work location would preclude timely reporting for the civic duty, or
2. The employee cannot return to work at least one hour before the end of the work shift.

C. Appearance as a witness. An employee who is subpoenaed as a witness by any court or administrative, executive, or judicial body in this state may be absent with pay unless the testimony or evidence to be given relates to the employee's commercial, business, or personal matters.

D. Jury and witness fees. Employees who are granted civic duty leave when called for jury duty or subpoenaed as a witness shall remit any fees to the employing agency, except for mileage allowance.

E. Membership on a public service body. An employee serving as a member of a governmental board, commission, or similarly constituted governmental body may be absent with pay while performing official duties with the body.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-B607. Compensatory Leave

A. General. Compensatory leave is leave that has been earned by an employee under the provisions of R2-5A-404.

B. Use of compensatory leave. An agency head:
1. Shall approve an employee's request for earned compensatory time off within a reasonable time after the employee makes the request if the use of such time off would not unduly disrupt agency operations.
2. May require an employee to use the employee's available compensatory leave during a period specified by the agency head.

C. Payment. Subject to funding availability, an agency head may pay an employee at any time for all or any portion of the employee's earned compensatory leave balance at the employee's regular rate of pay.

D. Movement.
1. To another state agency. An agency head may pay an employee who transfers to another state agency for all unused compensatory leave at the time of the transfer. An agency head may transfer part or all of the compensatory

leave earned by an employee who transfers to another agency with the gaining agency's concurrence. If the gaining agency does not concur, the losing agency shall pay all of the unused compensatory leave that the gaining agency will not accept.

2. To an employment status or a position ineligible for compensatory leave. If an employee has a change in employment status or position that results in the employee being ineligible to earn compensatory leave, the agency head or the agency head of the losing agency if the employee moves to another state agency, shall pay the employee for all unused compensatory leave at the employee's regular rate of pay immediately before the employee's change in status or position.

E. Separation. An agency head shall pay an employee who separates from state employment for all unused compensatory leave at a rate of compensation not less than the higher of:

1. The average regular rate received by such employee during the last three years of the employee's employment, or
2. The final regular rate received by such employee.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-B608. Educational Leave

A. General. An employee may be sent with pay to participate in a formal educational or training course of study at a college, university, or technical school with the approval of the agency head and the Director, based on the determination that the leave is in the best interest of the state.

B. Application. The approved application shall be accompanied by a written agreement signed by the agency head and the employee containing the following provisions at a minimum:

1. A statement of the payments, if any, to be provided to the employee and the manner of their payment.
2. An agreement by the employee to return to or continue in state employment upon the completion of the educational or training course of study for a period of time specified by the agency head.
3. A statement by the employee that failure to successfully complete the course, to complete the specified state employment, or to fulfill all of the terms of the agreement, shall result in the employee's being required to repay all or a proportionate part of the salary and other payments received, if any.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-B609. Living Donor Leave

An employee who requests absence with pay for living donor leave under A.R.S. § 41-706 shall submit written verification that the employee is to serve as a donor. An employee may be absent with pay for the time specified for the following purposes:

1. Up to 40 working hours to serve as a bone marrow donor.
2. Up to 240 working hours to serve as an organ donor.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-B610. Leave for National Disaster Medical System (NDMS) Training

An employee who requests absence with pay on national disaster medical system leave under A.R.S. § 38-610 is entitled to be absent with pay for the number of hours regularly scheduled to work on all days the employee is on training duty.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-B611. Meritorious Service Leave

A. The Director shall establish guidelines for meritorious service leave.

B. Except for employees in covered positions classified as Correctional Officers I, II, or III, or Community Corrections Officers, meritorious service leave is only available to uncovered employees.

C. The guidelines established by the Director shall include at a minimum:

1. The maximum number of hours of meritorious service leave that may be awarded to an employee per calendar year;
2. The maximum percentage of agency employees eligible for meritorious service leave;
3. A requirement that an employee shall use meritorious service leave within 12 months of receipt of the leave;
4. A requirement that if the employee does not use the meritorious service leave within 12 months of receipt, that the leave is forfeited; and
5. A statement that unused meritorious service leave is forfeited upon separation from state employment.

D. Subject to the guidelines established by the Director, a meritorious service leave program may be implemented at the discretion of the agency head.

E. An agency head shall report to the Director on the utilization of meritorious service leave pursuant to the reporting requirements in the guidelines established by the Director.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

PART C. UNPAID LEAVE

R2-5A-C601. Furlough

A. Definition. A furlough is the involuntary placement of an employee on leave of absence without pay for budgetary reasons.

B. Types of furloughs. A furlough may be authorized by legislative action. In addition, the Director may approve:

1. A reduction of funding furlough that allows an agency head to place employees on furlough for any combination of consecutive or non-consecutive days. There is no maximum number of days an employee may be placed on furlough, but consecutive furlough days shall not exceed five consecutive days or more than one-half the employee's regularly scheduled hours in a pay period, whichever is less; and
2. A suspension of funding furlough that allows an agency head to place employees on furlough indefinitely until funding is restored.

C. General.

1. The total number of days an employee is placed on furlough may vary based on the amount of the reduction or length of suspension of funding.
2. A furlough day equals eight hours for full-time employees and is pro-rated for part-time employees. Furlough hours for part-time employees are calculated by multiplying the number of hours the employee is scheduled to work in a week by 0.2. If the calculation results in a fraction, the furlough hours shall be rounded to the nearest whole hour, as follows:
   a. 0.5 or above is rounded up, and
   b. Less than 0.5 is rounded down.
3. A furlough is unpaid.

4. Unless a work emergency occurs under subsection (D)(5)(d), while on furlough, an employee shall not conduct state work or volunteer to conduct state work, either with or without compensation.
5. Paid leave shall not be substituted for furlough days.
6. All state employees within the scope of the furlough shall be subject to the furlough in the same manner. Exceptions may be granted when an agency head determines certain employees within the scope of the furlough have unique knowledge or skills or are considered mission critical and need to be excluded from the furlough.
7. Unless the employee is in a physician or attorney position, an employee who is in a position that has been determined to be exempt from the provisions of the Fair Labor Standards Act (FLSA) will lose the exemption for any work week in which the employee is furloughed for less than the full work week.
8. A furlough shall not adversely affect an employee's service anniversary date or create a break in service.
9. Upon conclusion of the furlough period, an agency head shall return an employee to the employee's status and position held prior to the furlough, unless a personnel action taken in accordance with State Personnel System rules authorizes a change to the employee's record.
10. An employee's failure or inability to return to work upon conclusion of the furlough period may, in accordance with applicable State Personnel System rules:
    a. Result in the employee being placed on leave,
    b. Be considered a resignation,
    c. Result in separation without prejudice, or
    d. Be cause for dismissal of a covered employee.

D. Reduction of funding furlough.

1. An agency head shall submit to the Director a furlough plan for approval if the agency head determines a furlough is necessary due to a reduction of funding. An agency head is not required to implement or exhaust other cost-savings measures prior to initiating a furlough plan.
2. The agency head shall submit the furlough plan for approval at least 30 business days prior to the proposed implementation date of the furlough. If circumstances beyond the agency head's control do not permit at least 30 business days' notice, the agency head shall submit the furlough plan as soon as the agency head is aware of the necessity for the furlough and provide a written explanation of why the 30 business day requirement was not met.
3. An agency head shall include all of the following in the furlough plan:
    a. The proposed scope of the furlough plan, which shall be either agency-wide or limited to:
        i. Agency operations in one or more geographic areas,
        ii. One or more organizational units of the agency,
        iii. One or more funding sources,
        iv. One or more job classes,
        v. One or more class series, or
        vi. Any combination of the above.
    b. If the furlough will not be conducted on an agency-wide basis, each affected:
        i. Geographic location,
        ii. Organizational unit,
        iii. Funding source,
        iv. Job class, and
        v. Class series.
    c. For each affected geographical location, organizational unit, funding source, job class, and class series specified in the furlough plan, the total number of employees scheduled for furlough;
    d. If requesting any exceptions within the scope of the furlough under subsection (C)(6), the total number of employees within the scope of the furlough, the number of employees for whom an exception is requested, and the reason for the request;
    e. The number of days and date ranges for the furlough;
    f. The anticipated cost savings due to the furlough;
    g. The agency's procedures for scheduling furloughs; and
    h. The procedures for notifying employees of the furlough.
4. The Director shall review and provide written notification of approval, modification, or denial of an agency's furlough plan within 20 business days of receipt.
5. Upon approval of the Director to conduct a reduction of funding furlough, an agency head:
    a. May place an employee on furlough for any combination of consecutive or non-consecutive days, subject to the limits in subsection (B)(1);
    b. Shall determine the scheduling of furloughs that provide for the continuation of any agency operations required by law;
    c. May cancel or rescind any approved paid or unpaid leave in progress or scheduled for an employee who is designated for furlough and shall notify the affected employee in writing of the cancellation of the approved leave for the duration of the furlough. If the previously approved leave was scheduled to extend beyond the furlough, the employee may return to paid leave status, if available, following the furlough period. If the agency head cancels an employee's paid leave and:
        i. The employee is on leave pursuant to the provisions of the federal Family and Medical Leave Act (FMLA) during a scheduled furlough day, the furlough day shall not count against the employee's FMLA entitlement and the employee's leave balance shall not be charged for the furlough day; or
        ii. The employee is on military leave during a scheduled furlough day, the furlough day shall not count against the employee's military leave and the employee's leave balance shall not be charged for the furlough day; and
    d. Shall prohibit an employee from working during the period of the furlough, unless a work emergency arises. In the event of a work emergency, an agency head may revoke the furlough for an employee in an individual case. An employee whose furlough is revoked due to an emergency shall be paid for time required to work and shall be required to take the furlough on another day, unless otherwise exempted.

E. Suspension of funding furlough - agency head request.

1. An agency head shall submit to the Director for approval a furlough plan if the agency head determines a furlough is required due to a suspension of funding to pay employees.
2. The agency head shall submit the furlough plan for approval at least 15 business days prior to the proposed implementation date of the furlough. If circumstances beyond the agency head's control do not permit at least 15 business days' notice, the agency head shall submit the furlough plan as soon as the agency head is aware of

the necessity for the furlough and provide a written explanation of why the 15 business day requirement was not met.

3. An agency head shall include all of the following in the furlough plan:
   a. The proposed scope of the furlough plan, which shall be either agency-wide or limited to:
      i. Agency operations in one or more geographic areas,
      ii. One or more organizational units of the agency,
      iii. One or more funding sources,
      iv. One or more job classes,
      v. One or more class series, or
      vi. Any combination of the above.
   b. If the furlough will not be conducted on an agency-wide basis, each affected:
      i. Geographic location,
      ii. Organizational unit,
      iii. Funding source,
      iv. Job class, and
      v. Class series.
   c. For each affected geographical location, organizational unit, funding source, job class, and class series specified in the furlough plan, the total number of employees scheduled for furlough;
   d. If requesting any exceptions within the scope of the furlough under subsection (C)(6), the total number of employees within the scope of the furlough, the number of employees for whom an exception is requested, and the reason for the request;
   e. The procedures for notifying employees of the furlough; and
   f. The procedures for notifying employees of restoration of funding and when to return to work.
4. The Director shall review and provide written notification of approval, modification, or denial of an agency's furlough plan within 10 business days of receipt.
5. Upon approval of the Director to conduct a suspension of funding furlough, an agency head:
   a. Shall freeze all personnel actions except for those actions that would accomplish, or assist in accomplishing the purpose of the furlough;
   b. May place employees on furlough indefinitely until the reason for the furlough is abated;
   c. Shall notify affected employees of the furlough and that while on furlough, an employee:
      i. Shall not report to work or work from any location until notified to return to work; and
      ii. Will not receive pay for any unused and unforfeited annual leave, should the employee resign or be terminated, until funding is restored;
   d. May cancel or rescind any approved paid or unpaid leave in progress or scheduled for an employee who is designated for furlough and shall notify the affected employee in writing of the cancellation of the approved leave for the duration of the furlough. If the previously approved leave was scheduled to extend beyond the furlough, the employee may return to paid leave status, if available, following the furlough period; and
   e. Shall notify employees upon restoration of funding and when to return to work.

F. Suspension of funding furlough - failure to pass state budget. If the state fails to pass a budget and funds are not appropriated for the following fiscal year, the Director may authorize an agency head to implement a suspension of funding furlough. Upon such notification by the Director, an agency head:

1. Shall freeze all personnel actions except for those actions that would accomplish, or assist in accomplishing the purpose of the furlough;
2. Unless an exception has been authorized as provided in subsection (F)(4), shall place all employees on furlough indefinitely until the reason for the furlough is abated;
3. Shall require all employees to be subject to the furlough in the same manner;
4. May establish exceptions when only a portion of the employees in a particular class are necessary to perform mission critical services;
5. Shall notify affected employees of the furlough and that while on furlough, an employee:
   a. Shall not report to work or work from any location until notified to return to work; and
   b. Will not receive pay for any unused and unforfeited annual leave, should the employee resign or be terminated, until funding is restored;
6. Shall cancel or rescind any approved paid or unpaid leave in progress or scheduled for an employee who is designated for furlough and shall notify the affected employee in writing of the cancellation of the approved leave for the duration of the furlough. If the previously approved leave was scheduled to extend beyond the furlough, the employee may return to paid leave status, if available, following the furlough period; and
7. Shall notify employees upon restoration of funding and when to return to work.

G. Employee request for review.

1. An employee may submit a request for review of the employee's placement on furlough. The employee shall make the request for review in writing to the agency head no later than three business days after the employee's receipt of a furlough notice. The employee shall limit the request for review to the determination resulting in the employee's furlough and include a proposed resolution.
2. The agency head shall provide a written response to the employee with a final decision within:
   a. Five business days after receipt of the request if a reduction of funding furlough, or
   b. Fifteen business days after the employee returns to work if a suspension of funding furlough.
3. A request for review shall not delay implementation of the furlough.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-C602. Leave Without Pay

A. Approval. All leave without pay requires a written request by an employee in advance, including the reason for the employee's request, and approval by the agency head.

B. Use of leave. Except for military leave, an agency head shall not grant leave without pay in excess of 80 consecutive hours until all annual leave earned for working on a day on which a state holiday is observed, all accrued annual leave and, if the leave without pay is for medical reasons, sick leave are exhausted.

C. Return to work.

1. An employee who returns to work after an authorized period of leave without pay of 80 consecutive hours or less shall return to the same position occupied at the start of the leave without pay.

2. Except as provided in subsection (C)(4), an employee who returns to work after a period of leave without pay in excess of 80 consecutive hours may return to a position in the class held at the start of the leave without pay, if a position is available and funded, and if the leave without pay is terminated in one of the following ways:
   a. Expiration of its term and the employee's return to work;
   b. Rescission of the leave without pay by the agency head before its scheduled expiration due to an unforeseen need that results in an insufficient number of employees available to provide service and for which:
      i. The agency head provides written notice of the rescission to the employee's last known address at least 15 days before the date the employee is directed to return to work; or
      ii. If circumstances beyond the agency's control do not permit at least a 15-day notice, the agency head provides notice as soon as possible after becoming aware of the need for the employee to return to work; or
   c. Curtailment of the leave without pay before its scheduled expiration date upon request of the employee and with approval of the agency head.
3. An agency head may consider the failure or inability of an employee to return to work on the first work day after an approved leave without pay as a resignation.
4. An employee returning to work from leave without pay granted:
   a. For industrial illness or injury for up to six months shall return to the position occupied at the start of the leave without pay. If this position or a position in the same class is not available and funded, the agency head shall conduct a layoff or, if the employee is covered, a reduction in force in accordance with Subchapter B.
   b. As military leave is subject to the provisions of the USERRA regulations incorporated by reference in R2-5A-D603.
   c. As FMLA leave is subject to the provisions of the FMLA regulations incorporated by reference in R2-5A-D601.

D. Insurance benefits continuation. An employee who is on leave without pay may continue to participate in the employee insurance plans as follows:
1. Health benefit plan participation.
   a. An employee who is on FMLA leave is eligible to continue to participate in the health benefit plan for the duration of the FMLA leave by paying the employee premium/contribution. An agency head may recover the state's portion of premium/contributions paid to maintain health coverage for an employee if the employee fails to return from FMLA leave under certain circumstances, in accordance with FMLA regulations incorporated by reference in R2-5A-D601.
   b. An employee who is on leave without pay for a health-related reason that is not an industrial illness or injury and who either does not meet FMLA eligibility requirements or has exhausted FMLA leave and remains absent from work may continue to participate in the health benefit plan by paying both the state and employee premium/contribution. Authority to continue participation in the health benefit plan shall terminate on the earliest of:
      i. Receipt of long-term disability benefits for which there is eligibility to continue health benefit plan participation under a state-sponsored retirement plan,
      ii. A determination of eligibility for Medicare coverage, or
      iii. 30 months after the incapacity began.
   c. An employee who is on leave without pay for reasons other than those outlined in subsection (D)(1)(a), (b), or R2-5A-D602 pertaining to industrial leave, may continue to participate in the health benefit plan for a maximum of six months by paying both the state and employee premiums/contributions.
2. Life insurance plan participation.
   a. An employee who is on FMLA leave continues to participate in the Basic Life and Accidental Death and Dismemberment Insurance Plan and may continue to participate in the supplemental life and dependent life insurance coverage by paying the full premium/contribution.
   b. An employee who is on leave without pay for a health-related reason that is not an industrial illness or injury and who either does not meet FMLA eligibility requirements or has exhausted FMLA leave and remains absent from work may continue to participate in the basic life insurance plan by paying the state premium/contribution. An employee who elects to continue to participate in the basic plan may also continue any supplemental or dependent life coverage that is in force at the beginning of the leave without pay by continuing to pay the premium/contribution. Authority to continue in the life insurance plan shall terminate in accordance with the time limits specified in subsection (D)(1)(b).
   c. An employee who is on leave without pay for reasons other than those outlined in subsection (D)(1)(a), (b), or R2-5A-D602 pertaining to industrial leave, may continue to participate in the basic life insurance plan by paying the state premium/contribution. An employee who elects to continue to participate in the basic plan may also continue any supplemental or dependent life coverage that is in force at the beginning of the leave without pay by continuing to pay the premium/contribution. Authority to continue in the life insurance plan shall be available for a maximum of six months.
3. Termination of insurance. The insurance coverage of an individual on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

PART D. LEAVE THAT COULD BE EITHER PAID OR UNPAID

R2-5A-D601. Family and Medical Leave Act (FMLA) Leave

A. General. All state agencies are responsible for complying with the federal Family and Medical Leave Act (FMLA) of 1993 and all applicable revisions. FMLA Regulations, 29 CFR 825.100 through 29 CFR 825.800 (July 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This

incorporation by reference contains no future editions or amendments. Any interference with, restraint of, or denial of an employee's rights provided by the FMLA is strictly prohibited.

B. Eligible employee.
1. An eligible employee for the purposes of the FMLA is an employee who:
   a. Is an employee of the state of Arizona;
   b. Has been employed by the state of Arizona for at least 12 months; and
   c. Worked for at least 1,250 hours of service during the 12 months immediately preceding commencement of the leave.
2. An agency head shall not extend FMLA benefits to an ineligible employee.

C. Situations covered by the FMLA. A state agency shall grant an eligible employee FMLA leave when the employee takes leave for one or more of the following reasons:
1. The birth of a child or placement of a child with the employee for adoption or foster care, provided the leave concludes within 12 months of the birth or placement.
2. To care for the employee's spouse, child or parent with a serious health condition.
3. The employee is unable to work because of the employee's own serious health condition.
4. Any qualifying exigency arising out of the fact that the employee's spouse, child or parent is a covered military member on active duty or call to active duty status in support of a contingency operation.
5. To care for a covered service member with a serious injury or illness when the covered service member is the employee's spouse, child, parent or next of kin.

D. Amount of FMLA leave.
1. An employee who takes FMLA leave for any of the situations described in subsections (C)(1), (2), (3) or (4) may take a maximum of 12 workweeks of leave during any rolling 12-month period, measured backward from the first day of each approved period of FMLA leave.
2. An employee who takes FMLA leave for the situation described in subsection (C)(5) may take up to 26 workweeks of leave in a single 12-month period.
3. During a 12-month period, an eligible employee is able to take no more than 12 workweeks of leave for any of the situations described in subsections (C)(1), (2), (3) or (4) and a combined total of 26 workweeks of leave if the leave includes the situation described in subsection (C)(5).
4. If a husband and wife are both state employees, the husband and wife are limited in the amount of FMLA leave taken to a combined total of:
   a. 12 workweeks of leave for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.
   b. 26 workweeks of leave to care for a covered service member with a serious injury or illness.

E. Designation of FMLA leave. An employee need not specifically request FMLA leave to be placed on FMLA leave. If an eligible employee takes leave for any reason covered by the FMLA and has not already exhausted the employee's available FMLA leave, the agency head shall designate the employee's leave as FMLA leave.

F. Use of paid leave. Except for portions of industrial leave, an employee on FMLA leave shall be required to use the employee's available paid leave while on FMLA leave as follows and in the following order:
1. Sick leave or, as applicable, family sick leave subject to the provisions of R2-5A-B603.
2. Compensatory leave subject to the provisions of R2-5A-B607.
3. Annual leave subject to the provisions of R2-5A-B602.
4. Leave without pay subject to the provisions of R2-5A-C602.

G. Insurance benefits continuation. An employee who is using leave with pay remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay while on FMLA leave may continue to participate in the employee insurance plans as follows:
1. Health benefit plan participation. An employee is eligible to continue to participate in the health benefit plan for the duration of the FMLA leave by paying the employee premium/contribution. An agency head may recover the state's portion of premium/contributions paid to maintain health coverage for an employee if the employee fails to return from FMLA leave under certain circumstances, in accordance with FMLA regulations incorporated by reference in subsection (A).
2. Life insurance plan participation. An employee continues to participate in the Basic Life and Accidental Death and Dismemberment Insurance Plan and may continue to participate in the supplemental life and dependent life insurance coverage by paying the full premium/contribution.
3. Termination of insurance. The insurance coverage of an employee on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.

H. Return from FMLA leave. An agency head shall restore an employee returning from FMLA leave to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. The provisions of the FMLA, not the provisions of R2-5A-C602(C), shall govern return to work from leave without pay granted to complete an FMLA-qualified leave.

I. Employee responsibilities. An employee is required to adhere to the employing agency's call-in procedures, give the agency 30 days' notice in the event of a foreseeable leave, provide requested documentation, and periodic updates of the employee's status and intent to return to work as requested by the agency.

J. Agency rights. Nothing in the FMLA or this rule should be construed as limiting an agency's right to manage, discipline or terminate an employee, including an employee's failure to comply with the agency's request for appropriate documentation to substantiate the employee's need for the leave. However, an employee's use of FMLA leave cannot be considered as a negative factor in any employment decision.

K. Conflict. If there is a conflict between the provisions of these rules and the FMLA, the provisions of the FMLA govern.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-D602. Industrial Leave

A. Use of leave.
1. An agency head shall place an employee who sustains a job-related illness or injury that is compensable under the Workers' Compensation Law, A.R.S. Title 23, Chapter 6 on sick leave.

2. If an employee who is on leave under the Worker's Compensation laws meets Family and Medical Leave Act (FMLA) eligibility requirements and the leave qualifies for FMLA leave, an agency head shall count it as FMLA leave. An agency head shall apply industrial leave and FMLA concurrently.
3. An employee shall use leave in an amount necessary to receive total payments (leave payments plus Workers' Compensation payments) that do not exceed the gross salary of the employee.
4. If an employee exhausts all sick leave, compensatory leave and annual leave, an agency head shall place the employee on leave without pay.

B. Payments. If an employee receives a retroactive Workers' Compensation payment for any period of industrial illness or injury for which leave payments were received, the employee shall reimburse the agency for Workers' Compensation payments that exceed 100% of the employee's base pay before the illness or injury, and the agency head shall restore the equivalent value of leave to the employee's appropriate leave account.

C. Light duty. If an employee has a job-related illness or injury that impairs performance on the former job, the agency head shall make every effort to place the employee in a suitable position within the agency, including a light duty assignment.

D. Restriction. An agency head shall not grant sick leave or leave without pay to an employee who fails to accept compensation available under the industrial injury and disease provisions of A.R.S. §§ 23-901 to 23-1091.

E. Insurance benefits continuation. An employee who is using leave with pay in accordance with subsection (A) remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay due to an industrial illness or injury may continue to participate in the employee insurance plans as follows:

1. Health benefit plan participation.
   a. An employee may continue to participate in the health benefit plan for a maximum of six months from the date of illness or injury by paying the employee premium/contribution.
   b. At the end of the six-month period, an employee who remains on leave without pay due to industrial illness or injury may continue to participate in the health benefit plan by paying both the state and employee premiums/contributions, until the employee returns to work or is determined to be eligible for Medicare coverage or Long-term Disability, whichever occurs first.
2. Life insurance plan participation. An employee who is on leave without pay continues to participate in the basic life and accidental death and dismemberment insurance plan without cost for six months after the month in which the illness or injury occurs. During this six-month period, the employee may continue supplemental life and dependent life coverages that were in effect at the start of the leave by paying the applicable premium/contribution.
3. Termination of insurance. The insurance coverage of an employee on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.

F. Accrual of leave. An employee shall continue to receive full leave accrual as long as the employee uses two or more hours of paid leave each day.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-D603. Military Leave
An employee who requests absence with pay on military leave under A.R.S. § 26-168, 26-171, or 38-610 shall submit a copy of the orders for duty with the request for military leave. An employee may be absent with pay for military purposes for up to thirty days in any two consecutive federal fiscal years. All state agencies are responsible for complying with the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 and all applicable revisions. USERRA Regulations, 20 CFR 1002.1 through 20 CFR 1002.314 (April 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-D604. Victim Leave
An employee who is a victim of a juvenile offense or a crime and who requests absence from work to attend court-related proceedings under A.R.S. § 8-420 or 13-4439 shall submit a copy of the form provided to the employee by the law enforcement agency or a copy of the information the law enforcement agency provided to the employee with the request for victim leave. An employee shall use the employee's available sick leave, compensatory leave or annual leave for such absence. If an employee exhausts all sick leave, compensatory leave and annual leave, an agency head shall place the employee on leave without pay.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 7. PERFORMANCE MANAGEMENT

R2-5A-701. General

A. Performance management system. The Director shall establish a performance management system to evaluate the job performance of state employees. The performance management system established by the Director shall contain performance rating levels and shall contain numerical points to apply to each performance rating level established.

B. Administration. The Director shall develop an administrative manual and training on the performance management system.

C. Exceptions. The performance management system may be used:

1. As determined by the appointing authority for the agency head, to evaluate the job performance of the agency head.
2. As determined by the agency head, to evaluate the job performance of:
   a. Each deputy director, or equivalent, of the agency.
   b. Each assistant director, or equivalent, of the agency.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-702. Performance Management Process

A. Performance plan. For the purposes of this subsection, "performance plan" means a document prepared by an employee's supervisor that outlines what is expected of the employee and how the employee's performance will be measured. Subject to review by agency management, a supervisor:

1. Shall administer a performance plan for each employee within 30 days of becoming the employee's supervisor.

2. May modify a performance plan at any time during a performance period.
3. Shall modify a performance plan when significant responsibilities or expectations are added to or removed from a position.
4. Shall notify the affected employee of any modifications made to a performance plan under subsection (A)(2) or (3).

B. Performance evaluation requirements.
1. Informal evaluation. A supervisor shall:
   a. Monitor and evaluate an employee's performance throughout the rating period,
   b. Provide feedback to the employee on a regular basis, and
   c. Attempt to correct inadequate performance where possible and appropriate.
2. Formal evaluation. A supervisor shall:
   a. Formally evaluate, document and rate the performance of each employee at least annually.
   b. Submit the evaluation to agency management for review prior to the evaluation being administered to the employee.
3. Covered probationary employees. Prior to granting a covered probationary employee permanent status, a supervisor shall evaluate a probationary employee at least once prior to the end of the employee's probationary period.

C. Responsibilities.
1. An employee shall comply with the performance plan established by the supervisor.
2. A supervisor shall comply with performance evaluation requirements.
3. An agency head shall ensure that all performance evaluations are completed as required by this Section.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 8. DISCIPLINARY ACTIONS

R2-5A-801. General

A. Authority. An agency head has the primary authority and responsibility for managing the conduct of all employees within an agency. A covered employee may be disciplined only for cause. An agency head shall discipline a covered employee in accordance with this Article and the rules in Subchapter B of this Chapter. An uncovered employee serves at the pleasure of the appointing authority and may be dismissed at will. Except for an employee who is in a position listed in A.R.S. § 41-742(F), any action that involves a suspension greater than 80 working hours, an involuntary demotion, or a dismissal requires review by the Director prior to the agency head administering such action.

B. Level of discipline.
1. If an agency head deems it necessary to discipline an employee, the agency head may determine the level of discipline to be imposed, up to and including dismissal, subject to review by the Director, if applicable.
2. In determining the level of discipline to be imposed, the agency head may consider the following factors:
   a. Consistent application of rules and standards,
      i. Unless otherwise prescribed by statute, the agency head need only consider those cases decided under the administration of the current agency head. Decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards.
      ii. In determining consistent application of rules and standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used for comparison purposes in hearings wherein the consistent application of rules and standards is at issue.
   b. Prior knowledge of rules and standards,
   c. The severity of the infraction,
   d. The repeated nature of violations,
   e. Prior corrective or disciplinary actions,
   f. Previous oral discussions,
   g. The employee's past work record,
   h. The effect on agency operations,
   i. The potential of the violations for causing damage to persons or property.

C. Limitations.
1. Except as otherwise provided by statute or rule, suspensions shall not exceed a total of 30 working days during any 12-month period. The 12-month period begins with the first day of the first suspension.
2. An employee who is involuntarily demoted must possess the qualifications for the position and:
   a. A covered employee who has attained permanent status may be involuntarily demoted only to a regular position in the covered service.
   b. An uncovered employee may be involuntarily demoted only to a position in the uncovered service.

D. Review by Director.
1. Letters of reprimand and suspensions without pay of 80 working hours or less are not subject to review by the Director.
2. Prior to imposing a suspension greater than 80 working hours, an involuntary demotion, or dismissal, the agency head shall submit the proposed action to the Director for review as prescribed in R2-5A-802, unless the employee is in a position listed in A.R.S. § 41-742(F). If the employee is in a position listed in A.R.S. § 41-742(F), a review by the Director is not required.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-802. Procedures for Review by the Director

A. Prior to administering any action requiring review by the Director, the agency head shall submit the proposed letter to the Director prior to the date the agency head intends to issue the letter to the employee.

B. The Director shall review the agency head's proposed action and provide notification of concurrence or recommend modification to the proposed action.

C. When the agency head administers the action to an employee, the agency head shall also send a copy of the employee's letter to the Director. If the agency head determines that no action will be taken, the agency head shall notify the Director.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-803. Employee Request for Review of Disciplinary Action

A. A covered employee who is issued a disciplinary action may have grievance or appeal rights, as applicable.

B. An uncovered employee does not have grievance rights or the right of appeal to a state merit board or council.

C. A covered employee who files a complaint on a disciplinary action alleging discrimination or harassment is precluded from also filing a grievance through the agency's grievance procedure on the same disciplinary action that is the subject of the employee's complaint.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 9. COMPLAINTS

R2-5A-901. Complaint System

A. General. Each agency head shall:
1. Adopt a procedure to address employee complaints concerning discrimination or harassment in compliance with this rule.
2. Designate an employee of the agency to serve as the agency's complaint coordinator, who shall be responsible for receiving complaints, determining applicability under the complaint system, investigating or assigning the complaint to the appropriate individual within the agency for review or investigation, and tracking the processing of complaints.

B. Matters subject to the complaint system. The adopted complaint procedure shall require the complainant to file the complaint with the agency complaint coordinator within 180 days of the action giving rise to the complaint and to clearly outline the allegations to be addressed, including whether the basis of the complaint is based on:
1. Unlawful discrimination based on race, color, religion, sex (including pregnancy), age, national origin, genetic information or on the basis of a disability.
2. Allegation of sexual harassment or other form of harassment.
3. Retaliation for filing a complaint.
4. Retaliation or intimidation for exercising any right under state or federal law.

C. Preparation. A complainant shall not be allowed the use of state time or state property to prepare a complaint, prepare for a meeting with agency management or to meet with a representative. Subject to supervisory approval, a complainant may request available compensatory or annual leave for this purpose.

D. Multiple complaints. Multiple complaints by an employee may be consolidated into a single complaint. Separate complaints filed by two or more employees regarding the same issue or issues may be consolidated into a group complaint. Employees having a common complaint may submit one group complaint, identifying one complainant as the selected spokesperson for the group. Employees who choose to file a group complaint are prohibited from filing separate complaints on the same issue.

E. Amendments. Once a complaint is submitted to the agency complaint coordinator, it may not be amended. If additional documentation is submitted by the complainant after the initiation of the complaint, the reviewing or investigating official may remand the complaint to the complainant for reconsideration and resubmission.

F. Approval. Each agency will submit its proposed complaint procedure and any subsequent changes to the Director for approval.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-902. Complaint Procedures

A. Content. Each agency complaint procedure shall include as a minimum that:
1. The agency head be notified of all verbal or written complaints of discrimination or harassment reported by an employee immediately upon receipt of a complaint.
2. Employees who are told or otherwise become aware that discrimination or harassment is occurring must immediately report the allegation or complaint to the agency's complaint coordinator.
3. The complaint include all facts and circumstances involved in the alleged violation, including:
   a. Description of the incident(s),
   b. Name(s) of individual(s) involved,
   c. Name(s) of witness(es),
   d. The date(s) the discrimination or harassment occurred (if known),
   e. Resolution sought,
   f. Federal or state law alleged to have been violated.
4. The agency complaint coordinator shall acknowledge receipt of the complaint in writing to the complainant not later than five business days after receipt of the written complaint.
5. The agency complaint coordinator shall initiate an investigation into the alleged complaint or assign the complaint to the appropriate individual within the agency for review or investigation within 10 business days and the review or investigation shall be completed within 60 business days of receipt of the written complaint. If extenuating circumstances exist, an extension shall be requested through the agency complaint coordinator.
6. Barring resolution of the complaint by agreement of the parties, the agency complaint coordinator shall forward a written recommendation to the agency head, or designee, within 10 business days of completion of the review or investigation.
7. The agency head, or designee, shall review the findings and recommendations and issue a decision in writing to the complainant.
8. A statement advising that retaliation against an employee for filing a complaint in good faith will not be tolerated or permitted.
9. A statement specifying that a grievance filed by a covered employee under R2-5B-403 that includes an allegation of discrimination or harassment shall be reviewed or investigated under the provisions of this Article, and not the grievance system.

B. Review by Director.
1. An employee, other than a Department of Administration employee, who is not satisfied with the agency head's response to a complaint alleging discrimination or harassment, may elevate the complaint to the Director within five business days after the receipt of the agency head's response. The Director will furnish a copy of the final decision to the agency head and the complainant within 20 business days following receipt of the complaint by the Director. The 20 business days may be extended by the Director with the concurrence of the complainant. The decision of the Director is the final step in the complaint procedure.
2. A complainant who is a Department of Administration employee and who is not satisfied with the Director's decision on a complaint alleging discrimination or harassment may resubmit the complaint to the Director within five business days after receipt of the Director's decision. The Director will appoint an individual who is not an employee of the Department of Administration and who

serves in a position that is assigned to manage an agency's employee relations or investigations work unit to investigate the resubmitted complaint. The investigator shall conduct an investigation and furnish a copy of the findings and final decision to the Director and the complainant within 20 business days following receipt of the complaint by the investigator. The 20 business days may be extended by the investigator with the concurrence of the complainant. The decision of the investigator is the final step in the complaint procedure.

3. The response will refer the employee to the appropriate entity if the employee is dissatisfied with the final step of the complaint procedure.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 10. SEPARATIONS

R2-5A-1001. Voluntary Separation

A. Resignation. An employee may terminate employment with the state by submitting a written resignation to the agency head. An employee should submit a resignation at least 10 business days prior to the effective date of the resignation. If an employee resigns orally, the agency head shall confirm the resignation in writing. An agency head may refuse to accept a resignation and separate the employee pursuant to R2-5A-1002.

B. Job abandonment. An agency head may consider an employee to have voluntarily resigned from employment with the agency when the employee is absent from duty for three consecutive workdays or equivalent without proper authorization.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5A-1002. Involuntary Separation

A. General. An agency head may terminate an employee as deemed necessary to meet the needs of the agency and in keeping with federal and state laws and regulations. A covered employee may be dismissed only for cause. An agency head shall dismiss a covered employee in accordance with Article 8 and the rules in Subchapter B of this Chapter.

B. Staff reduction. At times, a staff reduction is necessary due to lack of work, lack of funds, economic slowdowns, technological or structural changes in the agency's operations, or because a staff reduction is determined to be necessary to ensure the financial health and viability of the agency.

1. Except for an employee who is in a position listed in A.R.S. § 41-742(F), a staff reduction of an uncovered employee requires review by the Director prior to the agency head administering such action.
2. An agency head shall conduct staff reductions of covered employees in accordance with Subchapter B, Article 6, Reduction in Force.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

SUBCHAPTER B. COVERED EMPLOYEES

ARTICLE 1. GENERAL

R2-5B-101. Definitions

In addition to the definitions provided in Subchapter A of this Chapter, the following definitions apply to this Subchapter:

"Limited appointment employee" means an employee who, before September 29, 2012, was subject to the provisions of A.R.S. Title 41, Chapter 4, Articles 5 and 6 that were in effect before September 29, 2012, was appointed to a position that was based on the duration of funding, and was not eligible to acquire reduction in force rights.

"Original probationary period" means the specified period following initial appointment to covered service. A.R.S. § 41-741(10)

"Permanent status" means the standing a covered employee achieves after the completion of an original probation or a promotional probation.

"Probationary period" means a working test period of employment in a covered service position for evaluation of the employee's work. A.R.S. § 41-741(11)

"Promotional probation" means the specified period of employment following promotion of a permanent status employee to another covered position that has a higher pay grade. A.R.S. § 41-741(12)

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-102. Applicability

A. The rules in this Subchapter are applicable to covered positions, applicants for covered positions and covered employees in the State Personnel System.

B. Covered service is limited to the following:

1. An employee who was in the state service as either a probationary or permanent status employee, was not required to become at will uncovered in accordance with A.R.S. Title 41, Chapter 4, Article 4, and who does not:
   a. Voluntarily elect to become uncovered at will.
   b. Voluntarily accept a change in assignment to a position in the uncovered service.
   c. Have a break in service.
2. A newly hired employee who is appointed or a current uncovered employee who voluntarily accepts a change in assignment to:
   a. A position in the Arizona Department of Corrections that is classified as a Correctional Officer I, Correctional Officer II, Correctional Officer III, or a Community Corrections Officer; or
   b. A position in any state agency that requires certification as a full authority peace officer by the Arizona Peace Officer Standards and Training Board, provided the position is not in the uncovered service.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Amended by exempt rulemaking at 19 A.A.R. 717 effective April 13, 2013 (Supp. 13-1).

ARTICLE 2. EMPLOYMENT STATUS

R2-5B-201. Applicability

The rules under this Article are applicable only to positions in the covered service and covered employees.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-202. Original Probation

A. General. A new employee hired into a position in the covered service shall serve an original probation period of one year.

B. Extension of probation.

1. An agency head may extend an employee's original probation up to six additional months for employment-related reasons.
2. The probationary period shall be extended for any period for which a probationary employee is on leave without pay for more than 80 consecutive working hours. If original probation is extended for this reason, the employee's probation may exceed 18 months.

C. Completion of original probation.
1. In accordance with the rules in Subchapter 5A, Article 7, a supervisor shall evaluate an original probationary employee and submit a report to the agency head before expiration of the employee's probationary period. If the agency head takes no action to extend the probationary period or to terminate the employee, the agency head shall grant permanent status to the employee upon completion of the probationary period.
2. If an agency head determines at any time during an original probationary period that the services of a probationary employee are no longer required in that position for any reason or for no reason, the agency head may:
   a. Dismiss the employee without a stated reason and without the right of appeal, providing the employee a letter of dismissal; or
   b. Offer the employee another position for which the employee possesses the qualifications. An employee who accepts a position that is not in the covered service is an at will uncovered employee.

D. Change in position. An original probation employee who is selected for another position in the covered service shall serve an original probation period in the new position.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-203. Promotional Probation

A. General. A permanent-status employee who is promoted to a position in the covered service shall serve a promotional probation period of six months.

B. Extension of probation.
1. An agency head may extend an employee's promotional probation up to six additional months for employment-related reasons.
2. The probationary period shall be extended for any period for which a probationary employee is on leave without pay for more than 80 consecutive working hours. If promotional probation is extended for this reason, the employee's probation may exceed one year.

C. Completion of promotional probation.
1. In accordance with the rules in Subchapter 5A, Article 7, a supervisor shall evaluate a promotional probationary employee and submit a report to the agency head before expiration of the employee's probationary period. If the agency head takes no action to extend the probationary period, to revert or separate the employee, or offer the employee another position, the agency head shall grant permanent status to the employee upon completion of the probationary period.
2. If an employee fails to complete a promotional probation successfully the agency head may revert the employee in the current employing agency to:
   a. A vacant position in the class in which the employee held permanent status immediately before promotion, or
   b. A similar position in another class at the same grade as the class that the employee holds permanent status if the employee possesses the qualifications for that position.

D. Discipline. Neither subsection (C)(2)(a) nor (b) shall preclude the imposition of disciplinary action.

E. Failure to complete promotional probation. An employee who is reverted shall not have the right to appeal.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-204. Permanent Status

A covered employee who has successfully completed the employee's probationary period shall attain permanent status in the position.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-205. Change from Covered to Uncovered Service

A. Voluntary election. A covered employee may voluntarily elect to become an at will uncovered employee without a change in assignment. Such an election is subject to the approval of the head of the employing agency and the Director. If approved, the effective date of the employee's change to uncovered service shall be the first day of the pay period immediately following the Director's approval.

B. Change in assignment. Except for a special assignment, a covered employee who voluntarily accepts a change in assignment to a position that is not in the covered service, regardless of whether the voluntary change in assignment is a promotion, demotion, or lateral transfer, is an at will uncovered employee. The effective date of the employee's change to uncovered service shall be the same as the effective date of the change in assignment. A special assignment is not a change in assignment.

C. Return to state employment. A covered employee who has a break in service and returns to employment in an agency in the State Personnel System in any capacity shall be an at will uncovered employee, unless the appointment is to a position in the covered service.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Amended by exempt rulemaking at 19 A.A.R. 717 effective April 13, 2013 (Supp. 13-1).

ARTICLE 3. DISCIPLINARY ACTIONS

R2-5B-301. General

A. Applicability. The rules under this Article are applicable only to covered employees.

B. Review by Director. Disciplinary actions for covered employees are subject to the review requirements outlined in R2-5A-801(D) and R2-5A-802.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-302. Reprimand

A. Authority. An agency head may issue a written reprimand to an employee for cause.

B. Reprimand Procedures. The agency head shall provide the employee with a written statement of the reasons for the reprimand and the employee's grievance rights.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782,

effective September 29, 2012 (Supp. 12-4).

R2-5B-303. Suspension

A. Authority. An agency head may suspend an employee without pay for cause.

B. Limitation. Except as otherwise provided by statute or rule, suspensions shall not exceed a total of 30 working days during any 12-month period. The 12-month period begins with the first day of the first suspension.

C. Pre-suspension procedures for suspensions exceeding 80 working hours. Before an employee with permanent status can be suspended for more than 80 working hours, the agency head shall submit the proposed action to the Director for review as prescribed in R2-5A-802, give the employee written notice of the charges, a summary of the agency head's basis for the charges, and an opportunity for the employee to present a written response. The employee's response shall be made not later than three business days after the employee receives notice of the charges, unless extended in writing by the agency head.

D. Suspension procedures. The agency head shall provide the employee with a written statement of the reasons for the suspension. The statement shall specify the period of suspension and the employee's grievance or appeal rights.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-304. Involuntary Demotion

A. Authority. An agency head may involuntarily demote a permanent status employee for cause to any covered position in the employing agency, provided the employee possesses the qualifications for such position.

B. Pre-demotion procedures. Before an employee with permanent status can be involuntarily demoted, the agency head shall submit the proposed action to the Director for review as prescribed in R2-5A-802, give the employee written notice of the charges, a summary of the agency head's basis for the charges, and an opportunity for the employee to present a written response. The employee's response shall be made not later than three business days after the employee receives notice of the charges, unless extended in writing by the agency head.

C. Involuntary demotion procedures. Prior to the effective date of the involuntary demotion, a written notice containing specific reasons for the demotion and the employee's right of appeal shall be provided to the employee and the Director.

D. Probation. Except as otherwise provided in these rules, an employee who is involuntarily demoted shall not be required to serve a probationary period in the position to which demoted.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-305. Dismissal

A. Relief from duty. Nothing in this rule shall preclude the agency head from immediately placing an employee on administrative leave pending implementation of procedures under this Section, but no pay shall be withheld for such period.

B. Dismissal during original probation. An employee on original probation may be dismissed without a stated reason and without the right of appeal.

C. Pre-dismissal procedures. Before an employee with permanent status can be dismissed, the agency head shall submit the proposed action to the Director for review as prescribed in R2-5A-802, give the employee written notice of the charges, a summary of the agency head's basis for the charges, and an opportunity for the employee to present a written response. The employee's response shall be made not later than three business days after the employee receives notice of the charges, unless extended in writing by the agency head.

D. Dismissal procedures. The agency head may dismiss an employee with permanent status only for cause but not before attempting to serve the employee personally or by registered or certified mail, return receipt requested (addressee only), with written notice of the specific reasons for dismissal in sufficient detail to inform the employee of the facts, with a copy to the Director. The agency head shall include a statement of the employee's right to appeal.

E. Effective date of dismissal. The dismissal action is not effective until one of the following occurs:

1. The employee signs for receipt of the dismissal letter personally served or served by mail;
2. Three business days have passed since the letter was mailed to the employee; or
3. An attempt is made to personally serve the dismissal letter, but the employee refuses to sign for the letter. Such attempt to personally serve the letter shall be witnessed.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 4. GRIEVANCES

R2-5B-401. Applicability

The rules under this Article are applicable only to covered employees.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-402. Grievance System

A. General. Each agency that has one or more covered employees shall:

1. Adopt a grievance procedure which will afford each covered employee a systematic means of resolving an employee's disagreement with the receipt of a disciplinary action that is either:
   a. A written reprimand, or
   b. A suspension of:
      i. 40 working hours or less if the employee is a full authority peace officer, or
      ii. 80 working hours or less if the employee is a covered employee in any other capacity.
2. Designate an employee of the agency to serve as the agency's grievance coordinator, who shall be responsible for receiving grievances, determining applicability under the grievance system, forwarding the grievance to the appropriate individual within the agency for review or investigation, and tracking the processing of grievances.

B. Non-applicable matters. The adopted grievance procedure shall not apply to any matter for which another method of review is provided, including but not limited to:

1. Retirement, Life Insurance, or Health Insurance;
2. Any classification action;
3. Any recruitment, selection, or appointment;
4. Any compensation action;
5. A disciplinary action that is either:
   a. A suspension of:
      i. More than 40 working hours if the employee is a full authority peace officer, or
      ii. More than 80 working hours if the employee is a covered employee in any other capacity,

b. A demotion, or
c. A dismissal.
6. A complaint alleging discrimination or harassment; or
7. Any reduction in force action.

C. Restrictions. An employee may not submit a grievance challenging the following management rights:
1. An agency head's right to direct agency employees.
2. An agency head's right to hire, promote, transfer, assign, and retain employees.
3. An agency head's right to maintain efficiency of government operations and to determine the methods, means, and personnel by which these operations are to be conducted.

D. Preparation. A grievant shall not be allowed the use of state time or state property to prepare a grievance, prepare for a meeting with agency management or to meet with a representative. Subject to supervisory approval, a grievant may request available compensatory or annual leave for this purpose.

E. Steps. An agency's grievance procedure shall have two steps for review.
1. As determined by the agency head, the first step in the grievance procedure shall be:
a. The employee's second line supervisor,
b. The assistant director or equivalent, or
c. Any level of management between (a) and (b).
2. The final step in the grievance procedure shall be the agency head, or designee.
3. An agency head may choose to incorporate an additional step in the agency grievance procedure after the first step review.

F. Amendments. Once a grievance is submitted to the first step, it may not be amended. If additional documentation is submitted by the grievant after the initiation of the grievance, the reviewing official may remand the grievance to the appropriate previous level for reconsideration.

G. Approval. Each agency head will submit the agency's proposed grievance procedure and any subsequent changes to the Director for approval.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-403. Grievance Procedures
Content. The grievance procedure established in each state agency shall include as a minimum:
1. An initial statement that any complaint alleging unlawful discrimination or unlawful harassment will be reviewed or investigated according to the provisions of the separate complaint process outlined in Subchapter A, Article 9, and not the grievance system.
2. A requirement that the grievant have an oral discussion with the immediate supervisor in an attempt to resolve the employee's disagreement with the disciplinary action, prior to initiating the written grievance procedure.
3. A requirement that the employee file the grievance in writing with the agency grievance coordinator, within 10 business days after the occurrence of the action being grieved. The date of occurrence of a:
a. Reprimand is the date the reprimand was issued to the employee.
b. Suspension is the first day of suspension.
4. A requirement that the grievance contain a complete statement of all the facts and circumstances involved and the specific redress sought.
5. A provision that the grievant may select a representative at any step in the procedure after the oral discussion with the immediate supervisor.
6. A requirement that another state employee who serves as the representative of a grievant must receive approval for annual or compensatory leave to represent the grievant.
7. A requirement that the grievant must have a minimum of five business days after receipt of a response to forward the grievance at any step, must sign the grievance at each step, and must state the reasons why the response at the previous step was unsatisfactory.
8. A requirement that the agency head will respond to the grievant not later than 30 business days after receipt of the grievance at the first step. Within the 30 business day period, the time for any step may be extended by the agency head with the concurrence of the grievant.
9. A statement that the decision of the agency head is the final step in the grievance process.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 5. APPEALS

R2-5B-501. Applicability
The rules under this Article are applicable only to covered employees who have attained permanent status.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-502. General
A. Except for an employee who is a full authority peace officer, an employee may file an appeal on the receipt of a disciplinary action that is either:
1. A suspension for more than 80 working hours,
2. An involuntary demotion, or
3. A dismissal.

B. Such appeals shall be filed with the State Personnel Board and in accordance with the rules established by the Board.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-503. Full Authority Peace Officers
A. A full authority peace officer may file an appeal on the receipt of a disciplinary action that is either:
1. A suspension for more than 40 working hours,
2. An involuntary demotion, or
3. A dismissal.

B. Such appeals shall be filed with the Law Enforcement Merit System Council and in accordance with the rules established by the Council.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

ARTICLE 6. REDUCTION IN FORCE

R2-5B-601. Applicability
The rules under this Article are applicable only to covered positions and covered employees.

Historical Note
Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

R2-5B-602. Reduction in Force Procedures
A. General.

1. An agency head shall submit to the Director a proposal to conduct a reduction in force if required for one or more of the following reasons:
   a. Lack of funds or work,
   b. Abolition of one or more covered positions,
   c. Material change in job duties or agency organization, or
   d. Introduction of a cost reduction initiative.
2. An agency head shall submit the proposal for a reduction in force at least 30 business days before the proposed effective date of the reduction in force. If circumstances beyond the agency's control do not permit at least 30 business days' notice, the agency head shall submit the proposal as soon as the agency head is aware of the necessity for a reduction in force.
3. An agency head shall include all of the following in the proposal for a reduction in force:
   a. The reason for the reduction in force;
   b. The proposed scope of the reduction in force, which shall be limited to either:
      i. The agency,
      ii. An organizational unit of the agency, or
      iii. Agency operations within a geographic area,
   c. Each specific covered position proposed for elimination and an organization chart identifying each position, and
   d. The proposed effective date of the reduction in force.
4. An agency head shall submit a proposal that is consistent with A.R.S. § 41-772 and this Section.
5. An agency head shall not approve a personnel action that would have an effect on the reduction in force after the agency head has submitted a proposal for a reduction in force.
6. An agency head shall not re-establish a position that was abolished as a result of a reduction in force for two years if the position was filled when the reduction in force occurred, unless the position was abolished due to fiscal constraints, legislative action, or court order.

B. Administration of reduction in force. The Director shall review and approve, modify or deny a reduction in force within 20 business days of receipt. Upon approval of the Director to conduct a reduction in force:

1. An agency head shall separate a covered employee who is not a permanent status employee in the class affected by the reduction in force in the following order before any reduction in force action is taken that affects a permanent status employee, provided the separation of the non-permanent status employee will accomplish, or assist in accomplishing, the purpose of the reduction in force:
   a. Temporary employee,
   b. Original probationary employee, and
   c. Limited appointment employee.
2. An agency head shall use retention points to identify a permanent status employee within a class series affected by a reduction in force for retention in the employee's current position, transfer, reduction, or separation based on the employee's relative standing on the retention point list.
3. An agency head shall base retention points upon performance calculated in accordance with the instructions in subsections (C) and (D).
4. An employee on promotional probation or special assignment shall compete for retention in the employee's permanent status class.
5. An employee in an underfill position shall compete for retention in the employee's permanent status class.
6. A permanent part-time employee shall compete for retention against another permanent part-time employee in the same class.

C. Calculation of retention points. An agency head shall compute the average score of a maximum of the three most recent performance evaluations in the 24 months concluded before the date of proposal for a reduction in force. An employee's average score shall be the employee's retention points. If an employee has not had a performance evaluation in the past 24 months, the employee shall receive 2.0 retention points.

D. Resolution of ties. An agency head shall break any tie in total retention points in the following manner and order:

1. The employee with the highest most recent performance evaluation shall be given preference.
2. If a tie continues to exist, the agency head shall break the tie by lot.

E. Offer of position.

1. An agency head shall provide written notice at least five business days in advance to each employee identified for transfer, reduction, or separation. If circumstances beyond the agency's control do not permit at least five business days' notice, the agency head shall provide notice as soon as the agency head is aware of the necessity to transfer, reduce, or separate the employee.
2. The notice shall include:
   a. The reason for and effective date of the action;
   b. A job offer, if any, including the salary, location of the position, and supervisor's name;
   c. The availability of reduction in force procedures and records for review, with references to relevant statutes and rules; and
   d. The employee's right to request a review of the determination as provided in R2-5B-603.
3. An agency head shall offer a position to an employee identified for transfer, reduction, or separation with the highest number of points on the retention point list in descending order as follows:
   a. If a vacant covered position exists and an employee possesses the required qualifications for the position, an agency head shall make the single best offer, in terms of pay range, within the agency of:
      i. A regular position at the same or lower pay range in the same class series as the employee's present permanent status position;
      ii. A regular position at the same or lower pay range in any class series in which the employee has held permanent status during the past five years; or
      iii. If both positions described in subsections (E)(3)(a)(i) and (ii) are available, the position described in subsection (E)(3)(a)(i).
   b. If the offer under subsection (E)(3)(a) is a position at a lower pay range, the agency head shall provide the employee the option of accepting a vacant covered:
      i. Funded, regular position at the employee's present pay range in a class series in which the employee has never held permanent status for which the employee is qualified; or
      ii. Temporary or part-time position at the employee's present pay range for which the employee is qualified.
4. An employee shall possess the qualifications required when the position was last filled, unless the Director grants an exception.

5. Any job offer shall contain a time period of not less than three business days in which the employee may accept the offer. Failure of an employee to reply in writing within the stated time period, or failure to accept the job offer, shall constitute a resignation. An employee may accept a job offer and retain the right to request a review of the determination.
6. If no position exists, the agency head may separate the employee.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Amended by exempt rulemaking at 19 A.A.R. 717 effective April 13, 2013 (Supp. 13-1).

R2-5B-603. Employee Request for Review

A. An employee may request a review of the following determinations made during a reduction in force:
1. Calculation of the employee's retention points,
2. A job offer resulting in the employee's transfer or reduction, and
3. Notification of the employee's separation.

B. Within three business days of receipt of a determination notice, unless a longer period is authorized by an agency head, an employee may submit a written request to the agency head for a review of the determination. The request for review shall be based upon an error, contain specific information concerning the error involved, and include a proposed resolution of the problem.

C. The agency head shall review the request and respond to the employee within five business days after receipt of the request.

D. An agency head may postpone any portion of a reduction in force until completion of an employee request for review.

Historical Note

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4).

STATUTORY AUTHORITY FOR THE RULES IN 2 A.A.C. 5
Subchapter A; Articles 1, 3, 4, 5, 6, 7 and 8
Subchapter B; Article 4

38-611. Compensation of certain state officers and employees

A. Except as otherwise provided in subsections B and C of this section, any officer or employee of the state, or any of its agencies, is entitled to receive a salary within the range as determined by the department of administration unless modified by the legislature.

B. Elected state officers, employees of the supreme court, employees of the court of appeals, employees of the legislature, employees of the governor's office, employees of the Arizona state schools for the deaf and the blind except the superintendent and the medical officer and all employees of the Arizona board of regents and the state universities are exempt from the provisions of this section.

C. Except as otherwise provided by statute or specific legislative appropriation, members of boards, commissions, councils or advisory committees who are authorized by law to receive compensation may receive compensation at the rate of not to exceed thirty dollars for each day engaged in the service of such board, commission, council or advisory committee.

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.

2. Provide assistance to the governor and legislature as requested.

3. Adopt rules the director deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.

6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.

8. Accept and disburse grants, gifts, donations, matching monies and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

9. Establish and maintain separate financial accounts as required by federal law or regulations.

10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

41-741. Definitions

In this article and articles 5 and 6 of this chapter, unless the context otherwise requires:

1. "Appointing authority" means the person or group of persons authorized by law or delegated authority to make appointments to fill positions.

2. "At will" means an employment relationship where either party to the relationship may sever the relationship at any time for any reason other than an unlawful reason.

3. "Break in service" means a separation from state employment, regardless of the reason for separation.

4. "Change in assignment" means movement of an employee to a different position in the same state agency or another state agency.

5. "Covered employee" means an employee who:

(a) Before September 29, 2012, is in the state service, is not uncovered pursuant to section 41-742, subsection A and has remained in covered status without a break in service since that date.

(b) Before September 29, 2012, is in the state service, is employed as a correctional officer I, correctional officer II, correctional officer III or community corrections officer and has remained in covered status without a break in service since that date.

(c) Before September 29, 2012, is in the state service, is a full authority peace officer as certified by the Arizona peace officer standards and training board and has remained in that status without a break in service since that date.

(d) On or after September 29, 2012, is a correctional officer I, correctional officer II, correctional officer III or community corrections officer and is appointed to a position in the covered service, but does not include a position in any other class in the correctional officer class series or the community correctional officer class series or in any other correctional class series.

(e) On or after September 29, 2012, is a full authority peace officer as certified by the Arizona peace officer standards and training board and is appointed to a position that requires such a certification in the covered service.

6. "Covered service" means that employment status conferring rights of appeal as prescribed in sections 41-782 and 41-783 or section 41-1830.16, as applicable.

7. "Director" means the director of the department of administration, or the director's designee, who is responsible for administering the state personnel system pursuant to applicable state and federal laws.

8. "Employee" means all officers and employees of this state, whether in covered service or uncovered service, unless otherwise prescribed.

9. "Full authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by the Arizona peace officer standards and training board.

10. "Original probationary period" means the specified period following initial appointment to covered service.

11. "Probationary period" means a working test period of employment in a covered service position for evaluation of the employee's work.

12. "Promotional probation" means the specified period of employment following promotion of a permanent status employee to another covered service position that has a higher pay grade.

13. "Rules" means rules adopted by the department of administration, human resources division.

14. "Significant procurement role":

(a) Means any role that includes any of the following duties:

(i) Participating in the development of a procurement as defined in section 41-2503.

(ii) Participating in the development of an evaluation tool.

(iii) Approving a procurement as defined in section 41-2503 or an evaluation tool.

(iv) Soliciting quotes greater than ten thousand dollars for the provision of materials, services or construction.

(v) Serving as a technical advisor or an evaluator who evaluates a procurement as defined in section 41-2503.

(vi) Recommending or selecting a vendor that will provide materials, services or construction to this state.

(vii) Serving as a decision maker or designee on a protest or an appeal by a party regarding an agency procurement selection or decision.

(b) Does not include making decisions on developing specifications and the scope of work for a procurement as defined in section 41-2503 if the decision is based on the application of commonly accepted industry standards or known published standards of the agency as applied to the project, services, goods or materials.

15. "State agency" means a department, board, office, authority, commission or other governmental budget unit of this state and includes an agency assigned to a department for administrative purposes. State agency does not include the legislative and judicial branches, the Arizona board of regents, state universities, the Arizona state schools for the deaf and the blind, the department of public safety, the Arizona peace officer standards and training board, the cotton research and protection council or public corporations.

16. "State personnel board" means the board established by section 41-781.

17. "State personnel system" means all state agencies and employees of those agencies that are not exempted by this article.

18. "State service" means all offices and positions of employment in state government that, before September 29, 2012, were subject to the provisions of articles 5 and 6 of this chapter that were in effect before September 29, 2012.

19. "Supervisor" means a state employee who has one or more other state employees reporting directly to the person and, for those state employees, typically has the authority to:

(a) Approve sick or annual leave.

(b) Recommend hiring, discipline or dismissal.

(c) Assign or schedule daily work.

(d) Complete a performance evaluation.

20. "Uncovered employee" means an employee in uncovered service.

21. "Uncovered service" means employment at will and includes all state employees except those in covered service.

41-742. State personnel system; covered and uncovered employees; application; exemptions

A. Beginning September 29, 2012, unless otherwise prescribed in this article:

1. All new hires are at will uncovered employees.

2. Any employee who meets any of the following criteria is an at will uncovered employee:

(a) Is employed as an attorney in a position assigned to the attorney salary schedule.

(b) A supervisor.

(c) Is at a pay grade of nineteen or above or, if a successor compensation system is established, in an equivalent pay range as determined by the director.

(d) Is in a position assigned to the information technology salary schedule, in a position assigned to an information technology classification or, if a successor compensation system is established, in an equivalent pay range as determined by the director.

3. Any covered employee who voluntarily accepts a change in assignment to a position in the uncovered service, regardless of whether the voluntary change in assignment is a promotion, demotion or lateral transfer, is an at will uncovered employee on the start date of the voluntary change in assignment.

4. A covered employee may voluntarily elect to become an at will uncovered employee without a change in assignment on approval by the state agency head and the director. If approved, the change from covered to uncovered status is immediate.

5. Once a covered employee becomes an at will uncovered employee, the change is irrevocable.

B. Except as provided in subsection F of this section, the purpose of this article is for all state agencies in the state personnel system to treat employees pursuant to the following principles:

1. Recruiting, selecting and advancing employees on the basis of the employee's relative ability, knowledge and skills after open competition.

2. Providing compensation based on merit, performance, job value and competitiveness within applicable labor markets.

3. Training employees if the training will result in better organizational and individual performance.

4. Retaining employees on the basis of the adequacy of their performance, correct inadequate performance where possible and appropriate and separate employees whose performance is inadequate.

5. Managing applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, age, disability or religious creed and with proper regard for their privacy and constitutional rights as citizens.

6. Ensuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office.

C. The director shall establish and administer the state personnel system, including:

1. A classification system and job classes and associated knowledge, skills and abilities for those classes.

2. A centralized job announcement system to streamline statewide recruiting for applicants.

3. A centralized employment system to be used by all successful applicants, including a common application form to be used by all state agencies.

4. A compensation system, including assigning pay ranges for all job classes and special pay plans for certain classes or groups of employees considering such factors as occupational patterns, economic conditions and pay plans common to government, business and industry.

5. A statewide training program.

6. A statewide performance management system.

7. An audit function to review state agencies' processes and compliance with applicable statutes, personnel rules and policies.

8. An integrated system to process personnel, payroll and benefits transactions and serve as the system of record for state employees.

D. This article and articles 5 and 6 do not apply to:

1. An elected state officer. An elected state officer means only elected officials and does not include the employees of elected state officers unless expressly provided.

2. Members of boards and commissions who are appointed by the legislature or the governor, board members appointed pursuant to section 41-619.52 unless otherwise prescribed by law, employees of the Arizona legislative council, employees appointed or employed by the legislature, any legislative agency or either house of the legislature and employees of the supreme court and the court of appeals.

3. The Arizona board of regents, officers or employees of state universities and personnel of the Arizona state schools for the deaf and the blind.

4. Patients or inmates employed in state institutions.

5. Officers and enlisted personnel of the national guard of Arizona and employees of the department of emergency and military affairs who occupy Arizona national guard positions identified as mobilization assets.

6. The cotton research and protection council.

7. The department of public safety.

8. The Arizona peace officer standards and training board.

E. Unless otherwise prescribed in this article, subsection A, paragraphs 1, 2 and 3 of this section do not apply to either an initial appointment to or changes in assignment to:

1. An employee of any state agency who is a full authority peace officer as certified by the Arizona peace officer standards and training board.

2. An employee of the state department of corrections who is employed as a correctional officer I, correctional officer II, correctional officer III, community corrections officer or, if a successor classification system is established, in an equivalent job class as determined by the director.

F. Subsection B, paragraph 1 of this section, relating to open competition and subsection B, paragraph 4 of this section and subsection B, paragraph 5 of this section, relating to political affiliation, do not apply to:

1. Employees of the governor's office.

2. Employees of offices of elected officials who either:

(a) Report directly to the elected official.

(b) Head a primary component or report directly to the head of a primary component of the office of the elected official.

(c) As a primary duty, determine or publicly advocate substantive program policy for the office of the elected official.

3. The state agency head and each deputy director, or equivalent, of each state agency and employees of the state agency who report directly to either the state agency head or deputy director.

4. Each assistant director, or equivalent, of each state agency and employees in the state agency who report directly to an assistant director.

5. Attorneys in the office of the attorney general.

6. Employees in investment related positions in the state retirement system or plans established by title 38, chapter 5, article 2, 3, 4 or 6.

G. This article and articles 5 and 6 of this chapter do not confer any rights in excess of, or in addition to, those previously authorized to any state employee.

H. This article does not create or confer any contractual employment right for any employee and, unless otherwise provided by law, state agencies are prohibited from executing employment contracts with any state employee.

I. Any communications, including policy manuals, employee handbooks, job offers and performance appraisals and other communications as determined by the director, whether in writing or oral, that conflict with article 1, 5 or 6 of this chapter or this article are void and do not alter or supersede article 1, 5 or 6 of this chapter or this article.

41-743. Powers and duties of the director

A. The director is responsible for the direction and control of personnel administration.

B. The director shall:

1. Employ staff as necessary to perform the duties prescribed by this article.

2. Establish those offices as the director determines necessary to maintain an effective and efficient program of personnel administration.

3. Adopt rules and procedures relating to personnel and personnel administration for both covered and uncovered employees. The rules shall include:

(a) The establishment and maintenance of classification and compensation plans.

(b) The recruitment, selection and appointment process of eligible applicants.

(c) Leave benefits and administration.

(d) Procedures for the periodic and regular review and evaluation of the quality and quantity of work performed by employees.

(e) Changes to employment status.

(f) Procedures for the review of complaints if the complaint contains an allegation of discrimination or harassment.

(g) Procedures requiring review by the director of dismissals, suspensions for more than eighty working hours or involuntary demotions before administering the action.

(h) Grievance rights specific to covered employees.

(i) Appeal rights and other rules specific to covered employees.

(j) Any other aspects of personnel administration as determined by the director.

4. Provide an annual report and recommendation to the legislature and the joint legislative budget committee as provided in section 41-751.

5. Establish a mandatory program of personnel management training for all employees with supervisory responsibility that is appropriate to the nature and scope of the employees' responsibilities. The director may waive the mandatory training on a case by case basis. The training shall include at least the following subjects:

(a) Basic employee supervision.

(b) Employee performance evaluations.

(c) Employee discipline.

(d) Other subjects as the director determines.

6. Provide consultation to state agency management in all aspects of personnel management to increase efficiency and economy in state agencies by improving the methods of personnel administration with full recognition of the requirements and needs of management.

C. The director may:

1. Delegate specific personnel functions to a state agency head consistent with legal requirements.

2. Enter into agreements with any state agency or political subdivision of this state or any agency of a political subdivision of this state to furnish personnel administration services and facilities of the department. Unless monies have been appropriated by the legislature for this purpose, any agreement shall provide for reimbursement to this state of the actual cost of the services and facilities furnished, as determined by the department.

3. Subject to legislative appropriation, contract for the services of consultants necessary to perform the annual salary plan and salary plan adjustment recommendations.

D. Subsection B, paragraph 3, subdivision (g) of this section relating to review by the director for certain disciplinary actions does not apply to those employees listed in section 41-742, subsection F.

41-745. Covered and uncovered service

A. Except as provided in subsection C of this section or section 41-742, subsection A, an employee under covered service is entitled to continue to be a covered employee as long as the employee remains in covered status without a break in service or as otherwise provided by law. Probationary status employees are required to complete their probationary period before obtaining rights of appeal. On successfully completing a probationary period, an employee in covered service is entitled to have appeal rights as provided in article 6 of this chapter or section 41-1830.16, as applicable.

B. Except as provided in subsection C of this section, uncovered service consists of all employees in the state agencies not included in the covered service. Employees in uncovered service are employees at will and are not entitled to appeal rights.

C. A position that requires certification as a full authority peace officer by the Arizona peace officer standards and training board or a position designated as a correctional officer I, correctional officer II, correctional officer III or community corrections officer shall be in the covered and uncovered service as follows:

1. If, on September 29, 2012, the position is filled with an uncovered employee, the position shall remain in the uncovered service for all future appointments to that position.

2. If, on September 29, 2012, the position is filled with a covered employee who was in the state service and the employee does not voluntarily elect to become an at will uncovered employee, the position shall remain in the covered service for the current incumbent and for all future appointments to that position.

3. If, on or after September 29, 2012, an employee in the covered service voluntarily elects to become an at will uncovered employee, the position shall remain in the uncovered service for all future appointments to that position.

41-746. <u>Refusal of consideration for employment; verification of education and work history</u>

A. The director may refuse to consider for employment or remove from consideration for employment any applicant who:

1. Has practiced any deception or fraud in the applicant's application.

2. Has failed to reply within a reasonable time to communications concerning the applicant's availability for employment.

3. Is found to be unsuited or not qualified for employment.

4. Lacks any of the requirements established by the director for the position for which the applicant applies.

B. The director shall develop procedures and standard forms to be used by all state agencies to verify a candidate's education and work history. The procedures shall include a requirement that a state agency head shall make documented, good faith efforts to contact current and previous employers of a candidate to obtain information and recommendations that may be relevant to the candidate's fitness for employment.

41-747. Employment procedures; violation

A. An appointing authority shall comply with the procedures prescribed in this article and the rules adopted by the director for the recruitment, selection, hiring and separation of employees in the state personnel system. The appointing authority shall prescribe the compensation of an employee at all times pursuant to section 38-611.

B. An appointing authority that violates subsection A of this section and incurs an obligation is subject to the civil and criminal penalties prescribed in title 35, chapter 1.

41-748. Transfer of accumulated annual leave; definitions

A. The director shall adopt procedures for the transfer of accumulated annual leave from one employee to another employee in the same state agency and for transfer of accumulated annual leave from one employee to another state employee in another state agency if the employees are members of the same family. The transfers may occur if the employee to whom the leave is transferred has a seriously incapacitating and extended illness or injury or a seriously incapacitating and extended disability that is caused by pregnancy or childbirth or a member of the employee's immediate family has a seriously incapacitating and extended illness or injury or a seriously incapacitating and extended disability that is caused by pregnancy or childbirth and the employee has exhausted all available leave balances. Transferred annual leave shall be increased or reduced proportionally by the difference in the salaries of the employees as determined by department rule. An employee who receives transferred annual leave is limited to using six consecutive months of leave per occurrence unless the employee has applied for long-term disability insurance as provided by rule.

B. For the purposes of this section:

1. "Immediate family" means an employee's parent, spouse, or child, whether natural, adopted, foster or step.

2. "Same family" means an employee's spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew or niece.

41-754. Required reduction in hours

An agency director may require an agency employee to work reduced hours in order to comply with any reduction in appropriations. The director shall prescribe procedures to implement these reductions.

41-771. Powers and duties of director relating to employees in covered service

The director shall adopt rules and procedures that are applicable only to employees in covered service. The rules and procedures shall provide for:

1. The continuation of a probationary period for probationary employees.

2. A minimum period of original probationary service following the initial appointment of a full authority peace officer as certified by the Arizona peace officers standards and training board or the initial appointment of a correctional officer I, correctional officer II, correctional officer III or community corrections officer. During an original probationary period, the probationary employee shall perform the actual duties of the position and may be discharged without cause. The director shall establish a period of promotional probation service.

3. Disciplinary action to be taken against an employee only if cause exists.

4. Reduction in force by reason of lack of monies or work, abolition of a position or a material change in duties or organization as provided in section 41-772.

41-772. Reduction in force procedure in covered service

A. The director shall establish reduction in force procedures to be used by all state agencies if reductions are required in covered service by reason of lack of monies or work, abolition of a position, a material change in duty or organization or the introduction of other cost reduction initiatives.

B. The procedures shall use the person's performance record as the sole basis for determining retention. Consideration of the person's performance is limited to performance, as measured by up to the three most recent performance evaluations conducted using a performance measurement system approved by the director, during a period of not more than the two years immediately preceding the reduction in force. Notwithstanding any other statute, a state agency shall not adopt policies that provide employment retention priority for employees based on tenure or seniority.

C. The procedures shall provide for a reduction in force to be limited to a single agency or organizational unit of an agency or an organizational unit of agency operations within a geographic area.

D. The procedures shall provide for an expedited review of any determinations made during a reduction in force.

41-773. Causes for dismissal or discipline for employee in covered service

A. Each of the following constitutes cause for discipline or dismissal of an employee in covered service:

1. Fraud or misrepresentation in securing appointment.

2. Incompetency.

3. Inefficiency.

4. Neglect of duty.

5. Insubordination.

6. Dishonesty.

7. Being impaired by alcohol or drugs while on duty.

8. Illegal use or illegal possession of a narcotic or habit-forming drug.

9. Unauthorized absence or absence without leave.

10. Commission of any crime classified as a felony or involving moral turpitude.

11. Discourteous treatment of the public or other employees.

12. Improper political activity.

13. Wilful disobedience.

14. Misuse or unauthorized use of state property.

B. In addition to the causes prescribed by subsection A of this section, the director may establish other causes deemed necessary.

C. The director shall prescribe definitions for each of the causes for dismissal or discipline prescribed or established under this section that shall be used by covered employees and, as

applicable, the state personnel board or the law enforcement merit system council in evaluating dismissals and disciplinary actions.

ARIZONA BOARD OF ATHLETIC TRAINING
Title 4, Chapter 49, Articles 1 & 4, R4-49-101, R4-49-401, R4-49-406

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: June 24, 2024

SUBJECT: **BOARD OF ATHLETIC TRAINING**
Title 4, Chapter 49, Articles 1&4, Rules R4-49-101, R4-49-401, & R4-49-406

Summary

This one-year review report (1YRR) from the Board of Athletic Training (Board) covers three (3) rules total, one (1) rule from Title 4, Chapter 49, Article 1 and two (2) rules from Article 4, all related to the practice of dry needling being performed by athletic trainers.

As required under A.R.S. § 41-1095(A), this report focuses on the Board's review of R4-49-101, R4-49-401, and R4-49-406, provisions amended under the exemption provided by Laws 2022, Chapter 46, Sec. 3. As such, this is the first review report for these rules.

Proposed Action

The Board indicates that the rules are clear, concise, and understandable; enforced as written; effective in achieving their objectives; and consistent with other rules and statutes. The Board identified two instances where the conciseness and clarity of the rules in this 1YRR could be further improved, however the Board determined these changes do not warrant an expenditure of limited state resources at this time. Rather, these issues will be corrected when it is necessary to substantively amend the rules. Therefore, the Board recommends no proposed course of action at this time.

1. Has the agency analyzed whether the rules are authorized by statute?

The Board cites general and specific authorization by statute for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Board of Athletic Training (Board) did not prepare an economic, small business, and consumer impact statement due to exemption from complying with A.R.S. Title 41, Chapter 6. The Board states that in the 19 months since the rule went into effect, the Board has received 193 applications for athletic trainers to register to deliver the therapeutic modality of Dry Needling. The Board has approved 167 of the registrations.

To qualify to provide therapeutic dry needling, an athletic trainer is required to complete 24 contact hours of training and education. The Board estimates the one-time cost of obtaining the training and education to be $400 to $1,200. Additionally, the athletic trainer must redirect 24 hours of time to the training and education and must assemble and submit the documented proof to the Board.

The Board incurs costs for receiving and evaluating the documented proof of compliance from licensees. The Board estimates each set of documented proof received costs approximately $25 in staff time for processing and recordkeeping. This means the Board has incurred $4,825 so far. The Board will evaluate whether to charge a fee for this service.

Stakeholders include the Board and athletic trainers that deliver dry needling as a therapeutic modality.

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?

This information is not available due to exemption from complying with A.R.S. Title 41, Chapter 6.

Nonetheless, the Board points out that an athletic trainer voluntarily chooses to incur the costs of obtaining training and education because the athletic trainer believes the benefits of providing therapeutic dry needling outweigh the costs.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

The Board reports it has not received any written criticisms of these rules since they were adopted.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Board indicates the rules are clear, concise, and understandable. However, they could be made more clear and concise, for example:

R4-49-101 - A definition of "dry needling" has been added. The definition duplicates statute and is cross referenced in the lead to the Section.

R4-49-406 - Portions of this rule are inconsistent with current rule-writing standards regarding use of "shall" and the active voice.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Board indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Board indicates the rules are effective in achieving its objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Board 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 Board indicates these rules are not more stringent than corresponding federal law because there are no federal laws directly applicable to the subject matter of the rulemaking.

10. Has the agency completed any additional process required by law?

The Board states this is not applicable as there are not any additional processes required by law.

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

The Board indicates these rules do not require a permit or license or any other agency authorization. The rules simply establish training and education qualifications a licensed athletic trainer must meet before providing therapeutic dry needling.

12. Conclusion

This one-year review report (1YRR) from the Board of Athletic Training (Board) covers three (3) rules total, one (1) rule from Title 4, Chapter 49, Article 1 and two (2) rules from Article 4,

all related to the practice of dry needling being performed by athletic trainers. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301.

The Board indicates that the rules are clear, concise, and understandable; enforced as written; effective in achieving their objectives; and consistent with other rules and statutes. The Board identified two instances where the conciseness and clarity of the rules in this 1YRR could be further improved, however the Board determined these changes do not warrant an expenditure of limited state resources at this time. Rather, these issues will be corrected when it is necessary to substantively amend the rules. Therefore, the Board recommends no proposed course of action at this time.

Council staff recommend acceptance of this 1YRR.

KATIE HOBBS
Governor

CHUCK BAUGHMAN
Chair

SHAINA GANATRA
Executive Director

ARIZONA BOARD OF ATHLETIC TRAINING
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July 08, 2024

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

Re: One-Year-Review Report
Title 4. Professions and Occupations, Chapter 49. Board of Athletic Training, Articles 1 & 4

Dear Ms. Klein:

On behalf of the Arizona Board of Athletic Training ("Board"), please find enclosed the One-Year-Review Report of the Athletic Training Board for R4-49-101, R4-49-401, and R4-49-406.

The Board certifies compliance with A.R.S. 41-1091.

Thank you for your assistance in this matter. If you have any questions or need additional information, please contact me at 602-589-8353 or Shaina.Ganatra@otboard.az.gov.

Regards,

Shaina Ganatra
Executive Director

One-year-review Report of R4-49-101, R4-49-401, and R4-49-406
Title 4. Professions and Occupations
Chapter 49. Board of Athletic Training

INTRODUCTION

In 2022, the legislature amended the Board's statutes to expand the scope of practice for athletic trainers to include the therapeutic administration of dry needling. The legislature instructed the Board to adopt rules establishing professional standards of care and training and education qualifications for athletic trainers who wish to perform dry needling for therapeutic purposes. The rules were to be adopted on or before September 30, 2022. The legislature exempted the required rulemaking from the provisions of Arizona Revised Statutes Title 41, Chapter 6 (See Laws 2022, Chapter 46, Sec. 3).

As required under A.R.S. § 41-1095(A), this report focuses on the Board's review of R4-49-101, R4-49-401, and R4-49-406, which are the rules amended under the exemption.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-4103(A)(7)

1. Specific statute authorizing the rules:
   R4-49-101. Definitions: A.R.S. § 32-4103(C)
   R4-49-401. Scope of Practice: A.R.S. § 32-4103(C)
   R4-49-406. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality: A.R.S. § 32-4103(C)

2. Objective of the rules:
   R4-49-101. Definitions: The objective of this rule is to define words for which an ordinary dictionary definition may be inadequate.
   R4-49-401. Scope of Practice: The objective of this rule is to incorporate by reference a national scope of practice for athletic trainers.
   R4-49-406. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality: The objective of this rule is to protect public health and safety by specifying the standards of care and training and education

qualifications required of an athletic trainer who wishes to provide dry needling for therapeutic purposes.

3. Are the rules effective in achieving their objectives?
   Yes

4. Were there written criticisms of the rules, including written analyses questioning whether the rules are based on valid scientific or reliable principles or methods?
   No

5. Are the rules consistent with other rules and statutes?
   Yes

6. Are the rules enforced as written?
   Yes

7. Are the rules clear, concise, and understandable?
   Yes but as with most rules, they could be made more clear and concise. For example, a definition of "dry needling" is added to R4-49-101. The definition duplicates statute and is cross referenced in the lead to the Section. Portions of R4-49-406 are inconsistent with current rule-writing standards regarding use of "shall" and the active voice.

8. Estimated economic, small business, and consumer impact of the rule:
   Because the legislature exempted the Board from complying with A.R.S. Title 41, Chapter 6, when it made rules addressing dry needling, the Board did not prepare an economic, small business, and consumer impact statement. The Board currently licenses 829 athletic trainers. In the 19 months since the rules went into effect, the Board received documentation providing proof of compliance with the training and education qualifications specified in R4-49-406(B) from 167 individuals (approximately 20% of all licensees). Incomplete documentation was received from 26 individuals. Those with incomplete documentation may submit additional documents to show compliance.

To qualify to provide therapeutic dry needling, an athletic trainer is required to complete 24 contact hours of training and education. The training and education is available from several entities. The Board estimates the one-time cost of obtaining the training and education to be $400 to $1,200. Additionally, the athletic trainer must redirect 24 hours of time to the training and education and must assemble and submit the documented proof to the Board. An athletic trainer voluntarily chooses to incur these costs because the athletic trainer believes the benefits of providing therapeutic dry needling outweigh the costs.

The Board is authorized under A.R.S. § 32-4126(B) to charge for services it provides. The amount charged may not exceed the actual cost of providing the services. The Board has not charged anything for receiving and evaluating the documented proof of compliance from licensees. But, these activities have a cost for the Board. The Board estimates each set of documented proof received costs approximately $25 in staff time for processing and recordkeeping. This means the Board has incurred $4,825 (193 X $25) so far. The Board will evaluate whether to charge a fee for this service.

9. Has the agency received any business competitiveness analyses of the rule?
   No

10. If applicable, whether the agency completed additional processes required by law:
    Not applicable

11. A determination after analysis that the probable benefits of the rules outweigh within this state the probable costs of the rules and the 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:
    The legislature instructed the Board to establish training and education qualifications for delivery of therapeutic dry needling. The Board believes the 24 hours of training and education established is the minimum necessary to protect public health and safety and imposes the least burden and costs on licensees.

The Board determined the minimal costs identified in item 8 for licensees and the Board are outweighed by the benefit of protecting public health and safety by ensuring athletic trainers who perform dry needling are qualified to do so. The only paperwork requirement for licensees is to submit documentary proof of compliance with the training and education qualifications. This has to be done only once. Paperwork requirements for the Board involve processing documentation received and maintaining records.

12. Are the rules more stringent than corresponding federal laws?

    No. The rules are not more stringent than federal laws because there are no federal laws directly applicable to the subject matter of the rulemaking. There is a Sports Medicine Licensure Clarity Act, which protects athletic trainers who provide health-care services outside the state in which the athletic trainer is licensed. As a health professional (See A.R.S. § 32-3201(2)), an athletic trainer must comply with federal laws regarding provision of health care, including HIPPA.

13. For a rule that requires issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

    None of the rules in the rulemaking requires issuance of a regulatory permit, license, or agency authorization. The rules simply establish training and education qualifications a licensed athletic trainer must meet before providing therapeutic dry needling.

14. Proposed course of action:

    The Board determined no action is needed. Correcting the minor issues identified in item 7 does not warrant an expenditure of limited state resources. These issues will be corrected when it is necessary to substantively amend the rules.

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ADMINISTRATIVE RULES DIVISION

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 49. BOARD OF ATHLETIC TRAINING

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
July 1, 2022 through September 30, 2022

Questions about these rules? Contact:

Board:	Arizona Board of Athletic Training
Address:	1740 W. Adams St., Suite 3407 Phoenix, AZ 85007
Website:	http://www.at.az.gov
Name:	Shaina Ganatra, Executive Director
Telephone:	(602) 589-8353
Fax:	(602) 589-8354
Email:	Shaina.Ganatra@otboard.az.gov

The release of this Chapter in Supp. 22-3 replaces Supp. 22-2, 1-6 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

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 49. BOARD OF ATHLETIC TRAINING

Authority: A.R.S. § 4103(A)(7)

Supp. 22-3

Editor's Note: 4 A.A.C. 49 was adopted to enforce Arizona Revised Statutes, Title 32, Chapter 41. The rules in this Chapter were adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

CHAPTER TABLE OF CONTENTS

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R4-49-101 through R4-49-104, adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

ARTICLE 2. LICENSURE

Article 2, consisting of Sections R4-49-201 through R4-49-206, adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

ARTICLE 3. HEARINGS

Article 3, consisting of Sections R4-49-301 through R4-49-302, adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

ARTICLE 4. ATHLETIC TRAINING PRACTICE

Article 4, consisting of Sections R4-49-401 through R4-49-404, adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

ARTICLE 1. GENERAL PROVISIONS

R4-49-101. Definitions

In addition to the definitions at A.R.S. § 32-4101, in this Chapter:

1. "Actively pursuing athletic training certification" means:
   a. Current enrollment in an educational program to fulfill academic requirements for athletic training certification; or
   b. Current participation in fieldwork experience to fulfill the fieldwork experience requirements for athletic training certification.
2. "Applicant" means an individual requesting an original license, a temporary license, a renewal license, or a reinstated license from the Board.
3. "Approved provider" means an educational provider approved by the BOC.
4. "Athletic training certification" means current athletic trainer certification provided by the BOC.
5. "BOC" means the Board of Certification, Inc.
6. "CAATE" means the Commission on Accreditation of Athletic Training Education.
7. "Confidential record" means:
   a. Minutes of executive sessions except as provided in A.R.S. § 38-431.03(B);
   b. A record classified as confidential by another law, rule, or regulation applicable to the Board;
   c. College or university grades, medical or mental health information, and professional references of an applicant except that the applicant who is the subject of the information may view or copy the record;
   d. An applicant's driver license number, Social Security number, home address, home phone number, place of birth, and birth date;
   e. A record for which the Board determines that public disclosure will have a significant adverse effect on the Board's ability to perform its duties or will otherwise be detrimental to the best interests of the state. When the Board determines that the reason justifying the confidentiality of the record no longer exists, the Board shall make the record available for public inspection and copying; and
   f. Information regarding a complaint under investigation except as provided in A.R.S. § 41-1010.
8. "Contact hour" means an actual clock hour spent in direct participation in a structured education format as a learner.
9. "Continuing education" means a structured learning process required of a licensee to maintain licensure that includes study in the areas of athletic training practice through an institute, seminar, lecture, conference, workshop, mediated instruction, programmed learning course, or postgraduate study in athletic training.
10. "Continuing education unit" or "CEU" means one contact hour of participation in a continuing education course.
11. "Day" means a calendar day.
12. In addition to A.R.S. § 32-4101(7), "Direct supervision" means:
    a. The athletic trainer can intervene on behalf of the patient, and
    b. The athletic trainer reviews the performance of the athletic training student every grading period.
13. "Dry needling" means "a therapeutic modality that is performed by an athletic trainer and that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular and connective tissues to evaluate and manage neuromusculoskeletal conditions, pain and movement impairments".
14. "Facility of practice" means the principal location of an agency or organization where an athletic trainer provides athletic training services but excludes areas used predominantly for athletic sport or competition.
15. "Good moral character" means the applicant has not taken any action that is grounds for disciplinary action against a licensee under A.R.S.§ 32-4153.
16. "Licensee" means a person licensed in Arizona as an athletic trainer.
17. "National examination" means the national athletic training certification examination provided by the BOC.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 618 (March 18, 2022), effective April 23, 2022 (Supp. 22-1). Amended by exempt rulemaking at 28 A.A.R. 2435 (September 16, 2022), effective September 30, 2022, per Laws 2022, Chapter 46, Section 3 (Supp. 22-3).

R4-49-102. Fees

A. An applicant shall pay the following:
1. Application for original license: $300;
2. Renewal of license: $175;
3. Reinstatement of a license: $100. This is in addition to the renewal license fee;
4. Duplicate license: $10.

B. Applicants who are military service members, military veterans, and military spouses:
1. The Board shall waive the application fees and expedite the issuance of a license for an active duty military service member and the member's spouse, or honorable discharged military veteran who has been discharged not more than two years before application; and
2. In order to request a waiver of application fees and expedited services, the military service member, military veteran, or military spouse must submit a copy of the uniformed services military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation.

C. The Board shall charge 25¢ per page for copies of records, documents, letters, minutes, applications, and files or appropriate charges prescribed in A.R.S. § 39-121.03(A).

D. All fees are nonrefundable except as provided in A.R.S. § 41-1077.

E. An applicant shall pay original license fees and returned or insufficient fund replacement checks in cash or by cashier's check, money order, or credit card.

F. An applicant shall pay renewal, reinstatement, and duplicate license fees in cash or by cashier's check, money order, personal check, or credit card.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking

at 28 A.A.R. 618 (March 18, 2022), effective April 23, 2022 (Supp. 22-1).

R4-49-103. Board Operations

A. The Board shall meet annually in January. The Board shall hold additional meetings as required by A.R.S. § 32-4103(A)(8) and as necessary to conduct the Board's business. Meetings may be convened by the Chair, a majority vote of the Board members, or upon written request to the Chair from at least two Board members.

B. All Board records shall be open to public inspection and copying, except confidential records. Records may be inspected at the Board Office Monday through Friday, 8:00 a.m. to 5:00 p.m., except state holidays or other days in which the office is required to be closed.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-104. Service by the Board

The Board shall serve any Board decision, order, or subpoena by personal service or by mailing a copy by certified mail, return receipt requested. Service by certified mail shall be made to the last address of record filed with the Board. Service upon an attorney who has appeared on behalf of a party constitutes service upon the party. If service is by certified mail, service is complete upon mailing.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

ARTICLE 2. LICENSURE

R4-49-201. Qualifications for Licensure

To qualify for an athletic trainer license a person shall:

1. Meet the requirements in A.R.S. § 32-4122,
2. Complete an athletic training education program, accredited by CAATE or its predecessors, and
3. Pass the national examination.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-202. Original License Application

A. An applicant for an athletic trainer license shall submit an original application that includes the following information:

1. Applicant's full name;
2. Applicant's name as it will appear on the license;
3. Other names used;
4. Social Security number;
5. Residence address and telephone number;
6. Date of birth;
7. Applicant's national athletic training certificate number and date of certification;
8. Post-secondary educational institutions attended;
9. Professional experience, field work, or both within the last five years;
10. Employer's name, address, and telephone number;
11. Current or previous athletic training or other professional license or certification numbers from other states and foreign countries and the status of each license or certification;
12. Current and previous arrest, criminal conviction, and disciplinary actions from any licensing agency or court;
13. E-mail address;
14. Alternate email address if the personal email address is to remain confidential;
15. Statement of citizenship or alien status and submittal of documents showing the individual's presence in the United States is authorized under federal law;
16. Signature and date with an attestation regarding the truthfulness of the information provided.

B. An applicant shall submit or cause to be submitted on the applicant's behalf the following:

1. Application fee,
2. Written verification from the BOC of athletic training certification or a passing score on the national examination as required by R4-49-201,
3. A readable fingerprint card and associated fee for submission to the Department of Public Safety or current fingerprint clearance card issued by the Department of Public Safety.
4. Verification of passing an exam on the athletic training statutes and this Chapter as evidenced by an original notice of examination results.

C. An original license shall expire one year from the date of issuance.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 618 (March 18, 2022), effective April 23, 2022 (Supp. 22-1).

R4-49-203. Renewal of License

A. To renew a license, a licensee shall submit a renewal application and a renewal fee.

B. A licensee shall sign the renewal application and include the following:

1. Applicant's full name;
2. Applicant's name as it will appear on the renewal license;
3. Residence address and telephone number;
4. Current Arizona Board of Athletic Training license number;
5. Arrest, criminal conviction, and disciplinary actions from any licensing agency or court since last license renewal;
6. Social Security number;
7. Employer's name, address, and telephone number;
8. Attestation of compliance with the continuing education requirements listed in R4-49-208;
9. Attestation that applicant agrees to practice under the direction of a licensed physician as required by R4-49-405, including maintaining physician-approved written protocols for common athletic training activities and post-injury guidelines that comply with A.R.S. § 32-4103(B);
10. A readable fingerprint card and associated fee for submission to the Department of Public Safety or a current fingerprint clearance card issued by the Department of Public Safety if the previous submission is at least five years old or the Department of Public Safety clearance card will expire within the term of the renewed license;

11. Statement of lawful presence in the United States or submittal of required documents showing lawful presence;
12. Signature and date with an attestation regarding the truthfulness of the information provided.

C. A licensee shall submit the renewal application and fees to the Board office at least 14 days prior to the expiration date of the current license.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 618 (March 18, 2022), effective April 23, 2022 (Supp. 22-1).

R4-49-204. Expired License: Reinstatement

A. A license expires if it is not renewed on or before the renewal date.

B. An expired license may be reinstated within three years of expiration of the license if:
1. The former licensee has:
   a. Current certification from the BOC as an athletic trainer, or
   b. Proof of continuing education to meet the requirements for the time not licensed;
2. A renewal application is submitted under R4-49-203;
3. The license reinstatement fee and renewal fee are paid under R4-49-102; and
4. The former licensee attests, in writing, that the licensee has not practiced athletic training in Arizona during the time the license was expired.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-205. License Application Review

A. For an original license, renewal license, or reinstated license as an athletic trainer the time-frames required by A.R.S. § 41-1072 et seq. are:
1. Overall time-frame: 120 days
2. Administrative completeness review time-frame: 60 days
3. Substantive review time-frame: 60 days

B. An administratively complete application for licensure consists of all the information and documents listed in:
1. R4-49-202 for an original athletic training license,
2. R4-49-203 for renewal of an athletic training license, and
3. R4-49-204 for reinstatement of an athletic training license.

C. The administrative completeness review time-frame, as described in A.R.S. § 41-1072(1) and listed in subsection (A)(2), begins on the date the Board receives an application.
1. If the application is not administratively complete when received, the Board shall send a notice of deficiency to the applicant. The deficiency notice shall state the documents and information needed to complete the application.
2. The applicant shall submit to the Board the missing documents and information within 120 days from the date of the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date of the deficiency notice until the date the Board receives the missing documents and information.
3. If the applicant fails to provide the missing documents and information within the 120 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be licensed shall apply again under R4-49-202, R4-49-203, or R4-49-204.
4. When the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.

D. The substantive review time-frame, as described in A.R.S. § 41-1072(3) and listed in subsection (A)(3), begins on the date of the notice of administrative completeness.
1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information but the Board may make supplemental requests for additional information by written agreement with the applicant.
2. The applicant shall submit to the Board the additional information identified in the request for additional information within 60 days from the date of the request for additional information. The time-frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the Board receives the additional information.
3. Unless an applicant requests that the Board deny a license within the 60-day period in subsection (D)(2), the Board shall close the file of an applicant who fails to submit the additional information within the 60 days provided. An applicant whose file is closed and who wants to be licensed shall apply again under R4-49-202, R4-49-203, or R4-49-204.
4. When the substantive review is complete, the Board shall inform the applicant in writing of its decision to grant or deny a license to the applicant.
   a. The Board shall deny a license if it determines that the applicant does not meet all substantive criteria for licensure required by statute and rule.
   b. The Board shall grant a license if it determines that the applicant meets all substantive criteria for licensure required by statute and rule.
   c. If the Board denies a license, the applicant may, within 30 days of service of the notice of denial, make a written request for a hearing to review the Board's decision. The hearing shall be conducted under A.R.S. Title 41, Chapter 6, Article 10.
   d. In a hearing conducted on a denial of a license, the applicant has the burden of proof.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-206. License Display

A licensee shall display the licensee's current license issued by the Board in a conspicuous place in each facility of practice. A licensee may use a photocopy of the license to satisfy this requirement.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

R4-49-207. Temporary Licenses

A. Subject to subsection (B), the executive director may issue a temporary license to an applicant for a license if the applicant meets the requirements of A.R.S. § 32-4127.

B. The executive director shall not issue a temporary license without prior Board approval if one or more of the following apply:
1. The applicant is the subject of a pending complaint before the Board or any other state health care regulatory entity.
2. The applicant has had a license or certificate to practice a health care profession suspended or revoked by another state health care regulatory entity.
3. The applicant has a criminal history or history of disciplinary action by a state health care regulatory entity.
4. The applicant has previously been denied an application for an athletic training license.

C. A temporary licensee is subject to disciplinary action by the Board pursuant to A.R.S. § 32-4153.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

R4-49-208. Continuing Education

A. As a prerequisite to renewal, a licensee shall complete at least 15 CEUs in the area of athletic training since the issuance of the previous license.

B. A licensee shall:
1. Maintain continuing education records that:
   a. Verify the continuing education activities the licensee completed during the preceding two years, and
   b. Consists of each statement of credit or certificate issued by an approved provider at the conclusion of a continuing education activity;
2. At the time of licensure renewal, attest to the number of CEUs the licensee completed since the issuance of the previous license on the renewal form; and
3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.

C. Licensees may provide proof of continued BOC certification to meet the CEU requirements of this Section.

D. In addition to the CEU requirements in subsection (A), all licensees shall maintain current certification in cardiopulmonary resuscitation from a provider that is approved by the Board.

E. Upon written request to the Board 30 days prior to the license renewal date, the Board may waive a licensee's continuing education requirement in the case of extreme hardship including, but not limited to, mental or physical illness, disability, absence from the United States, service in the United States Armed Forces or other extraordinary circumstances as determined by the Board.

F. The Board may audit a licensee's continuing education records and suspend or revoke, according to A.R.S. §§ 32-4155 and 32-4156, the license of a licensee who fails to comply with continuing education completion, recording, or reporting requirements of this Section.

G. A licensee who is aggrieved by a decision of the Board concerning continuing education units may request an administrative hearing before the Board.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 618 (March 18, 2022), effective April 23, 2022 (Supp. 22-1).

ARTICLE 3. HEARINGS

R4-49-301. Hearing Procedures

The Board shall conduct all hearings held under A.R.S. § 32-4154 et seq. in accordance with A.R.S. Title 41, Chapter 6, Article 10 and rules issued by the Office of Administrative Hearings.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

R4-49-302. Rehearing or Review of Decision

A. Any party in a contested case or appealable agency action before the Board may file a motion for rehearing or review within 30 days after service of the final administrative decision. Service is complete upon personal service or five days after the date the decision is mailed by certified mail to the party's last known address of record. The party shall attach a supporting memorandum specifying the grounds for the motion.

B. A party is required to file a motion with the Board for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.

C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
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. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the proceedings;
7. Evidence that the Board's decision was a result of passion or prejudice; or
8. Findings of fact or decision that was not justified by the evidence or was contrary to law.

E. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.

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, serve opposing affidavits.

G. Not later than 10 days after the date of a decision the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1).

ARTICLE 4. ATHLETIC TRAINING PRACTICE

R4-49-401. Scope of Practice
A licensee shall work within the scope of practice for athletic trainers stated in the definition of "athletic training" at A.R.S. § 32-4101(4) and the competencies contained in the 2020 Standards for Accreditation of Professional Athletic Trainings Programs, published by the (CAATE), 2001 K Street NW, 3rd Floor North, Washington, DC 20006, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 618 (March 18, 2022), effective April 23, 2022 (Supp. 22-1). Amended by exempt rulemaking at 28 A.A.R. 2435 (September 16, 2022), effective September 30, 2022, per Laws 2022, Chapter 46, Section 3 (Supp. 22-3).

R4-49-402. Direct Supervision of Athletic Training Students
A. A licensee may provide direct supervision to an athletic training student who is actively pursuing athletic training certification.
B. A licensee shall not provide direct supervision to more than eight athletic training students at one time.
C. A licensee is responsible for any treatment related to athletic training performed by an athletic training student who is under the licensee's direct supervision.
D. Only a licensed athletic trainer is allowed to prepare an initial treatment plan, initiate or re-evaluate a treatment plan, or authorize in writing a change to a treatment plan.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1).

R4-49-403. Standards of Practice
A licensee shall comply with the standards of professional practice contained in Board of Certification Standards of Professional Practice, published November 2020 by the Board of Certification, Inc., 1415 Harney Street, Suite 200, Omaha, Nebraska 68102, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 618 (March 18, 2022), effective April 23, 2022 (Supp. 22-1).

R4-49-404. Code of Ethics
A licensee shall work within the code of ethics for athletic trainers as stated in A.R.S. § 32-4153(10) and the NATA Code of Ethics, published September 2005 and updated March 2018, by the National Athletic Trainers' Association, 1620 Valwood Parkway, Suite 115, Carrollton, TX 75006, which is incorporated by reference and is on file with the Arizona Board of Athletic Training Office. The material incorporated contains no future amendments or editions.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 1374, effective March 7, 2001 (Supp. 01-1). Section amended by final rulemaking at 19 A.A.R. 361, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 618 (March 18, 2022), effective April 23, 2022 (Supp. 22-1).

R4-49-405. Direction of a Licensed Physician
A licensee shall render service or treatment under the direction of a physician licensed under A.R.S. Title 32, Chapter 13 or 17, as follows:
1. The licensee shall have standard, written protocols for common athletic training activities approved by the physician.
2. The licensee shall have post-injury treatment guidelines that comply with A.R.S. § 32-4103(B) approved by the physician.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 4389, effective November 25, 2002 (Supp. 02-3).

R4-49-406. Professional Standards of Care and Training and Education Qualifications for Delivery of Dry Needling Therapeutic Modality
A. Effective September 30, 2022, before providing the therapeutic modality "dry needling" in accordance with A.R.S. § 32-4101(4)(D) and as defined in R4-49-101(13), an athletic trainer shall:
1. Meet the qualifications established in subsection (B), and
2. Provide the Board with documented proof of compliance with the qualifications listed in subsection (C) in a format as prescribed by the Board.

B. Course content that meets the training and education qualifications for "dry needling" shall contain all of the following:
1. The course content shall be approved by one or more of the following entities prior to the course or courses being completed by the athletic trainer:
   a. Commission on Accreditation of Athletic Training Education,
   b. National Athletic Trainers' Association,
   c. Board of Certification, Inc.,
   d. State or district associations of the National Athletic Trainers' Association, or
   e. Specialty groups or societies of the National Athletic Trainers' Association.
2. The course content shall include all of the following components of education and training:
   a. Clean needle techniques to include one of the following standards:
      i. The U.S. Centers for Disease Control and Prevention, or
      ii. The U.S. Occupational Safety and Health Administration.
   b. Anatomical review,
   c. Blood borne pathogens, and
   d. Contraindications and indications for "dry needling".
3. The course content required in subsection (B) shall include passing both a written examination and practical

examination before completion of the course content. Practice application course content must be completed in a synchronous environment and examinations shall be done in-person to meet the qualifications of subsection (B).

4. The course content required in subsection (B) shall total a minimum of 24 contact hours of education.

C. The standard of care for "dry needling" includes:

1. Dry needling cannot be delegated to any assistive personnel.
2. Referral to one or more appropriate health care practitioners when required by A.R.S. § 32-4151(A).
3. Documentation of the "dry needling" as required by A.R.S. § 32-4153(18).
4. If the patient is a minor, parent or guardian consent for treatment is obtained and documented in the patient record.
5. Dry needling must be addressed in the written protocols approved by the physician providing direction.

Historical Note

New Section made by exempt rulemaking at 28 A.A.R. 2435 (September 16, 2022), effective September 30, 2022, per Laws 2022, Chapter 46, Section 3 (Supp. 22-3).

32-4101. Definitions

In this chapter, unless the context otherwise requires:

1. "Athletic illness" means an illness that arises from, or a manifestation of an illness that occurs as a result of, a person's participation in or preparation for games or sports or participation in recreational activities or physical fitness activities.

2. "Athletic injury" means an injury sustained by a person as a result of that person's participation in or preparation for games or sports or participation in recreational activities or physical fitness activities, or any injury sustained by a person that is of the type that occurs during participation in or preparation for games or sports or participation in recreational activities or physical fitness activities, regardless of the circumstances under which the injury was sustained.

3. "Athletic trainer" means a person who is licensed pursuant to this chapter.

4. "Athletic training" includes the following performed under the direction of a licensed physician and for which the athletic trainer has received appropriate education and training as prescribed by the board:

(a) The prevention, recognition, examination, evaluation, rehabilitation and management of athletic injuries.

(b) The prevention, evaluation, immediate care and monitoring of athletic illnesses.

(c) The referral of a person receiving athletic training services to appropriate health care professionals, as necessary.

(d) The use of heat, cold, water, light, sound, electricity, passive or active exercise, massage, mechanical devices or any other therapeutic modality to prevent, treat, rehabilitate or recondition athletic injuries.

(e) The planning, administration, evaluation, and modification of methods for prevention and risk management of athletic injuries and athletic illnesses.

(f) Education and counseling related to all aspects of the practice of athletic training.

(g) The use of topical pharmacological agents in conjunction with the administration of therapeutic modalities and pursuant to a prescription issued pursuant to the laws of this state and for which an athletic trainer has received appropriate education and training.

5. "Athletic training student" means a student who is currently enrolled in an athletic training education program that is accredited by an accrediting agency recognized by the board.

6. "Board" means the board of athletic training.

7. "Direct supervision" means that the supervising athletic trainer is present in the facility or on the campus where athletic training students are performing services, is immediately available to assist the person being supervised in the services being performed and maintains continued involvement in appropriate aspects of the services being performed.

8. "Direction of a licensed physician" means direction as prescribed by the board by rule pursuant to section 32-4103.

9. "Dry needling" means a skilled intervention that is performed by an athletic trainer and that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular and connective tissues to evaluate and manage neuromusculoskeletal conditions, pain and movement impairments.

10. "Licensed physician" means a person who is licensed pursuant to chapter 13 or 17 of this title.

11. "Restricted license" means a license on which the board places restrictions or conditions, or both, as to the scope of practice, place of practice, supervision of practice, duration of license status or type or condition of a person to whom

the licensee may provide services.

32-4103. Board; powers and duties; direction of athletic trainers; continuing education requirements; civil immunity

A. The board shall administer and enforce this chapter and shall:

1. Evaluate the qualifications of applicants for licensure.

2. Designate the national examination that it requires applicants to pass.

3. Issue licenses to persons who meet the requirements of this chapter.

4. Establish requirements pertaining to the ratio between supervising athletic trainers and athletic training students.

5. Regulate the practice of athletic training by interpreting and enforcing this chapter.

6. Establish requirements for assessing the continuing competence of licensees.

7. Adopt and revise rules to enforce this chapter.

8. Meet at least once each quarter in compliance with the open meeting requirements of title 38, chapter 3, article 3.1 and keep an official record of these meetings.

9. At its first regular meeting after the start of each calendar year, elect officers from among its members and as necessary to accomplish board business.

10. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, board rules and board procedures.

11. Maintain a current list of all licensees. This list shall include the licensee's name, current business and residential addresses, telephone numbers and license number.

12. Enter into contracts for services necessary to enforce this chapter.

13. Publish, at least annually, final disciplinary actions taken against a licensee.

14. Publish, at least annually, board rulings, opinions and interpretations of statutes or rules.

15. Not later than December 31 of each year, submit a written report of its actions and proceedings to the governor.

B. The board shall adopt rules to prescribe the direction of athletic trainers by a licensed physician, including recommendations, guidelines and instructions as to standard protocols to be followed in the general, day-to-day activities in which athletic trainers engage. These rules shall require that postathletic injury or athletic illness treatment direction be provided by the person's treating physician or, if applicable, by the team physician for the institution or organization that employs the athletic trainer. If appropriate, athletic trainers may also seek direction as to the treatment of an athletic injury or athletic illness from any health care provider who is involved in that person's treatment and who is not licensed pursuant to this chapter but who is licensed pursuant to this title.

C. The board shall adopt rules to prescribe the appropriate education and training for services that are proper to be performed by an athletic trainer.

D. The board may:

1. Adopt rules to prescribe continuing education requirements for licensure renewal, including a rule to allow the board to waive continuing education requirements for reasons of extreme hardship.

2. Appoint advisory committees to assist it in the performance of its duties. An advisory committee member appointed pursuant to this paragraph is not eligible to receive compensation but is eligible for reimbursement of expenses pursuant

to title 38, chapter 4, article 2.

3. Report any violations of this chapter or rules adopted pursuant to this chapter to a county attorney, the attorney general, a federal agency or a state or national organization, as appropriate.

E. A physician who, without compensation, provides direction to an athletic trainer that consists of recommendations, guidelines and instructions as to standard protocols to be followed in the general day-to-day activities in which athletic trainers engage is not subject to civil liability for providing that direction if the physician is not guilty of gross negligence or intentional misconduct in providing that direction.

Senate Engrossed

~~appropriation; Warner Street bridge~~
(now: dry needling; athletic trainers)

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 46

SENATE BILL 1398

AN ACT

AMENDING SECTIONS 32-4101 AND 32-4153, ARIZONA REVISED STATUTES; RELATING TO ATHLETIC TRAINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-4101, Arizona Revised Statutes, is amended to read:

32-4101. Definitions

In this chapter, unless the context otherwise requires:

1. "Athletic illness" means an illness that arises from, or a manifestation of an illness that occurs as a result of, a person's participation in or preparation for games or sports or participation in recreational activities or physical fitness activities.

2. "Athletic injury" means an injury sustained by a person as a result of that person's participation in or preparation for games or sports or participation in recreational activities or physical fitness activities, or any injury sustained by a person that is of the type that occurs during participation in or preparation for games or sports or participation in recreational activities or physical fitness activities, regardless of the circumstances under which the injury was sustained.

3. "Athletic trainer" means a person who is licensed pursuant to this chapter.

4. "Athletic training" includes the following performed under the direction of a licensed physician and for which the athletic trainer has received appropriate education and training as prescribed by the board:

(a) The prevention, recognition, examination, evaluation, rehabilitation and management of athletic injuries.

(b) The prevention, evaluation, immediate care and monitoring of athletic illnesses.

(c) The referral of a person receiving athletic training services to appropriate health care professionals, as necessary.

(d) The use of heat, cold, water, light, sound, electricity, passive or active exercise, massage, mechanical devices or any other therapeutic modality to prevent, treat, rehabilitate or recondition athletic injuries.

(e) The planning, administration, evaluation, and modification of methods for prevention and risk management of athletic injuries and athletic illnesses.

(f) Education and counseling related to all aspects of the practice of athletic training.

(g) The use of topical pharmacological agents in conjunction with the administration of therapeutic modalities and pursuant to a prescription issued pursuant to the laws of this state and for which an athletic trainer has received appropriate education and training.

5. "Athletic training student" means a student who is currently enrolled in an athletic training education program that is accredited by an accrediting agency recognized by the board.

6. "Board" means the board of athletic training.

7. "Direct supervision" means that the supervising athletic trainer is present in the facility or on the campus where athletic training students are performing services, is immediately available to assist the person being supervised in the services being performed and maintains continued involvement in appropriate aspects of the services being performed.

8. "Direction of a licensed physician" means direction as prescribed by the board by rule pursuant to section 32-4103.

9. "DRY NEEDLING" MEANS A SKILLED INTERVENTION THAT IS PERFORMED BY AN ATHLETIC TRAINER AND THAT USES A THIN FILIFORM NEEDLE TO PENETRATE THE SKIN AND STIMULATE UNDERLYING NEURAL, MUSCULAR AND CONNECTIVE TISSUES TO EVALUATE AND MANAGE NEUROMUSCULOSKELETAL CONDITIONS, PAIN AND MOVEMENT IMPAIRMENTS.

~~9.~~ 10. "Licensed physician" means a person who is licensed pursuant to chapter 13 or 17 of this title.

~~10.~~ 11. "Restricted license" means a license on which the board places restrictions or conditions, or both, as to the scope of practice, place of practice, supervision of practice, duration of license status or type or condition of a person to whom the licensee may provide services.

Sec. 2. Section 32-4153, Arizona Revised Statutes, is amended to read:

32-4153. Grounds for disciplinary action

The following are grounds for disciplinary action:

1. Practicing athletic training in violation of this chapter or rules adopted pursuant to this chapter.

2. Practicing or offering to practice beyond the scope of the practice of athletic training.

3. Obtaining or attempting to obtain a license by fraud or misrepresentation.

4. Engaging in the performance of substandard care by an athletic trainer due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the person cared for is established.

5. Failing to provide direct supervision in accordance with this chapter and rules adopted pursuant to this chapter.

6. Committing any felony or a misdemeanor involving moral turpitude. A conviction by a court of competent jurisdiction is conclusive evidence of the commission of the crime.

7. Practicing as an athletic trainer if the licensee's physical or mental abilities are impaired by the use of alcohol or any other substance that interferes with the ability to safely practice athletic training.

8. Having ~~had~~ a license or certificate revoked or suspended or any other disciplinary action taken or an application for licensure or certification refused, revoked or suspended by the proper authorities of another state, territory or country.

9. Engaging in sexual misconduct. For the purpose of this paragraph, "sexual misconduct" includes:

(a) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a provider relationship exists.

(b) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a person WHO IS treated by the athletic trainer.

(c) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to treatment under current practice standards.

10. Failing to adhere to the recognized standards and ethics of the athletic training profession.

11. Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter.

12. Charging unreasonable or fraudulent fees for services performed or not performed.

13. Having been adjudged mentally incompetent by a court of competent jurisdiction.

14. Aiding or abetting a person who is not licensed in this state and who directly or indirectly performs activities requiring a license.

15. Failing to report to the board any act or omission of a licensee or applicant or any other person who violates this chapter.

16. Interfering with an investigation or disciplinary proceeding by ~~wilful misrepresentation of~~ WILFULLY MISREPRESENTING facts or by ~~the use of~~ USING threats or harassment against any person to prevent that person from providing evidence in a disciplinary proceeding or any legal action.

17. Failing to maintain confidentiality without prior written consent of the individual treated or unless otherwise required by law.

18. Failing to maintain adequate records regarding treatment. For the purposes of this paragraph, "adequate records" means legible records that contain at a minimum a determination of the nature of the injury and the referral and treatment required, the treatment plan, the treatment record, a final summary on conclusion of treatment and sufficient information to identify the person treated.

19. Promoting an unnecessary device, treatment or service for the financial gain of the athletic trainer or of a third party.

20. Providing unwarranted treatment or treatment beyond the point of reasonable benefit.

21. Providing athletic training services that are in any way linked to the financial gain of a referral source.

22. Violating this chapter, board rules or a written order of the board.

23. FAILING TO DEMONSTRATE PROFESSIONAL STANDARDS OF CARE AND TRAINING AND EDUCATION QUALIFICATIONS, AS ESTABLISHED BY THE BOARD IN RULE, FOR PERFORMING DRY NEEDLING WHEN PROVIDED AS A THERAPEUTIC MODALITY.

Sec. 3. Rulemaking; exemption

A. On or before September 30, 2022, the board of athletic training shall adopt rules establishing the professional standards of care and training and education qualifications for athletic trainers who perform dry needling for therapeutic purposes.

B. For the purposes of subsection A of this section, the board of athletic training is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, through September 30, 2022.

APPROVED BY THE GOVERNOR MARCH 23, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 23, 2022.

BOARD OF TECHNICAL REGISTRATION
Title 4, Chapter 30, Articles 1, 2, and 3; Appendix A

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: July 2, 2024; August 6, 2024

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

FROM: Council Staff

DATE: June 5, 2024

SUBJECT: **BOARD OF TECHNICAL REGISTRATION**
Title 4, Chapter 30, Articles 1, 2, and 3; Appendix A

Staff Update

As a reminder, this 5YRR from the Board of Technical Registration was tabled at the July 2nd, 2024 Council meeting in order for the Board and Council staff to meet to address questions about the Board's response regarding item #13 - compliance with A.R.S. § 41-1037. On July 16th, 2024 this meeting took place and Council staff requested that the Board submit an amended report. The amended report was received on July 16th, 2024. Council staff verified the Board amended their response to item #13 and have substantially complied with their statutory obligation under A.R.S. § 41-1056(A)(11).

Summary

This Five-Year Review Report (5YRR) from the Arizona Board of Technical Registration (Board) covers thirty-one (31) rules and one (1) appendix in Title 4, Chapter 30, Articles 1-3. Article 1 relates to General Provisions, Article 2 relates to Registration Provisions, and Article 3 relates to Regulatory Provisions. These rules were first adopted in 1983 and the Board's last approved rulemaking prior to the submission of this 5YRR was in 2021. However, in March 2024 the Council approved a rulemaking that amended (7) rules in these articles, in part due to a petition. As this 5YRR was submitted before the March 2024 rulemaking was approved, the 5YRR analyzes the Board's rules prior to the March 2024 rulemaking amendments.

Proposed Action

No course of action was indicated in the agency's previous 5YRR approved by the Council in May 2019. The Board proposes future rulemaking by the end of the fiscal year, June 2025. The agency plans to complete the course of action through the normal rulemaking process, typically two years after opening the rule package. This future rulemaking would strike outdated seal examples in Appendix A, remove redundancies, correct inconsistencies, and increase clarity and conciseness of the rules with the changes listed in Item 5. This is in addition to and separate from the rulemaking amendments that were already approved by the Council in March 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

It is the opinion of the Board of Technical Registration (Board) that the economic, small business, and consumer impact that was anticipated in the 2021 rule change was accurate in that the rule change did not and has not created new benefits or burdens for the Board, other agencies, political subdivisions, or small businesses in this State.

Stakeholders include the Board, and home inspector applicants and certificate holders.

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 Board states that while the rule change added burdens and costs to home inspectors who place their certification on inactive status, the rule imposes the least burden and costs the Board could impose. Additionally, these costs do not outweigh the protection the rule provides to the public and inactive home inspectors.

4. Has the agency received any written criticisms of the rules over the last five years?

The Board states no written criticisms of the rules have been received over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Board indicates the rules are generally clear, concise and understandable with the following exceptions:

The Board's rules regarding applications for 'in-training' and examination authorization; rules explaining how the Board credits education and experience; and, which examinations are acceptable to the Board could be clearer.

The Board would like to enter a rulemaking to amend, create and strike the following rules to create better clarity:

Amend rules

R4-30-202 Remove language regarding fundamental exam authorization and move it to R4-30-204 which already details exam authorization process for professional examinations; add additional language to clarify and expand "in-training" designation and application requirements.

R4-30-204 Add language regarding fundamental exam authorization (removed from 202) and state-specific exam authorization; remove language regarding architect experience and move to R4-30-208.

R4-30-208 Remove language regarding education and move to new rule R4-30-207; add language regarding experience from 204 (architect experience), 222 (engineer experience), 242 (geologist experience), 254 (landscape architect experience), and 282 (land surveyor experience) to consolidate all experience under one rule.

R4-30-254 Remove language regarding the requirement to graduate from a LAAB accredited degree program; remove language regarding experience and move to 208.

Strike rules

R4-30-222 Requirements for "in-training' covered under 202; experience language moved to 208. Strike rule.

R4-30-242 Requirements for "in-training' covered under 202; experience language moved to 208. Strike rule.

R4-30-282 Requirements for "in-training' covered under 202; experience language moved to 208. Strike rule.

Create rules

R4-30-205 This rule would define which examinations the Board approves for 'in-training' designation and registration (no rule currently specifies this information).

R4-30-207 This rule would define the criteria for the Board to credit education. Current language found under 208 would be moved here, updated and expanded for clarity.

6. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

- The language in R4-30-303, which stipulates the required information for a registrant's seal, does not match the seal examples found in Appendix A. R4-30-303 stipulates:

"The upper portion of the annular space between the second and third circles shall bear whichever of the following phrases is applicable to the registrant: 1. 'Registered Architect;' 'Registered Professional Engineer' together with the branch of engineering in which registered; 'Registered Professional Geologist;' 'Registered Professional Landscape Architect;' or 'Registered Land Surveyor.'"

Appendix A shows examples for seals with two inconsistencies: one seal shows "Registered Landscape Architect" instead of "Registered Professional Landscape Architect" per R-4-30-303; and one seal shows "Registered Geologist" instead of "Registered Professional Geologist" per R-4-30-303.

- Appendix A also shows an example of an Assayer seal, a profession sunsetted in 2014.

- The language in R4-30-254 stipulates that an applicant for registration as a landscape architect must graduate from a degree program accredited by the Landscape Architectural Accreditation Board (LAAB) to satisfy education requirements.

"To qualify for landscape architect registration, an applicant shall provide proof to the Board of the successful completion of 96 months of landscape architecture education or experience or both. To satisfy the education requirement, an applicant must be a graduate of a four- or five-year landscape architectural degree program accredited at the time of graduation by the Landscape Architectural Accreditation Board (LAAB) or an equivalent predecessor organization."

This rule is inconsistent with R4-30-208, which stipulates that the Board may credit education pro rata if not a LAAB accredited degree: "2. The Board shall grant all other education credit according to the following: [. . .] b. Pro rata credit shall be granted for successful completion of courses substantially equivalent to the courses contained in the pertinent degree. . . [equivalent courses to a LAAB accredited degree]."

- This rule may also be inconsistent with statute A.R.S. § 32-122.01 *Qualifications for professional registration*. The statute stipulates that an applicant needs to show eight years of active engagement in the profession sought, which can consist of education, experience or a combination of both: "A. An applicant for professional registration as an architect, engineer, geologist or landscape architect shall: 1. Be actively engaged in education or experience, or both, in the profession for which registration is sought for at least eight years."

The statute does not mandate an education requirement, thus the Board states it can be argued that a rule cannot mandate an education requirement.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Board states the rules are effective in achieving its objectives.

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Board states it does not enforce the language in Appendix A when reviewing seal affidavits for new geologist and landscape architect registrants, instead relying upon the language found in R4-30-303. The language in R4-30-303 is newer as the Board updated the language in a rule package in 2018. Appendix A was not updated at that time, which the Board states may have been an oversight. The Board proposes striking the outdated seal examples from the Appendix in a future rulemaking.

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 Board states there are no federal laws that correspond to these rules.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Board has indicated in previous 5YRRs that the rules comply with A.R.S. § 41-1037. However, when asked to clarify how the rules that require a permit, license, or other agency authorization are in compliance with A.R.S. § 41-1037 (i.e., because it complies with the general permit requirements or because it meets a statutory exception) the Board responded that none of the rules covered by this 5YRR require the issuance of a regulatory permit, license, or agency authorization and that the Board's authority to issue permits, licenses and/or agency authorization are promulgated in its statutes. In contrast, Council staff have identified several rules covered by this report regarding agency authorizations. For example *R4-30-201 Registration as an Architect, Engineer, Geologist, Landscape Architect, or Land Surveyor* which outlines the requirements to obtain professional registration from the Board.

Council staff encourages the Council to inquire how the Board is in compliance with A.R.S. § 41-1037, for example, stating compliance with the general permit requirements, identifying the applicable statutory exception, or identifying the Board's specific statutory authority to issue an alternative type of permit, such as an individual, or traditional permit.

11. Conclusion

This Five Year Review Report (5YRR) from the Arizona Board of Technical Registration (Board) covers thirty-one (31) rules and one (1) appendix in Title 4, Chapter 30, Articles 1-3. Article 1 relates to General Provisions, Article 2 relates to Registration Provisions, and Article 3 relates to Regulatory Provisions. The Board proposes future rulemaking in June 2025 that would strike outdated seal examples in Appendix A, remove redundancies, correct inconsistencies, and increase clarity and conciseness of the rules. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301.

Council staff encourages the Council to clarify with the Board how the rules under this 5YRR regarding the requirement of a permit, license, or other agency authorization comply with the requirements in A.R.S. § 41-1037. Council staff otherwise recommend approval of this 5YRR.

February 27, 2024

grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Board of Technical Registration, Title 4, Chapter 30, Articles 1-3, Five-Year Review Report.

Dear Chair Klein,

Please find enclosed the Five Year Review Report of the Arizona Board of Technical Registration for Title 4, Chapter 30, Articles 1-3, due on March 29, 2024. The Board of Technical Registration hereby certifies compliance with A.R.S. 41-1091. For questions about this report, please contact Kurt Winter at 602-364-4883 or kurt.winter@azbtr.gov

Sincerely,

Judith R. Stapley

Judith R. Stapley, Executive Director

Board of Technical Registration

Governor's Regulatory Review Council

Five-Year-Review Report

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-101, *et. seq*.

Specific Statutory Authority: A.R.S. § 32-106(A)(1-9), through (I).

2. The objective of each rule:

Rule	Objective
R4-30-101	To define the terms that apply to the registration and regulation of the five professions and two occupations the Board regulates.
R4-30-102	To define the terms that apply to the certification and regulation of home inspectors in Arizona.
R4-30-106	To publish and authorize the fees the Board charges the public for its services.
R4-30-107	To define the expiration of registrations and certifications
R4-30-120	To explain the complaint review process the Board engages in prior to imposing disciplinary action against a registrant.
R4-30-121	To explain how the Board investigates complaints it receives against registrants.
R4-30-122	To explain when and how the Board may issue a Subpoena.
R4-30-123	To explain to individual respondents how the Board's informal compliance process works
R4-30-126	To explain how the Board serves its final decisions and to provide for rehearing processes
R4-30-201	To explain how applicants can obtain registration as an architect, engineer, geologist, landscape architect or land surveyor in AZ.
R4-30-202	To explain how an applicant can obtain 'in-training' designation
R4-30-203	To explain how an applicant can obtain a waiver of the licensing requirement to demonstrate proficiency in their profession by passing nationally required examinations
R4-30-204	To explain how to apply to sit for the nationally required examinations required for registration.
R4-30-208	To explain how an applicant's education and work experience can qualify him or her for registration
R4-30-209	To explain the timeframes it will take to process applications for professional registration, certification or in-training designation
R4-30-210	To explain the timeframes it will take to process applications to take the nationally required examinations
R4-30-214	To explain how someone could obtain architect registration
R4-30-221	To define the branches of engineering the Board recognizes

R4-30-222	To explain how someone could obtain 'engineer in-training' designation
R4-30-224	To explain how someone could obtain engineer registration
R4-30-242	To explain how someone could obtain 'geologist in-training' designation
R4-30-244	To explain how someone could obtain geologist registration.
R4-30-247	To explain how someone could obtain home inspector certification
R4-30-254	To explain how someone could obtain landscape architect registration
R4-30-282	To explain how someone could obtain 'land surveyor in-training' designation
R4-30-284	To explain the requirements for land surveyor registration
R4-30-301	To define 'unprofessional conduct' for registrants, pursuant to A.R.S. § 32-106(F)
R4-30-301.01	To define unprofessional conduct for home inspectors pursuant to A.R.S. § 32-111(D)(5)
R4-30-302	To explain requirements for electrical plans.
R4-30-303	To define the size and required information for the registrant's professional seal
R4-30-304	To explain the registrant's use of a professional seal
Appendix A.	To illustrate samples of acceptable seals

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.

4. Are the rules consistent with other rules and statutes? **Yes No X**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

- The language in R4-30-303, which stipulates the required information for a registrant's seal, does not match the seal examples found in Appendix A.

  R4-30-303 stipulates:

  > The upper portion of the annular space between the second and third circles shall bear whichever of the following phrases is applicable to the registrant: "Registered Architect"; "Registered Professional Engineer" together with the branch of engineering in which registered; "Registered Professional Geologist"; "Registered Professional Landscape Architect"; or "Registered Land Surveyor."

Appendix A shows examples for seals with two inconsistencies: one seal shows "Registered Landscape Architect" instead of "Registered Professional Landscape Architect" per 303; and one seal shows "Registered Geologist" instead of "Registered Professional Geologist" per 303. Appendix A also shows an example of an Assayer seal, a profession sunsetted in 2014.

- The language in R4-30-254 stipulates that an applicant for registration as a landscape architect must graduate from a degree program accredited by the Landscape Architectural Accreditation Board (LAAB) to satisfy education requirements.

> To qualify for landscape architect registration, an applicant shall provide proof to the Board of the successful completion of 96 months of landscape architecture education or experience or both. To satisfy the education requirement, an applicant must be a graduate of a four- or five-year landscape architectural degree program accredited at the time of graduation by the Landscape Architectural Accreditation Board (LAAB) or an equivalent predecessor organization.

This rule is inconsistent with R4-30-208, which stipulates that the Board may credit education pro rata if not a LAAB accredited degree.

1. The Board shall grant all other education credit according to the following:
   b. Pro rata credit shall be granted for successful completion of courses substantially equivalent to the courses contained in the pertinent degree [equivalent courses to a LAAB accredited degree].

This rule may also be inconsistent with statute ARS 32-122.01 Qualifications for professional registration. The statute stipulates that an applicant needs to show eight years of active engagement in the profession sought, which can consist of education, experience or a combination of both:

A. An applicant for professional registration as an architect, engineer, geologist or landscape architect shall:
   1. Be actively engaged in education or experience, or both, in the profession for which registration is sought for at least eight years.

The statute does not mandate an education requirement, thus it can be argued that a rule cannot mandate an education requirement.

5. <u>Are the rules enforced as written?</u> **Yes** **No X**

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

The agency does not enforce the language in Appendix A when reviewing seal affidavits for new geologist and landscape architect registrants, instead relying upon the language found in R4-30-303. The

reasoning for this is that the language in R4-30-303 is newer as the Board updated the language in a rule package in 2018. Appendix A was not updated at that time, which may have been an oversite. As a means of resolving the issue, the Board proposes striking the outdated seal examples from the Appendix in a future rulemaking.

6. Are the rules clear, concise, and understandable? **Yes No X**

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.

The Board believes the rules are clear, concise, and understandable but that it could further improve upon them.

The Board's rules regarding applications for 'in-training' and examination authorization; rules explaining how the Board credits education and experience; and, which examinations are acceptable to the Board could be clearer. The Board would like to enter a rulemaking to amend, create and strike the following rules to create better clarity:

Amend rules

R4-30-202 Remove language regarding fundamental exam authorization and move it to R4-30-204 which already details exam authorization process for professional examinations; add additional language to clarify and expand "in-training" designation and application requirements.

R4-30-204 Add language regarding fundamental exam authorization (removed from 202) and state-specific exam authorization; remove language regarding architect experience and move to R4-30-208.

R4-30-208 Remove language regarding education and move to new rule R4-30-207; add language regarding experience from 204 (architect experience), 222 (engineer experience), 242 (geologist experience), 254 (landscape architect experience), and 282 (land surveyor experience) to consolidate all experience under one rule.

R4-30-254 Remove language regarding the requirement to graduate from a LAAB accredited degree program; remove language regarding experience and move to 208.

Strike rules

R4-30-222 Requirements for "in-training' covered under 202; experience language moved to 208. Strike rule.

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R4-30-282 Requirements for "in-training' covered under 202; experience language moved to 208. Strike rule.

Create rules

R4-30-205 This rule would define which examinations the Board approves for 'in-training' designation and registration (no rule currently specifies this information).

R4-30-207 This rule would define the criteria for the Board to credit education. Current language found under 208 would be moved here, updated and expanded for clarity.

7. Has the agency received written criticisms of the rules within the last five years? Yes No X

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. Economic, small business, and consumer impact comparison:

The Board reviewed the economic, small business, and consumer impact statement (EIS) included with its 2021 rule changes.

- Questions 1 and 2 of the EIS indicate the need for the rule change was to amend R4-30-247 so that it conforms to statute. Additionally, the EIS states "The amendments to R4-30-247 align with statutory requirements and impose no new benefit or burden to the Board, public or registrants."
- Questions 3-8, and each question's sub-questions, were answered either as 'No", "None" or "NA". These answers correspond with the responses in questions 1 and 2 that the rule update did not create new benefits or burden for the Board, other agencies, political subdivisions, or small businesses in this State.
- After reviewing the 2021 rule change EIS, the Board opines that, as of the due date of this document (March 2024), the answers given in the 2021 EIS are accurate in that the rule change did not and has not created new benefits or burdens for the Board, other agencies, political subdivisions, or small businesses in this State.

Between the submission of the 2021 rule changes and the due date of this document (March 2024), there have been no appreciated rule changes by the Board as it relates to the 2021 economic, small business and consumer impact statement.

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.

No course of action was indicated in the agency's previous five-year report. Below is the answer to question 14 from the Board's 2019 five-year rule review:

"Having just finished a comprehensive rule writing in August 2018, the Board has no plans at this time to engage in additional rule writing activity in 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:

In 2021, the Board updated R4-30-247 in a final rulemaking. The change in question mandates that a home inspector retain financial assurance for two years after changing their status to 'inactive'. Before this change, when a home inspector went 'inactive', it was not clear in statute or rule whether the home inspector was required to retain financial assurance. This rule change clarified that they were required to retain financial assurance for at least two years after going 'inactive'. The two years were based upon the statute of limitations for civil remedy of a home inspection, which is four years. See (A.R.S. 12-530)

The EIS from that rulemaking indicated, "The amendments to R4-30-247 align with statutory requirements and impose no new benefit or burden to the Board, public or registrants."

2024 Analysis used to determine that the probable benefits of the rule outweigh the probable costs of the rule:

- Cost/Benefit and whether the rule change is the least burdensome to the Board :
    - Method: Determine if the Board hired additional staff and/or increased its FTE count to implement and sustain the rule. If additional staff/FTEs were required, the costs to the agency to implement and sustain the rule would correspond with the hired employee's pay. If additional staff/FTEs were required, this would indicate an increased administrative burden on the Board.
    - Analysis: The Board reviewed its FTE count and Position Descriptions for its current employees. It was determined that the Board has not increased its FTE count to implement or sustain the rule. Additionally, the Board did not hire additional staff to implement or sustain the rule; the amount of work required to track and correspond with home inspectors regarding maintaining financial assurance has not changed (the work requires the time of one full time employee).
    - Determination: The Board has not incurred additional costs or benefits due to the imposition of this rule. The Board's administrative burden remained unchanged.

- Cost/Benefit and whether the rule change is the least burdensome to home inspectors:

    - Method: Determine whether requiring home inspectors to maintain financial assurance for at least two years after placing their certification on inactive status imposes a burden and costs for home inspectors. If so, is the burden and cost the least burdensome and costly option and does the burden and costs outweigh the probable benefits of imposing the rule.

    - Analysis: Per statute, home inspectors must maintain financial assurance; at a minimum, either a $25,000 bond or a $100,000 E&O policy. After contacting two bond companies and three insurance companies that the Board frequently receives financial assurance from, the Board has determined that a bond's average cost is roughly $300 a year and E&O policies $100 to $600 a month. The costs therefore for a home inspector who is inactive is roughly $600 for a bond over two years or roughly $2,400 to $14,400 for E&O insurance over two years.

      From this, it can be shown that the rule imposes burdens and costs on home inspectors wishing to place their certification on inactive status. However, there are mitigating factors that reduce or eliminate said burdens and costs.

        - Without this language, an inactive home inspector would be required to maintain financial assurance indefinitely. The rule amendment is intended to keep the public welfare intent of the financial assurance in place for a reasonable period of time, but allow a home inspector to enter retirement without a permanent burden of financial assurance.
        - A home inspector has a choice between a bond or E&O. The Bond is both cheaper and less burdensome.
        - The Board does not have a statute or rule that mandates a home inspector must place their certification on inactive status. Going 'inactive' is an option a home inspector may use if they wish to retire or do not plan to offer home inspection services in the near future, but with the option of "reactivating" their certificate in the future instead of reapplying as a new home inspector. A home inspector has other options if they do not wish to perform home inspection in Arizona; they may allow their certification to be canceled after not renewing or allow their certification to be revoked 90 days after their financial assurance lapses. Home inspectors who do not renew and are subsequently canceled do not need to maintain financial assurance after being canceled. Home inspectors who do not maintain financial assurance are subsequently revoked and do not need to maintain financial assurance after being revoked.
        - The two year period to retain financial assurance could be seen as burdensome, but the number of years was not an arbitrary choice, but one based upon the statute of limitations a customer can sue a home inspector for civil damages. Therefore, two years is the least burdensome option for imposing the rule.
        - An inactive home inspector, unlike a canceled or revoked home inspector, is still under the board's authority, and in order to protect the public, as well as the inactive home inspector who can theoretically reactivate their license at any time, the Board created this rule to make sure all parties are covered in the eventuality the board received a complaint regarding a home inspection or the home inspector is sued. The protection this provides to the public and home inspectors is a benefit that outweighs the costs and burdens placed on home inspectors.

Determination: The changes to R4-30-247 added burdens and costs to home inspectors who place their certification on inactive status. However, as explained in the mitigating factors above, the rule imposes the least burden and costs the Board could impose and said costs and burdens do not outweigh the protection the rule provides to the public and inactive home inspectors.

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)?

There are no federal laws that correspond with the agency's rules.

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:

To the degree the general permit requirements of ARS § 41-1037 are applicable, all of the Board's rules comply with ARS § 41-1037.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

Open a rule package to update or strike Appendix A and clarify rules per question 6 by the end of the fiscal year, June 2025. The agency plans to complete the course of action through the normal rulemaking process, typically two years after opening the rule package.

Arizona Administrative CODE
www.azsos.gov
Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

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 January 1, 2024 through March 31, 2024

Questions about these rules? Contact:

Name: Kurt Winter, Deputy Director
Address: Board of Technical Registration
1110 W. Washington, Suite 240
Phoenix, AZ 85007
Telephone: (602) 364-4883
Fax: (602) 364-4931
Email: Kurt.winter@azbtr.gov
Website: www.azbtr.gov

The release of this Chapter in Supp. 24-1 replaces Supp. 21-3, 1-25 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.

Arizona Administrative Code Publisher Department of State Office of the Secretary of State Administrative Rules Division	Published electronically under the authority of A.R.S. § 41-1012. Authentication authorized under Arizona Revised Statutes, Chapter 54, Uniform Electronic Legal Material Act.	Mailing Address: Administrative Rules Division Office of the Secretary of State 1700 W. Washington Street, Fl. 7 Phoenix, AZ 85007

Administrative Rules Division
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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

Authority: A.R.S. § 32-101 et seq.

Supp. 24-1

Chapter 30, consisting of Sections R4-30-101 through R4-30-126, R4-30-201 through R4-30-284, and R4-30-301 through R4-30-307, adopted effective August 3, 1983.

Former Chapter 30, consisting of Sections R4-30-01 through R4-30-04, R4-30-13 through R4-30-19, R4-30-27 through R4-30-31, R4-30-41 through R4-30-43, R4-30-52 through R4-30-56, R4-30-66, and R4-30-76, repealed effective August 3, 1983.

CHAPTER TABLE OF CONTENTS

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. REGISTRATION PROVISIONS

ARTICLE 3. REGULATORY PROVISIONS

ARTICLE 1. GENERAL PROVISIONS

R4-30-101. Definitions

The following definitions apply in this Chapter unless the context otherwise requires:

1. "Act" means the Technical Registration Act, A.R.S. Title 32, Chapter 1.
2. "Active engagement" means actually practicing or providing architectural, engineering, geological, landscape architectural, or land surveying services.
3. "Bona fide employee" means:
   a. Any person employed by a town, city, county, state, or federal agency working under the direction or supervision of a registrant;
   b. Any person employed by a business entity and working under the direct supervision of a registrant who is also employed by the same business entity; or
   c. Any person working under the direct supervision of a registrant who:
      i. Receives direct wages from the registrant;
      ii. Receives contract compensation from the registrant; or
      iii. Receives direct wages from the project prime professional who has a contract with another registrant and whose work product is the responsibility of the latter registrant.
4. "Branch" means a specialty area within the category of engineering.
5. "Category" means the professions of architecture, geology, engineering, landscape architecture, and land surveying.
6. "De minimis violations" means violations of Board statutes or rules that do not present a threat to public welfare, health, or safety.
7. "Design team" means a group of individuals that includes one or more professional registrants collaborating with any other individuals on a specific project to develop professional documents.
8. "Detached single family dwelling" as used in the Act means a single family dwelling unit such as a house, which is structurally and physically separate from all other family dwelling units. This does not mean any single family dwelling unit which is part of a multiple dwelling unit building such as a duplex, townhouse, apartment building, condominium, or cooperative. The term "detached single family dwelling" also includes all subsidiary buildings, structures and improvements such as garage, storage areas, swimming pool, and landscaping.
9. "Direct supervision" means a registrant's critical examination and evaluation of a bona fide employee's work product, during and after the preparation, for purposes of compliance with applicable laws, codes, ordinances, and regulations pertaining to professional practice.
10. "Experience" is classified as follows:
    a. "Subprofessional experience" means task work done under direct supervision and not falling within the definition of professional experience, including but not limited to time spent as a rodman, chainman, recorder, instrument technician, survey aide, technician, clerk of the works, or similar work.
    b. "Professional experience" means a diversity of work calling for substantial technical knowledge, skill, and responsibility as well as a lesser degree of supervision necessary to ensure that good judgment is applied to protect the public during the course and scope of projects.
    c. "Responsible charge experience" means work in the field or in the office, where the applicant/registrant had responsibility for the direction of the work and its successful accomplishment and where the applicant/registrant had to make professional decisions without relying on advice or instructions from or first referring the decisions for approval to a superior.
    d. "Design experience" means professional experience, including work defined under "responsible charge experience," where the applicant/registrant must fulfill the requirements of local circumstances and conditions and yet not violate any of the requirements of the profession and ensure that the executed plan meets the purpose for which it was designed.
11. "Federal agency" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.
12. "Good moral character and repute" means that the registration or certification applicant/registrant:
    a. Has not been convicted of a felony or equivalent offense in another jurisdiction as defined in A.R.S. § 13-601.
    b. Has not been convicted of misdemeanor or equivalent offense in another jurisdiction if the offense has a reasonable relationship to the functions of the employment or category for which the registration, certification, or designation is sought;
    c. Has not, within five years of application for registration or certification, committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the candidate's proposed area of practice;
    d. Is not currently incarcerated in a penal institution;
    e. Has not engaged in fraud or misrepresentation in connection with the application for registration, certification, or related examination;
    f. Has not had a registration or certification revoked or suspended for cause by this state or by any other jurisdiction, or surrendered a professional license in lieu of disciplinary action;
    g. Has not practiced without the required technical registration or certification in this state or in another jurisdiction within the two years immediately preceding the filing of the application for registration or certification; and
    h. Has not, within five years of application for registration or certification, committed an act that would constitute unprofessional conduct, as set forth in R4-30-301 or R4-30-301.01.
13. "Gross negligence" means a substantial deviation in professional practice from the standard of professional care exercised by members of the applicant's/registrant's profession, or a substantial deviation from any technical standards issued by a nationally recognized professional organization comprised of members of the applicant's/registrant's profession, or a substantial deviation from requirements contained in state, municipal, and county laws, ordinances, and regulations pertaining to the registrant's professional practice.

14. "Incompetence" means to lack the professional qualifications, experience, or education to undertake a professional engagement or assignment.
15. "Insufficient evidence to support disciplinary action" means:
    a. The Board determines there was no evidence to warrant disciplinary action, but believes that continuation of the actions leading to the investigation may result in future Board action against the registrant; or
    b. The Board determines that there were de minimis violations of Board statutes or rules, but no disciplinary action should be taken against the certification or registration and that a letter of concern would be as effective a resolution as a letter of reprimand in deterring future violations of a like nature.
16. "Other misconduct" means the applicant/registrant:
    a. Has knowingly acted in violation or knowingly failed to act in compliance with any provisions of the Act, or rules of the Board or any state, municipal, or county law, code, ordinance, or regulation pertaining to the practice of the applicant's/registrant's profession; or
    b. Has refused to respond fully to a Board inquiry relating to an applicant's/registrant's qualifying experience, or provided the Board with false information relating to an applicant's/registrant's qualifying experience.
17. "Practicing" means offering or performing professional services regulated by the Act within the state of Arizona.
18. "Prepared" means to exercise direct supervision over the preparation of professional documents.
19. "Professional documents" mean the professional work product of a registrant that requires professional judgment, design, analysis, or conclusions, including original plans, drawings, maps, plats, reports, written opinions, specifications, and calculations.
20. "Project Prime Professional" means the registrant is responsible for the coordination, continuity, and compatibility of each collaborating registrant's work (when retained by the project prime professional).
21. "Public works" project means a work or undertaking that is financed, in whole or in part, by a federal agency or by a state public body, as defined in this Article.
22. "Registrant" means a person or firm who has been granted registration or certification to practice any profession regulated pursuant to the Act.
23. "Retired from active practice" means that the registrant no longer performs professional services.
24. "State public body" means the state or a county, city, town, municipal corporation, authority, or any other subdivision, agency, or instrumentality of such an entity, corporate or otherwise.
25. "Structure" as used in the Act means any constructed or designed improvement or improvements to real property including all onsite improvements, fixed equipment, and landscaping, pursuant to an engagement or project.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 968, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-102. Home Inspection Definitions

The following definitions apply to home inspection requirements in this Chapter:

1. "Parallel Inspection" means a home inspection completed by an applicant during the application process that is supervised by a certified home inspector acting as the Parallel Inspector, in the presence of no more than three other applicants. The applicant shall produce a written report for each Parallel Inspection, which the supervising certified home inspector, serving as the Parallel Inspector, shall review, analyze, correct, and return to the applicant within 10 calendar days after receiving the written report. The Parallel Inspector shall notate and instruct the applicant so that each report meets the Standards of Professional Practice for Arizona Home Inspectors. The applicant shall not perform any fee-paid Home Inspections during this Parallel Inspection period.
2. "Parallel Inspector" means an Arizona Certified Home Inspector who performs parallel inspections for a home inspector applicant so that the applicant can obtain a certification to conduct home inspections. A Parallel Inspector shall be in good standing with the Board and shall not have received any disciplinary action from the Board within the preceding year. The Parallel Inspector shall have been continuously certified by the Board as a Home Inspector for at least three years and shall have conducted at least 250 fee-paid home inspections in the State of Arizona. The Applicant shall provide a signed affirmation from the Parallel Inspector affirming that the Parallel Inspector has met this criteria to the Board with the application for certification.
3. "Peer Review" means a home inspection performed alongside a supervising Peer Reviewer in order to comply with the terms of Board ordered discipline. The Arizona Certified Home Inspector subject to Board ordered discipline shall, at the conclusion of each Peer Review, submit a written Home Inspection Report to the Peer Reviewer for analysis and review. The Peer Reviewer shall notate and instruct the Arizona Certified Home Inspector subject to Board ordered discipline in order for the report to meet the Standards of Professional Practice for Arizona Home Inspectors. The Arizona Certified Home Inspector subject to Board ordered discipline shall not perform any fee-paid Home Inspections during this Peer Review period.
4. "Peer Reviewer" means an Arizona Certified Home Inspector performing peer review inspections for a home inspector subject to Board ordered discipline so that inspector can fulfill the terms of the ordered discipline. A Peer Reviewer shall be in good standing with the Board and shall not have received any disciplinary action from the Board within the preceding three years. The Peer Reviewer shall have been continuously certified by the Board as a home inspector for at least five years and shall have conducted at least 250 fee-paid home inspections in the State of Arizona. The Arizona Certified Home Inspec-

tor subject to Board ordered discipline shall provide the Board with a signed affirmation from the Peer Reviewer affirming that the Peer Reviewer has met these criterion at the conclusion of each peer review inspection.

5. "Report Checklist Supplement" a tool designed to assist home inspector applicants, parallel inspectors, peer reviewers, application reviewers, enforcement advisory evaluators and certified home inspectors when reviewing or filling out an application for home inspector certification and a home inspection report. The "Report Checklist Supplement" is not a substitute for the current version of the "Standards of Professional Practice."

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4). New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2). Amended under A.R.S. § 41-1033(J) at 25 A.A.R. 3323, effective April 24, 2019 (Supp. 19-2). Amended by final rulemaking at 30 A.A.R. 768 (April 19, 2024), effective May 25, 2024 (Supp. 24-1).

R4-30-103. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4). New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 1911, effective October 7, 2013 (Supp. 13-3). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-104. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

R4-30-105. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

R4-30-106. Fees

A. The Board shall charge the following fees:

1. A computer generated list of registrants for a non-commercial purpose is $0.25 per name, with a maximum fee of $300.00.
2. A computer generated list of registrants for a commercial purpose is $0.25 per name, with a minimum fee of $250.00.
3. The photocopy fee is $1.00 for up to three pages followed by a $0.25 fee for each additional page.
4. The replacement certificate fee for registrants and certificate holders is $10.00 per certificate.
5. The recording medium copy fee is $15.00 per recording.
6. The local examination review fee is $30.00 per hour.
7. The returned check fee is $25.00 per check.
8. The verification of registration or certification fee is $25.00 per verification.
9. The laminated pocket card fee is $10.00 per card.

B. A person paying fees shall remit them in United States dollars in the form of cash, check, money order, or credit card. If a check is returned for insufficient funds, repayment, including payment of the returned check charge, shall be made in the form of cash, money order, or certified check.

C. Upon written request, the Board shall waive renewal fees for registrants whose registration is in inactive status.

D. Application fee refunds are not allowed after the application has been assigned an application number and processing commences.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Emergency amendments adopted effective May 7, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency amendments readopted without change effective August 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Emergency amendments readopted without change effective February 13, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments readopted without change effective May 31, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency amendments readopted with changes effective October 22, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency amendments permanently adopted with changes effective December 18, 1991 (Supp. 91-4). Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended effective January 12, 1996 (Supp. 96-1). Amended effective January 15, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-107. Registration and Certification Expiration Dates

A. Registrants with triennial registration have expiration dates based on the date of initial registration. The following table indicates triennial registration renewal periods:

Initial Registration Granted Date	Initial Triennial Renewal Expiration Date
Jan. 1 through Mar. 31	Three years from Mar. 31
Apr. 1 through Jun. 30	Three years from Jun. 30
Jul. 1 through Sept. 30	Three years from Sept. 30
Oct. 1 through Dec. 31	Three years from Dec. 31

B. Subsequent triennial renewal dates will be three years from the initial triennial renewal expiration date.
C. All annual registrations and certifications expire one year from the date of issuance.
D. Alarm business certifications expire three years from the date the certification is granted and subsequently every three years thereafter.
E. Alarm controlling persons and alarm agent certifications expire three years from the date the certification was granted and subsequently every three years thereafter.

Historical Note
Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-108. Reserved

R4-30-109. Reserved

R4-30-110. Reserved

R4-30-111. Reserved

R4-30-112. Reserved

R4-30-113. Reserved

R4-30-114. Reserved

R4-30-115. Reserved

R4-30-116. Reserved

R4-30-117. Reserved

R4-30-118. Reserved

R4-30-119. Reserved

R4-30-120. Complaint Review Process

A. The Board shall select a pool of volunteers who have submitted resumes and letters of interest to serve on enforcement advisory committees ("EACs"). The Executive Director shall select registrants and public members from the pool of volunteers to serve on the committees as needed. When practicable, each committee shall be comprised of one public member and a minimum of four registrants, at least one of whom is registered in the same category or branch as the respondent. The committee members shall provide technical assistance to Board staff in the evaluation and investigation of complaints. A quorum of three committee members is required for each committee meeting.
B. During the preliminary informal investigation of a complaint, registrants named as respondents may appear before an enforcement advisory committee ("EAC") relating to the complaint. Respondents may elect to appear with or without counsel. The committee shall attempt to assess the complaint and discuss the complaint with the respondent and others, if deemed necessary, and prepare a recommendation for disposition of the complaint.
C. Respondents are not required to participate in the enforcement advisory committee meeting and no inference shall be drawn from a respondent's decision not to attend.
D. If a respondent chooses not to attend the enforcement advisory committee meeting, the committee may meet and review information presented by staff and others and prepare a recommendation for disposition of the complaint.
E. The Board shall advise the respondent of the committee recommendation.
F. After the informal investigation has been completed, if the committee recommendation supports a determination that the complaint is unfounded, the recommendation shall be forwarded to the Board for review and final disposition.
G. In all cases where the advisory committee finds probable cause to believe that disciplinary action is warranted, the staff will attempt to resolve the complaint informally by obtaining a signed consent agreement from the respondent. The Board shall review the committee recommendation, staff recommendation, consent agreement, and, in the event a signed consent agreement cannot be obtained, any counterproposal from the respondent.

Historical Note
Adopted effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-121. Investigation of Violations

If any information concerning a possible violation of the Act or any of these rules is received or obtained by the Board or Board staff, an investigation shall be conducted prior to the initiation of formal proceedings. Investigative reports, professional assessments, enforcement advisory committee recommendations, and other documents and materials relating to an investigation shall remain confidential until the matter is closed, until the issuance of a hearing notice under A.R.S. § 32-128, or until the matter is settled by consent order; however, the Board shall inform the respondent that an investigation is being conducted and explain the general nature of the investigation. The respondent shall have access to a copy of the complaint and any assessment or EAC reports drafted during the investigation. The public may obtain information that an investigation is being conducted and an explanation of the general nature of the investigation. The Board may refer investigative information to other public agencies as appropriate under the circumstances.

Historical Note
Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-122. Issuance of Subpoenas

Any party desiring the Board to issue a subpoena shall make application, stating the substance of the testimony expected of the witness or the relevancy of the evidence to be produced. If the testimony or evidence appears to the Board to be material and necessary, a subpoena shall be supplied. The affixing of the seal of the Board and the signature of the Chairman, Secretary, Executive Director, shall be sufficient attestation of the same. The party applying for the subpoena shall pay for service of the subpoena. A party is considered served at the time of personal service or mailing of the document by certified mail that is addressed to the person's last known address of record on file with the Board.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

R4-30-123. Informal Compliance Procedures

A. Upon notification of the recommendation of an enforcement advisory committee, a registrant may meet with Board staff. The registrant may appear with or without counsel. The purpose of the meeting is to discuss informal settlement of the investigative matter. Upon completion of the meeting, a Board enforcement officer shall make recommendations to the Board.

B. At any time either before or after formal disciplinary proceedings have been instituted against a registrant, the registrant may submit to the Board an offer of settlement whereby, in lieu of formal disciplinary action, the registrant agrees to accept certain sanctions such as suspension, civil penalties, enrolling in relevant professional education courses, limiting the scope of practice, submitting work product to professional peer review, or other disciplinary sanctions. If the Board determines that the proposed settlement will adequately protect the public welfare, the Board shall accept the offer and enter a decision consented to by the registrant, incorporating the proposed settlement.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-124. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Section repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

R4-30-125. Reserved

R4-30-126. Service of Board Decisions; Rehearing of Board Decisions

A. Except as provided in subsection (G), any party to an appealable agency action or contested case before the Board who is aggrieved by a decision rendered in the matter may file with the Board, not later than 30 calendar days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the motion. A decision shall be deemed to have been served on the date when personally delivered or mailed by certified mail to the party's last known address of record with the agency. The filing of a motion for rehearing is a condition precedent to the right of appeal provided in A.R.S. § 32-128(J).

B. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 calendar days after service of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument. The filing of a motion for rehearing or review suspends the operation of the Board's order and allows the registrant to practice in his or her profession pending denial or granting of the motion, and pending the decision of the Board on the rehearing or review if the motion is granted.

C. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the agency, members of the Board or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Board or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
7. The decision is unjustified based upon the evidence or is contrary to law.

D. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.

E. Not later than 30 days after a decision is rendered, the Board may on its own motion order a rehearing or review of its decision for any reason listed in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting a rehearing shall specify the grounds for the rehearing.

F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within ten days after service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

G. If the Board makes specific findings that the immediate effectiveness of a decision is necessary for preservation of the public welfare, health or safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehear-

ing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

ARTICLE 2. REGISTRATION PROVISIONS

R4-30-201. Registration as an Architect, Engineer, Geologist, Landscape Architect, or Land Surveyor

A. An applicant for registration as an architect, engineer, geologist, landscape architect, or land surveyor shall submit a completed application package for professional registration that contains the following:

1. Evidence of successful completion of the current national professional examination or waiver of the examination pursuant to A.R.S. § 32-126 and R4-30-203 in the category, and branch if applicable, for which registration is sought. Applicants shall arrange to have their examination results sent directly to the Board from the applicable testing agency holding the examination results;
2. Name, residence address, mailing address if different from residence, email and telephone number, of the applicant;
3. Date of birth and social security number of the applicant;
4. Citizenship or legal residence of the applicant;
5. Category, and branch of engineering if applicable, for which the applicant is seeking registration;
6. A detailed explanatory statement and documentation, regarding;
    a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction, within five years before the date of application;
    b. Refusal of any professional or occupational registration, certification, or license to the applicant by any state or jurisdiction, within five years before the date of application;
    c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant;
    d. Any alias or other name used by the applicant; and
    e. Any conviction of the applicant for a felony or misdemeanor, other than a minor traffic violation, within five years before the date of application.
7. State or jurisdiction in which the applicant holds any other professional or occupational registration, certification, or license, type of registration, certification or license number, year granted, how registration, certification, or license was granted (by examination, education, experience, or reciprocity);
8. State or jurisdiction in which the applicant has pending an application for any type of professional or occupational license, registration, or certification, type of license, registration or certification being sought, and the status of the application;
9. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution the applicant attended;
10. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended, unless previously provided to the Board pursuant to R4-30-204;
11. Name, current address, and telephone number of the applicant's current and former employers (the names of companies within the last ten-year period) in the category for which registration is sought; dates of employment; applicant's title; description of the work performed; and number of hours worked per week, unless previously provided to the Board pursuant to R4-30-204;
12. Names and addresses of immediate supervisors in past and present employment in the category for which registration is sought. An applicant who has been working in the category for which registration is sought for 10 or more years shall provide the names and address of all immediate supervisors during the most recent ten-year period. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three professional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought, unless previously provided to the Board pursuant to R4-30-204;
13. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
14. Certificate of Experience Report from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record from additional professional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board, but the Board must receive them directly from the reference;
15. Evidence of successful completion, or waiver by the Board, of the applicable fundamentals examination. An applicant for registration who has successfully completed a fundamentals examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an engineer, geologist or land surveyor shall pass the applicable fundamentals examination before admission to the professional examination. An applicant seeking professional registration as a geologist may take the fundamentals examination on the same day;
16. Certification that the information provided to the Board is accurate, true and complete; and
17. The applicable fee.

B. If an applicant does not have the required education and experience for registration, the Board may, upon request of the applicant, hold the application for a period of time that does not exceed one year from the date the application is filed with the Board. All time-frames adopted pursuant to Title 41, Chap-

ter 6, Article 7.1 are suspended during the above-referenced time.

C. An applicant holding a certificate of qualification issued by one of the national examination councils recognized in R4-30-203(B) shall arrange to have the record forwarded to the Board by the national registration body. If the forms provided by the national examination council contain all the information described in A.R.S. § 32-122.01 and subsection (A), the Board may accept the forms in lieu of requiring the applicant to furnish the information directly to the Board.

D. The Board staff shall review all applications and, if necessary, refer completed applications to an evaluator deemed qualified by the board and chosen from the pool of enforcement advisory committee members for evaluation. If the application for registration is complete and in the proper form and the Board staff or the evaluator is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be registered in the field for which the application was filed, the Board staff or evaluator shall recommend that the Board certify the applicant as eligible for registration. If for any reason the Board staff or the evaluator is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for registration, the Board staff shall make a further investigation of the applicant. The Board staff and evaluator shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for registration.

E. The Board may accept documentation that an applicant has passed a written national examination in the area for which registration is sought from a national council of which the Board is a member.

F. The Board shall not accept an application for registration renewal unless the applicant has responded to the questions on the application relating to good moral character and other misconduct and signed the application for renewal. The Board shall return an incomplete application to the applicant which may result in assessment of a delinquent renewal fee.

G. An applicant may withdraw an application for registration by written request to the Board. Any fee paid by the applicant is non-refundable. If an applicant withdraws an application, the Board shall close the file. An applicant whose file has been closed and who later wishes to apply for professional registration shall submit a new application package to the Board pursuant to R4-30-201 and R4-30-202.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (05-3). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2). Amended by final rulemaking at 30 A.A.R. 768 (April 19, 2024), effective May 25, 2024 (Supp. 24-1).

R4-30-202. In-training Designation

A. An applicant for in-training designation shall submit an original completed in-training application package that contains the following:

1. Category for which the applicant is seeking an in-training designation;
2. Evidence of successful completion, or waiver by the Board, of the current fundamentals examination in the category for which in-training designation is sought;
3. Information regarding any conviction for a felony or misdemeanor, other than a minor traffic violation, within five years before the date of application;
4. Any alias or other name used by the applicant; and
5. The information set forth in subsections (B)(2) through (9);

B. An examination applicant who wants to sit for a fundamentals examination who does not possess an educational degree recognized by the applicable national council or who is not in the final year of a degree program recognized by the applicable national council shall submit an original completed exam authorization application to the Board, and provide the following:

1. Name of the fundamental examination the applicant wishes sit for;
2. Name, residence address, mailing address if different from residence, email and telephone number of the applicant;
3. Date of birth and social security number of the applicant;
4. Citizenship or legal residence;
5. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution that the applicant attended;
6. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended;
7. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
8. Certification that the information provided to the Board is accurate, true, and complete.
9. The applicable fees.

C. If otherwise qualified, the Board shall permit an applicant for in-training designation to take the fundamentals examination in the final year of a baccalaureate, masters, or other degree program that is not recognized by the applicable national council and accredited in the category for which the application is made. The applicant shall have the application form endorsed by the applicant's college dean or faculty advisor, or, if already a graduate, may arrange to have a final transcript, indicating the degree awarded, sent directly from the registrar to the Board, in lieu of the endorsement.

D. The Board shall permit an applicant without an accredited college degree or who is not in the final year of a degree program recognized by the applicable national council to take the fundamentals examination after submitting to the Board evidence of four years of satisfactory experience or education or both. The applicant shall provide the name, current address, and telephone number of all current and former employers; names of all supervisors and their titles; dates of employment; applicant's title, and a description of the work performed. The applicant shall provide Certificate of Experience Record and Reference Forms to immediate supervisors at present and past employers. The applicant shall ensure the completed reference forms are submitted to the Board. The applicant shall meet all other requirements of this Section.

Historical Note

New Section R4-30-202 renumbered from R4-30-203 and amended effective November 10, 1998 (Supp. 98-4).

Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2). Amended by final rulemaking at 30 A.A.R. 768 (April 19, 2024), effective May 25, 2024 (Supp. 24-1).

R4-30-202.01. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-203. Waiver of Examination

A. The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who holds a valid professional or occupational registration, certification, or license in the category for which registration, certification, or licensure is sought, and is in good standing in another state or U.S. territory provided: The applicant submits verifiable documentation to the Board that the applicant has been actively engaged as a professional or occupational registrant, certificant, or licensee in another state or U.S. territory for at least 10 years in the category for which registration, certification, or licensure is sought. For purposes of this subsection, "actively engaged as a professional registrant" means that the applicant holds a valid professional or occupational registration, certification, or license in good standing, and has been practicing or offering professional services for at least 10 of the last 15 years.

B. The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who submits verifiable documentation to the Board that the applicant holds one of the following professional records, issued by a national examination council, and is registered in good standing in another state or U.S. territory and has been actively engaged in the practice of the profession for which the applicant seeks registration. The Board recognizes the following national examination council records:

1. National Council of Architectural Registration Boards' ("NCARB") Certificate Record, with design and seismic (lateral forces) qualifications;
2. National Council of Examiners for Engineers and Surveyors Council ("NCEES") Record; or
3. Council of Landscape Architectural Registration Boards Council ("CLARB") Record and Certification.

C. When reviewing an engineering applicant's experience and examination information, the Board shall take into account the specific branch of engineering in which the applicant is seeking proficiency recognition.

D. The Board shall waive the fundamentals examination if an applicant has successfully completed a fundamentals examination in another state or jurisdiction in the category for which registration is sought, which is equivalent to those examinations required in Arizona. The applicant shall ensure that proof of successful completion is forwarded directly from the authority that administered the original examination.

E. The Board shall waive the fundamentals examination for an applicant who has a degree listed in R4-30-208(A) or other educational credit approved by the Board in the category, and branch if applicable, for which registration is sought, and meets all other requirements of A.R.S. § 32-126(D).

F. All applicants who request a waiver of any examination requirement shall meet all other requirements for professional registration or in-training designation in R4-30-201 and R4-30-202. An applicant applying for a waiver under subsection (B) shall ensure that the required documentation is forwarded directly to the Board from the national examination council.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). R4-30-203 renumbered to R4-30-202; new Section R4-30-203 renumbered from R4-30-207 and amended effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-204. Examinations

A. Board Review For Authorization to Test: Applicants who wish to sit for professional examination who do not possess an educational degree recognized by the applicable national council shall submit to the Board the following information for approval:

1. Name, residence address, mailing address if different from residence, email and telephone number;
2. Date of birth and Social Security number;
3. Proof of citizenship or legal residence;
4. Category, and branch of engineering if applicable;
5. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution attended;
6. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution attended;
7. Evidence of at least 60 months of required education or experience, or both, in the category for which registration is sought.
   a. The name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought;
   b. Dates of employment;
   c. Applicant's title;
   d. Description of work performed; and
   e. Number of hours worked per week;
8. Names and current addresses of applicant's current and former employers (the names of companies within the last ten year period) in the category for which registration is sought. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three additional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought;
9. A release authorizing the Board to investigate the applicant's education and experience;
10. Certificate of Experience Report from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record and Reference Forms from additional professional references as required by the Board. The applicant shall provide the

name, address, and telephone numbers of all references. The applicant shall ensure that the Board receives these Reports directly from the reference;

11. Evidence of successful completion, or waiver by the Board, of the applicable fundamentals examination. An applicant who has successfully completed a fundamentals examination in another state or jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an engineer, geologist, or land surveyor shall pass the applicable fundamentals examination before admission to the professional examination. An applicant for registration as a geologist may take the in-training examination on the same date as the professional examination;
12. Certification that the information provided to the Board is accurate, true, and complete; and
13. The applicable fees.
14. In addition to the above requirements, an applicant who does not possess education required for direct access to the NCARB Architect Registration Examination (ARE) shall provide the Board with 60 months of a diversity of experience directly related to the practice of architecture and of a character satisfactory to the Board, in each of the following categories, in order to obtain Board authorization to sit for the required registration examination:
    a. Practice Management. The experience obtained in this category shall demonstrate abilities to manage architectural practice, including professional ethics, fiduciary responsibilities, and the regulations governing the practice of architecture. The experience obtained shall focus on issues related to pre-contract tasks including negotiation, human resource management, and consultant development. Applicants shall demonstrate an understanding of and abilities in business structure, business development, and asset development and protection.
    b. Project Management. The experience obtained in this category shall demonstrate abilities to manage architectural projects, including organizing principles, contract management, and consultant management. The experience shall focus on issues related to office standards, development of project teams, and overall project control of client, fee, and risk management. Experience shall demonstrate an understanding of and abilities in quality control, project team configuration, and project scheduling. In addition, the experience shall demonstrate the ability to establish and deliver project services per contractual requirements in collaboration with consultants.
    c. Programming and Analysis. The experience obtained in this category shall demonstrate abilities related to the evaluation of project requirements, constraints, and opportunities. The experience shall focus on issues related to programming, site analysis, and zoning and code requirements and demonstrate an understanding of and abilities in project type analysis, the establishment of qualitative and quantitative project requirements, evaluation of project site and context, and assessment of economic issues.
    d. Project Planning and Design. The experience obtained in this category shall demonstrate abilities to assess objectives related to the preliminary design of sites and buildings. The experience shall focus on issues related to the generation or evaluation of design alternatives that synthesize environmental, cultural, behavioral, technical and economic issues. The experience shall demonstrate an understanding of and abilities in design concepts, sustainability/ environmental design, universal design, and other forms of governing codes and regulations.
    e. Project Development and Documentation. The experience obtained in this category shall demonstrate objectives related to the integration and documentation of building systems, material selection, and material assemblies into a project. The experience shall focus on issues related to the development of design concepts, evaluation of materials and technologies, selection of appropriate construction techniques, and appropriate construction documentation. The experience shall demonstrate an understanding of and abilities in integration of civil, structural, mechanical, electrical, plumbing, and specialty systems into overall project design and documentation.
    f. Construction and Evaluation. The experience obtained in this category shall demonstrate objectives related to construction contract administration and post-occupancy evaluation of projects. The experience shall focus on issues related to bidding and negotiation processes, support of the construction process, and evaluation of completed projects. The experience shall demonstrate an understanding of and abilities in construction contract execution, construction support services (including construction observation and shop drawing or submittal review), payment request processing, and project closeout. In addition, candidates shall also demonstrate an understanding and abilities in project evaluation of integrated building systems and their performance.

B. The Board staff shall review all applications and, if necessary, refer completed applications to an evaluator who meets qualifications approved by the Board for evaluation. If the application for examination is complete and in the proper form and the Board staff or the evaluator is satisfied that all statements on the application are true and that the applicant is eligible to take the examination, the Board staff or evaluator shall recommend that the Board certify the applicant as eligible to take the examination. If for any reason the Board staff or evaluator is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for examination, the Board staff shall make a further investigation of the applicant.

C. National Council Examinations:

1. Applicants who wish to sit for a fundamental or professional examination, and who have earned an educational degree recognized by the applicable national council may apply directly to the applicable national council to take that exam. Applicants who wish to sit for a fundamental examination who are in the final year of a degree program recognized by the applicable national council may apply directly to the applicable national council to take that exam.

2. Applicants not possessing the appropriate degree pursuant to subsection (C)(1) may apply to the Board for examination approval and after Board review, the Board may recommend them to the applicable national council for entry into the applicable national examination. Applicants shall meet all national council requirements for successful completion of applicable examinations.
3. An applicant for examination in any category shall take and pass the examination or at least one division of a multi-divisional examination within one year after receiving approval. If an applicant fails to take and pass an examination within one year after receiving approval, the applicant shall submit a new application for examination authorization to the Board.

D. Board Administered Examinations:

1. An examination administered by the Board shall be given at the times and places determined by the Board. Once the Board approves an applicant to sit for a Board-administered examination, shall take and pass the examination within one year from making the request to test unless the Board grants an extension. The applicant shall communicate all questions and concerns regarding extensions, special accommodations and refunds to the Board. The applicant shall make any request for additional time or other special examination accommodation to the Board within a reasonable time before the examination date.
2. An applicant who fails to achieve a passing grade on any examination administered by the Board may request reexamination by notifying the Board in writing of the applicant's desire to retake the examination and paying the applicable examination fee. An applicant who retakes any examination shall advise the Board of any changes in the information provided under subsection (A) of this Section and R4-30-202(B) within 30 days from the date of the change. The Board shall close an applicant's file if the Board does not receive written confirmation from the applicant of the applicant's desire to retake and pass the Board-administered examination within one year from the request for reexamination. An applicant whose file has been closed and who later wishes to apply for examination shall submit a new examination application package to the Board.
3. An applicant for a Board-administered examination who wishes to review the applicant's examination scores shall file a written request with the Board within 30 days after receiving notification of the failing grade. The applicant may review an examination by making prior arrangements with the staff and paying the applicable fee. The applicant shall complete any review within 60 days of the request for a review. In reviewing multiple choice questions, an applicant may review only those questions that were incorrect.
4. An applicant who desires a regrade of a Board administered examination shall file a written request with the Board within 30 days after receiving notification of the failing grade or within 30 days after reviewing the examination, whichever is applicable, and pay the applicable fee. The applicant shall identify the questions to be reviewed. The applicant shall state why a review of the item is justified. The applicant shall provide specific facts, data, and references to support any assertion that the solution deserves more credit. The Board shall determine whether it will regrade the examination.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2). Amended by final rulemaking at 30 A.A.R. 768 (April 19, 2024), effective May 25, 2024 (Supp. 24-1).

R4-30-205. Reserved

R4-30-206. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Repealed effective November 10, 1998 (Supp. 98-4).

R4-30-207. Renumbered

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Section R4-30-207 renumbered to R4-30-203 effective November 10, 1998 (Supp. 98-4).

R4-30-208. Education and Work Experience

A. Education credit.

1. The Board shall grant credit according to the following:
   a. Architectural applicants with National Architectural Accrediting Board accredited degree (NAAB): 60 months
   b. Architectural applicants with a four-year architectural degree: 48 months
   c. Landscape Architectural applicants with a Landscape Architectural Accrediting Board accredited degree (LAAB): 48 months
   d. Landscape Architectural applicants with LAAB accredited master's or doctorate degree: 60 months
   e. Engineering applicants with an Accreditation Board of Engineering and Technology (ABET) accredited bachelor's degree and a (ABET) master's or doctorate degree in the branch of engineering that registration is sought: 60 months
   f. Engineering applicants with an ABET accredited bachelor's degree or equivalent in the branch of engineering that registration is sought: 48 months
   g. Engineering applicants with four-year ABET accredited degrees in a branch other than that in which registration is sought: 36 months
   h. Land Surveying applicants with ABET accredited bachelor degree in land surveying: 48 months
   i. Land Surveying applicants with a master's degree in land surveying: 60 months
   j Geology applicants with bachelor's degree in geology or earth sciences: 48 months
   k. Geology applicants with a master's or doctorate degree in geology or earth sciences: 60 months
2. The Board shall grant all other education credit according to the following:

a. Credit shall not be granted for course work obtained in the United States or its possessions unless attained at an institution of higher education accredited by an accrediting agency recognized by the U.S. Department of Education.
b. Pro rata credit shall be granted for successful completion of courses substantially equivalent to the courses contained in the pertinent degree program identified in subsection (A) of this rule.
c. Credit shall not be given for general education courses in excess of the number of hours allowed in the pertinent program identified in subsection (A).
d. In determining pro rata credit, 30 semester hours or 45 quarter hours shall equal 12 months' credit.
e. An applicant shall be granted both education and work experience for the same period provided the total months' credit granted in a period does not exceed the number of months in that period.
f. Foreign education evaluation service acceptable to the Board shall be required of foreign-educated applicants and shall be provided at applicants' cost.

B. The Board shall credit work experience as follows:
1. One hundred and thirty hours or more of work per month is equal to one month of work experience.
2. Between 85 hours and 129 hours of work per month is equal to one-half month of work experience.
3. The Board shall not grant credit for less than 85 hours of work experience in a month.
4. Experience shall be verified by the employer before the Board grants the credit.

Historical Note

Adopted effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-209. Time-frames for Professional Registration, Certification, or In-training Designation

A. Within 60 days of receiving the initial application package for professional registration, certification, or in-training designation, the Board shall finish an administrative completeness review.
1. If the application package is complete, the Board shall notify the applicant that the package is complete and that the administrative completeness review is finished.
2. If the application package is incomplete, the Board shall notify the applicant that the package is deficient and specify the information or documentation that is missing. All time-frames are suspended from the date the notice is mailed to the applicant until the Board receives all missing information or documentation.
3. An applicant with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. If the applicant fails to supply the missing information or documentation, the Board may close the applicant's application file. Any fee paid by the applicant is Nonrefundable. An applicant whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.
4. If an applicant requests to sit for the professional, certification, or fundamentals examination, or requests a waiver of examination, the time-frames in R4-30-210 apply until the Board grants or denies the applicant's request.

B. The Board shall complete its substantive review of the application package and render a decision no later than 60 days after the date the Board mails the notice of administrative completeness to the applicant.
1. If the Board finds that the applicant meets all requirements in statute and rule, the Board shall approve the applicant for professional registration, certification, or intraining designation.
2. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a written request, specifying the additional information or documentation to be submitted and the deadline for submission. The time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is mailed until the date that all missing information or documentation is received or the deadline for submission passes.
3. When the Board and applicant mutually agree in writing, the Board or its designee shall grant extensions of the substantive review time-frame totaling no more than 30 days.
4. If the applicant fails to supply the missing information or documentation by the deadline date, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.
5. If the Board finds that the applicant does not meet all requirements in statute and rule, the Board shall deny the applicant professional registration, certification, or in-training designation. The Board shall provide written notice of the denial. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, and an explanation of the applicant's right to appeal, including the number of days the applicant has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeals process.

C. Saturdays, Sundays, and legal holidays are not counted in calculating the number of days under this Section.

D. For purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for a candidate applying for professional registration, certification, or in-training designation:
1. Administrative completeness review time-frame: 60 days;
2. Substantive review time-frame: 60 days; and
3. Overall time-frame: 120 days. Days during which time is suspended under subsection (A)(2) are not counted in the computation of the overall time-frame.

Historical Note

Adopted effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August

14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-210. Time-frames for Approval to Sit for, or for Waiver of, the Professional, Certification, or Fundamentals Examination

A. Within 60 days of receiving the initial application package to sit for, or for waiver of, the professional, certification, or fundamentals examination, the Board shall finish an administrative completeness review.
1. If the application package is complete, the Board shall notify the applicant that the package is complete and that the administrative completeness review is finished.
2. If the application package is incomplete, the Board shall notify the applicant that the package is deficient and specify the information or documentation that is missing. All time-frames are suspended from the date the notice is mailed to the applicant until the Board receives all missing information or documentation.
3. An applicant with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. If the applicant fails to supply the missing information or documentation, the Board may close the applicant's application file. Any fee paid by the applicant is nonrefundable. An applicant whose file has been closed and who later wishes to sit for the fundamentals, certification, or professional examination, or who requests a waiver of examination, shall submit a new application package and pay the applicable fee.

B. The Board shall complete its substantive review of the application package and render a decision no later than 60 days after the date the Board mails the notice of administrative completeness to the applicant.
1. If the Board finds that the applicant meets all requirements in statute and rule, the Board shall either approve the applicant to sit for the next applicable examination, or the Board shall waive the examination requirement.
2. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a written request, specifying the additional information or documentation to be submitted and the deadline for submission. The time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is mailed until the date that all missing information or documentation is received.
3. If the Board and applicant mutually agree in writing, the Board or its designee shall grant extensions of the substantive review time-frames totaling not more than 30 days.
4. If the applicant fails to supply the missing information or documentation by the deadline date, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to sit for the applicable examination or request a waiver of examination shall submit a new application package and pay the applicable fee.

C. Saturdays, Sundays, and legal holidays are not counted in calculating the number of days under this Section.

D. For the purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for an applicant wishing to sit for the applicable examination or to request a waiver of examination:
1. Administrative completeness review time-frame: 60 days;
2. Substantive review time-frame: 60 days; and
3. Overall time-frame: 120 days.

Historical Note

Adopted effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-211. Repealed

Historical Note

Adopted effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Section repealed by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

R4-30-212. Expired

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

R4-30-213. Reserved

R4-30-214. Architect Registration

An applicant for architect registration shall complete all of the following:
1. An applicant shall provide evidence of successful completion of the National Council of Architectural Registration Boards' (NCARB) professional experience requirement.
2. An applicant shall successfully complete the professional architect examination designated by the Board and provided by the National Council of Architectural Registration Boards.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Correction to subsection (B) (Supp. 96-1). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Amended by

final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-215. Reserved

R4-30-216. Reserved

R4-30-217. Reserved

R4-30-218. Reserved

R4-30-219. Reserved

R4-30-220. Reserved

R4-30-221. Engineering Branches Recognized

A. The Board shall recognize the branches of engineering described below for review of experience, selection of examination, definition of examination areas, and definition of demonstrated proficiency areas to be inscribed on the registrant's seal. The branches do not limit the areas of a registrant's practice of engineering. (See R4-30-301(18))

1. Agriculture: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning agricultural machinery, drainage, irrigation, terracing, farm electricity or water pumps and wells for the maintenance of adequate potable water supplies for crops, people, animals, or industry.
2. Architectural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning building mechanical, acoustical, electrical, lighting, or structural systems.
3. Chemical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning chemical enterprises, chemical and biological processes, plant layout, production of pilot plants, water, wastewater and pollution control plants, piping and distribution systems, heat exchanges, energy production management and distribution systems, process instrumentation and control systems, biomedical equipment, mining and minerals beneficiation, corrosion retardation, heat, mass and momentum transfer systems, reaction kinetics, thermodynamics, quality assurance controls, or systems for heat transmission.
4. Civil: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning highways, streets, transportation systems, drainage and flood control structures, surface and subsurface hydrologics, sewers, tunnels, railroads, geotechnical analysis, waterfronts, water and wastewater systems, water power and supply apparatus, wells, pumps, bridges, dams, irrigation structures, water purification apparatus, incinerators, or site fire protection systems.
5. Control Systems: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning control systems and their constituent devices including, but not limited to, dynamic stability and the application of instrumentation and feedback control principles to regulate and operate chemical plants, petroleum refineries, food processing plants, water and waste treatment plants, power plants, pollution abatement systems, transportation systems, or other dynamic processes and systems.
6. Electrical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning power systems, electronic and transmission equipment, electric service and supply systems, lighting systems, communication service and supply systems, fire alarm and detection systems, control systems, or electrical installations.
7. Environmental: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning water and wastewater systems, domestic and process (industrial/commercial) solid waste and hazardous materials systems, air quality systems, or health, safety, and environmental protection including, but not limited to systems relating to emergency response, risk analysis, radiation protection, noise toxicology, or industrial hygiene.
8. Fire Protection: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning building exiting and life safety systems, fire suppression systems and devices, fire detection and alarm systems and devices, smoke exhaust and smoke management systems, fire resistance for building components and assemblies, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems, and the reduction and control of fire hazards due to processes subject to fire or explosion.
9. Geological: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning geological studies related to surface and subsurface excavations and foundations, stability of slopes, groundwater locations, geological material age and strength determinations near surface or deep subsurface geological structures or geophysical mapping of geological formations and groundwater locations.
10. Industrial: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning factory layouts, tools and fixtures, factory planning, time and motion study systems, rate plans, production plans, quality control systems and analysis, work simplification systems, methods studies and cost, production control, organizational, operational and labor needs, or safety analysis.
11. Mechanical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning air conditioning, refrigeration, ventilation, combustion, heat transfer, energy, power, fuels, propulsion, machinery, tools, manufacturing, fluids, plumbing, fire suppression systems and devices, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems.
12. Metallurgical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning the production of metals or metal objects, testing procedures, metal processing, failure analysis procedures, mining and mineral beneficiation, or the development of metal alloys.
13. Mining: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning the construction of plants, shaft and bottom layouts, ventilation and hoisting systems, head frames, washery or concentration mills, mining methods and testing procedures, or metallurgical works and production procedures.

14. Nuclear: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning nuclear waste management, alternative waste management systems, disposal criteria and risk evaluation, transportation, packaging, decontamination, handling, welding evaluation, site stabilization, recovery techniques, water and air quality control systems, waste volume management, evaporation systems, reactor safety methods, health safety systems, cycle analysis, or nuclear fuels.
15. Petroleum: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning drilling equipment, pipelines, refinery plants, gathering systems, handling and storage systems, exploitation and selection methods, gas measurement and core analysis, phase behavior studies, reserve calculations, or the development of petroleum products.
16. Sanitary: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning water treatment and sewage disposal plants, water systems, sewers, incinerators, distribution systems, sewage and industrial waste treatment plants, pollution reduction systems, sanitary facilities, or public health systems.
17. Structural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning force-resisting and load-bearing members and their connections for structures such as foundations, bridges, walls, columns, slabs, beams, trusses, or similar members used singly or as part of a larger structure.

B. An applicant shall submit to the Board a separate application and application fee for each branch for which application is made. An applicant who wishes to change the branch of application after notification by the Board that the application has been evaluated by the Board shall submit the request in writing and pay an additional application fee.

Historical Note
Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended effective December 18, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1606, effective July 1, 2006 (Supp. 06-2).

R4-30-222. Engineer-In-Training Designation

A. To qualify for admission to the fundamentals examination solely on the basis of education, an applicant shall be a graduate of a four-year engineering degree program accredited at the time of graduation by the Accreditation Board for Engineering and Technology (ABET) or an equivalent predecessor organization.

B. To qualify for admission to the fundamentals examination, an applicant who is not a graduate of a four-year ABET-accredited engineering degree program shall have at least four years of education or experience or a combination of both directly related to the practice of engineering. Experience directly related to the practice of engineering of a character satisfactory to the Board includes but is not limited to the following in the candidate's branch of engineering:

1. Consultation: The active involvement in meetings, discussions or development of reports intended to provide information, facts or advice regarding the application of the accepted engineering principles to fulfill the client's specific requirements.
2. Research investigation: The search, examination or study to determine the practicality or effectiveness of accepted principles for adaptation and application to novel situations or the development of new or alternative solutions to solve problems.
3. Evaluation: The analysis, testing or study to determine or estimate the merit, effect, efficiency or practicality of approaches, methods, designs, structures or materials for use in a given situation or to achieve a specific result.
4. Planning: The preliminary development of objectives, statements, outlines, drafts, drawings or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a problem.
5. Design: Design, development and location experience.
6. Construction review: The review or supervision of construction projects in the candidate's branch of engineering to determine conformance with contract documents and design specifications (maximum 12 months' credit).
7. Administration: Administrative experience in the candidate's branch of engineering, including office and field administration, field or laboratory testing, quotation requests, change orders, bidding procedures, cost accounting and project closeouts maximum 12 months' credit).
8. Surveying: The measurement, using accepted methods of surveying, of units of space, water, land or structures to determine boundaries, areas, shapes, slopes, distances, angles or other calculations (maximum 12 months' credit).
9. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials directly relating to the candidate's branch of engineering (maximum six months' credit).
10. Other engineering experience: Experience of a nature set forth in this subsection but in other recognized branches of engineering (maximum six months' credit).
11. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).

C. An applicant for Engineer In-Training Designation shall successfully complete the fundamentals examination designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors.

Historical Note
Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-223. Reserved

R4-30-224. Engineer Registration

A. Work experience credited toward the eight-year active engagement requirement shall be directly related to the applicant's branch of engineering and of a character satisfactory to the

Board and attained as described in R4-30-222, except that work experience for specific branches of engineering as described in R4-30-221 shall be for the purpose of qualifying an applicant for registration only and shall not be construed to restrict or confine the work practices of or engineering engagements accepted by a registrant.

B. An applicant shall successfully complete the professional engineer examinations offered in the applicant's branch of engineering designated by the Board.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-225. Reserved

R4-30-226. Reserved

R4-30-227. Reserved

R4-30-228. Reserved

R4-30-229. Reserved

R4-30-230. Reserved

R4-30-231. Reserved

R4-30-232. Reserved

R4-30-233. Reserved

R4-30-234. Reserved

R4-30-235. Reserved

R4-30-236. Reserved

R4-30-237. Reserved

R4-30-238. Reserved

R4-30-239. Reserved

R4-30-240. Reserved

R4-30-241. Reserved

R4-30-242. Geologist-in-training Designation

A. To qualify for admission to the fundamentals examination solely on the basis of education, an applicant shall be a graduate or be in the final year of a four-year degree program with a major in geology or earth science at an accredited college or university.

B. To qualify for admission to the fundamentals examination, an applicant who is not a graduate of a four-year degree program as specified in subsection (A) shall have at least four years of education or experience or both directly related to the practice of geology. Experience directly related to the practice of geology of a character satisfactory to the Board shall include the following:

1. Consultation: The active involvement in meetings, discussions and development of reports intended to provide information, facts or advice regarding natural resources and surface and subsurface geological conditions and the preparation of geological maps for use in consultations with clients.
2. Evaluation: The evaluation of mining and petroleum properties, groundwater resources, unconsolidated earth materials, mineral fuels, natural hazards and land use limitations.
3. Supervision of exploration: The supervision of the geological phases of engineering investigation, exploration for mineral and natural resources, metallic and nonmetallic ores, petroleum and groundwater resources.
4. Administration: Administrative experience, including office and field administration, field or laboratory testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).
5. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials on geological subjects (maximum six months' credit).
6. Engineering: Experience in related branches of engineering (maximum six months' credit).
7. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).

C. An applicant for geologist in-training designation shall successfully complete the fundamentals examination designated by the Board and provided by the Association of State Boards of Geology.

Historical Note

Adopted effective August 3. 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-243. Reserved

R4-30-244. Geologist Registration

An applicant shall successfully complete the professional geologist examination designated by the Board and provided by the Association of State Boards of Geology.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-245. Reserved

R4-30-246. Reserved

R4-30-247. Home Inspector Certification

A. An applicant for certification as a home inspector shall submit an original completed application package that contains the following:

1. Evidence of successful completion, within two years before the date of application, of the National Home Inspector Examination as administered by the Examination Board of Professional Home Inspectors;
2. The information in subsection (B);
3. A completed fingerprint card;
4. Applicable fees;
5. Evidence of successful completion of 84 hours of classroom training or an equivalent course conducted by an educational facility that is licensed by the Arizona State

Board for Private Postsecondary Education, or accredited by the Distance Education Accrediting Commission, or by an accrediting agency approved by the United States Department of Education. The course of study shall encompass all of following major content areas:
a. Structural Components,
b. Exterior,
c. Roofing,
d. Plumbing,
e. Heating,
f. Cooling,
g. Electrical,
h. Insulation and Ventilation,
i. Interiors,
j. Fireplaces and Solid Fuel-Burning Devices,
k. Swimming Pools and Spas, and
l. Professional Practice;

6. Evidence of completion of 30 parallel inspections. The 30 parallel inspections and home inspection report shall meet the standards in R4-30-301.01 and be retained by the applicant for at least two years from the date of application. The applicant shall conduct these inspections on separate residential dwelling units and shall list them on a log provided by the Board. The log shall include, with respect to each inspection, the address of the property, the date of the inspection, and the name and certification number of the supervising home inspector. The Board may hold the applicant's package for a period of one year based solely on the need for time to permit the applicant to complete the required parallel inspections. All time frames promulgated under A.R.S. Title 41, Chapter 6, Article 7.1 are suspended during this period.

B. The application package shall contain the following:
1. Name, residence address, mailing address if different from residence address, email and telephone number;
2. Date of birth and Social Security number of the applicant;
3. Citizenship or legal residence;
4. A detailed explanatory statement regarding:
   a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant in any state or jurisdiction, within five years before the date of application;
   b. Refusal of any professional or occupational registration, license, or certification by any state or jurisdiction, within five years before the date of application;
   c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant;
   d. Any alias or other name used by the applicant;
   e. Any conviction for a felony or misdemeanor, other than a minor traffic violation, within five years before the date of application.
5. Documentation of absolute discharge from sentence at least five years before the date of application if an applicant has been convicted of one or more felonies; evidence of having a valid fingerprint clearance card issued pursuant to Title 41, Chapter 12, Article 3.1;
6. State or jurisdiction in which any professional or occupational registration, license or certification is held; type of registration, license, or certification; number; year granted, and how registration, license, or certification was granted (that is, by examination, education, experience, or reciprocity), 4 A.A.C. 30, Supp. 18-2, released June 30, 2018, page 18;
7. A release authorizing the Board to investigate the applicant's education, experience, criminal and disciplinary action history;
8. Certification that the information provided to the Board is accurate, true, and complete;
9. Copy of one home inspection report that meets the standards in R4-30-301.01 and reports on at least one immediate major repair as defined in the standards, along with the Report Checklist Supplement; and
10. Sworn statement or statements by the supervising certified home inspector or inspectors that the parallel inspections conducted by the applicant meet the standards in R4-30-301.01.

C. The Board staff shall review all applications and, if necessary, refer completed applications to the Home Inspector Rules and Standards Committee or a certified home inspector evaluator for evaluation. If the application is complete and in the proper form, the Board staff, committee, or evaluator is satisfied that all statements on the application are true, and the applicant is eligible in all other aspects to be certified as a home inspector, the Board staff, committee, or evaluator shall recommend that the Board certify the applicant. If the evidence is not clear and convincing of qualification for certification, the matter shall be reviewed by the committee and the committee may request additional information regarding any issue upon which the applicant has not established qualification by clear and convincing evidence.

D. A certified home inspector shall notify the Board in writing within five business days of any loss of, or change in, financial assurance. The Board shall suspend the certificate holder's certification immediately and prohibit further home inspections until current proof of financial assurance is provided to the Board. The Board shall revoke a certificate if the certificate holder fails to provide proof of financial assurance within 90 days of loss of financial assurance or lapse of policy. All certified home inspectors shall provide proof of financial assurance at the time of each annual certification renewal. The Board shall not renew a home inspector certification unless the financial assurance is in full force and effect.

E. A home inspector who places a home inspector certificate on inactive status shall retain the proof of financial assurance for at least two years after the date that the certificate becomes inactive. A home inspector who fails to retain financial assurance for the required two years is subject to suspension and revocation of the home inspection certificate as per subsection (D). In order to reactivate an inactive home inspection certificate, a home inspector shall provide proof of financial assurance to the Board with the application for reactivation. An inactive home inspector certification shall not qualify for reactivation until proof of financial assurance has been submitted to the Board.

F. In order to reactivate an inactive home inspector certificate, a home inspector who has not practiced as a certified home inspector during that time in another state requiring registration for the previous five years shall take and pass the National Home Inspector Examination.

Historical Note

New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3).

Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 713 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2). Amended by final rulemaking at 27 A.A.R. 93, effective March 9, 2021 (Supp. 20-1). Amended by final rulemaking at 30 A.A.R. 768 (April 19, 2024), effective May 25, 2024 (Supp. 24-1).

R4-30-248. Reserved

R4-30-249. Reserved

R4-30-250. Reserved

R4-30-251. Reserved

R4-30-252. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-253. Reserved

R4-30-254. Landscape Architect Registration

A. To qualify for landscape architect registration, an applicant shall provide proof to the Board of the successful completion of 96 months of landscape architecture education or experience or both. To satisfy the education requirement, an applicant must be a graduate of a four- or five-year landscape architectural degree program accredited at the time of graduation by the Landscape Architectural Accreditation Board (LAAB) or an equivalent predecessor organization.

B. To satisfy the experience requirement, an applicant who is a graduate of a five-year landscape architectural degree program shall demonstrate successful completion of at least three years of experience directly related to the practice of landscape architecture. An applicant who is a graduate of a four-year landscape architectural degree program shall demonstrate successful completion of at least four years of experience directly related to the practice of landscape architecture. Experience directly related to the practice of landscape architecture shall demonstrate an applicant's dedication to the protection of the public's health, safety and welfare and shall include the following:

1. Consultation: The active involvement in meetings, discussions and development of reports intended to provide information, facts or advice regarding the application of landscape architectural principles to fulfill the client's specific requirements.
2. Investigation, reconnaissance and research: The search, examination or study to determine the practicality or effectiveness of accepted landscape architectural principles to novel situations or the development of new or alternative solutions to landscape architectural problems.
3. Planning: The preliminary development of objectives, statements, outlines, drafts, drawings, maps or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a landscape architectural problem.
4. Design: The preparation and use of sketches, plans, drawings, specifications, contracts, outlines, models or schemes to convey the use and development of land, plantings, landscapings, settings, approaches to buildings, structures or facilities, traffic patterns and drainage or erosion patterns.
5. Supervision of development: The supervision of the development of land and incidental water areas for the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, settings and approaches, natural drainage and the consideration and determination of inherent problems of the land, including erosion, wear and tear, light and other hazards, including storm water quality.
6. Administration: Administrative experience, including office and field administration, field testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).
7. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).

C. An applicant shall successfully complete the professional landscape architect examination designated by the Board and provided by the Council of Landscape Architectural Registration Boards.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-255. Reserved

R4-30-256. Reserved

R4-30-257. Reserved

R4-30-258. Reserved

R4-30-259. Reserved

R4-30-260. Reserved

R4-30-261. Reserved

R4-30-262. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-263. Reserved

R4-30-264. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4).

Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-265. Reserved

R4-30-266. Reserved

R4-30-267. Reserved

R4-30-268. Reserved

R4-30-269. Reserved

R4-30-270. Repealed

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-271. Repealed

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 2111, effective June 2, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 3514, effective July 17, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-272. Repealed

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 2111, effective June 2, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 3514, effective July 17, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-273. Reserved

R4-30-274. Reserved

R4-30-275. Reserved

R4-30-276. Reserved

R4-30-277. Reserved

R4-30-278. Reserved

R4-30-279. Reserved

R4-30-280. Reserved

R4-30-281. Reserved

R4-30-282. Land Surveyor-in-training Designation

A. To qualify for admission to the fundamentals examination solely on the basis of education, an applicant shall be a graduate of a four-year land surveying degree program accredited at the time of graduation by the Accreditation Board for Engineering and Technology (ABET) or an equivalent predecessor organization.

B. To qualify for admission to the fundamentals examination, an applicant who is not a graduate of a four-year ABET-accredited land surveying degree program shall have at least four years of education or experience or both directly related to the practice of land surveying. Experience directly related to the practice of land surveying of a character satisfactory to the Board shall include the following:

1. The measurement of space, water, land or structures located or to be located upon or within them, to determine boundaries, areas or other necessary calculations through the use of any mechanical, physical, electric or electronic equipment or devices commonly used by registered professional land surveyors.
2. The analysis of measurement data through the use of professional knowledge or education or practical experience in the mathematical and physical sciences and in the principles of land surveying.
3. The location or relocation, establishment or re-establishment of boundaries, easements, rights-of-way, bench marks or corners.
4. Consultation with clients to determine the necessity of land surveying services and the determination of the correct type of services necessary to fulfill the client's needs and objectives.
5. The search of any source of public or private records for the purpose of performing a survey or to determine and, if necessary, to reconcile differences between the surveyor's collected data and such records.
6. The platting or subdividing of land or the planning and design of parcels of land for development purposes.
7. The preparation and maintenance of survey records.
8. Other land surveying activities, analyses or investigations defined in the Act.
9. The participation in office and field administration, quotation requests, bidding procedures, cost accounting and project closeouts (maximum 12 months' credit).
10. Construction staking (maximum 12 months' credit).
11. Subprofessional experience as defined in R4-30-101 (maximum six months' credit).

C. The applicant for land surveyor in-training designation shall apply to the Board and provide proof of successful completion of the fundamentals of surveying examination designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-283. Reserved

R4-30-284. Land Surveyor Registration

The candidate shall first successfully complete the fundamentals of surveying examination. Second, the candidate shall successfully complete the professional land surveyor examination provided by the National Council of Examiners for Engineers and Surveyors.

Third, the candidate shall successfully complete the Arizona State Specific Examination provided by the Board.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

ARTICLE 3. REGULATORY PROVISIONS

R4-30-301. Rules of Professional Conduct

All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration or certification, or in response to a subpoena.
2. A registrant shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
3. A registrant shall not commit bribery of a public servant as proscribed in A.R.S. § 13-2602, commit commercial bribery as proscribed in A.R.S. § 13-2605, or violate any federal statute concerning bribery.
4. A registrant shall comply with state, municipal, and county laws, codes, ordinances, and regulations pertaining to the registrant's area of practice.
5. If a registrant violates any state or federal criminal statute, the Board may take action against a registrant's license or certificate if a violation of the law is reasonably related to a registrant's area of practice.
6. A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
7. A registrant shall not accept an engagement if the duty to a client or the public would conflict with the registrant's personal interest or the interest of another client without making a full written disclosure of all material facts of the conflict to each person who might be related to or affected by the engagement.
8. A registrant shall not accept compensation for services related to the same engagement from more than one party without making a full written disclosure of all material facts to all parties and obtaining the express written consent of all parties involved.
9. A registrant shall make full disclosure to all parties concerning:
   a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except payments for actual and substantial technical assistance in preparing the proposal; or
   b. Any monetary, financial, or beneficial interest the registrant holds in a contracting firm or other entity providing goods or services, other than the registrant's professional services, to a project or engagement.
10. A registrant shall not solicit, receive, or accept compensation from material, equipment, or other product or services suppliers for specifying or endorsing their products, goods or services to any client or other person without full written disclosure to all parties.
11. If a registrant's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant shall immediately notify the responsible party appropriate building official, or agency, and the Board of the specific nature of the public threat.
12. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform any other arbitration duties, the registrant shall render decisions impartially and without bias to any party.
13. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Land Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, available at www.azpls.org. The Board of Technical Registration adopted the standards on June 15, 2001, and incorporated them into this subsection by reference. This incorporation by reference does not include any later amendments or editions and is available at the office of the Board of Technical Registration.
14. A registrant shall comply with any subpoena issued by the Board or its designated administrative law judge.
15. A registrant shall update the registrant's address, email and telephone number of record with the Board within 30 days of the date of any change.
16. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee of the registrant.
17. Except as provided below and in subsections (18) and (19), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
   a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
   b. The work is exempt under A.R.S. § 32-143.
18. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
19. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services that the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
20. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.
21. A registrant shall not enter into a contract for expert witness services on a contingency fee basis or any other arrangement in a disputed matter where the registrant's fee is directly related to the outcome of the dispute.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4).

Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1609, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2). The website address to the Arizona Professional Land Surveyors (APLS) referenced in subsection (13) has been corrected at the request of the Board (Supp. 21-3). Amended by final rulemaking at 30 A.A.R. 768 (April 19, 2024), effective May 25, 2024 (Supp. 24-1).

R4-30-301.01. Home Inspector Rules of Professional Conduct

A. A certified home inspector shall conduct a home inspection in accordance with the "Standards of Professional Practice" adopted by the Arizona Chapter of the American Society of Home Inspectors, Inc. on October 27, 2023, the provisions of which are incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of these standards are available electronically on the Board's website.

B. A certified home inspector is not required to inspect a pool and/or spa as part of a home inspection. If a certified home inspector conducts a pool and/or spa inspection, it shall be conducted in accordance with the "Arizona Home Inspector Pools and Spas Standards of Professional Practice" ("Standards") adopted by the Board at its April 25, 2023 meeting, the provisions of which are incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of the Standards are available electronically on the Board's website.

C. A Certified Home Inspector shall not:

1. Pay, directly or indirectly, in full or in part, a commission or compensation as a referral or finder's fee to a real estate company, real estate office, real estate broker/salesperson(s), real estate employees or real estate independent contractors in order to obtain referrals for home inspection business. This prohibition includes, but is not limited to, participation in pay-to-play programs by any name (e.g. "preferred vendor," "approved vendor," "marketing partner," "marketing services agreement");
2. Pay or receive, directly or indirectly, in full or in part, a commission or compensation as a referral or finder's fee related to the correction of defects found within the scope of the home inspection;
3. Perform, or offer to perform, for an additional fee, or have any financial interest in the performance of any repairs to the property that has been inspected by that inspector or the inspector's firm for a period of 24 months following the inspection; or
4. Be accompanied by more than four home inspector candidates while conducting any parallel home inspection.;
5. Perform, or offer to perform, a home inspection on a home while acting in the capacity of a licensed real estate salesperson or licensed real estate broker with any financial interest in the sale of the home.

Historical Note

New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2). Amended by final rulemaking at 30 A.A.R. 768 (April 19, 2024), effective May 25, 2024 (Supp. 24-1).

R4-30-302. Electrical Plans

A. A registrant shall prepare and submit drawings and specifications for a new electrical system or an addition or modification to an existing electrical system provided the service and associated electrical feeders exceeds 600 amperes 120/240 volts, single phase or 225 amperes 120/208 volts, three phase and the fault current exceeds 10,000 amperes.

B. In all cases a registrant shall design:

1. Electrical installations in hospitals or other buildings with surgical operating rooms regulated by Article 517 of the National Electrical code (1990 edition) incorporated herein by reference and on file with the Office of the Secretary of State.
2. Electrical installations in locations classified as hazardous in Article 500 of the National Electrical Code (1990 edition) incorporated herein by reference and on file with the Office of the Secretary of State.
3. Electrical installations in locations classified as hazardous in Article 500 of the National Electrical Code (1990 edition) with the exception of gasoline dispensing or repair garages.
4. A registrant shall design an alarm or signaling system that is required for life safety or code compliance.

Historical Note

Adopted effective December 18, 1991 (Supp. 91-4). Heading amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

R4-30-303. Securing Seals

A. Each registrant required to use a seal shall secure and use an ink seal 1 1/2 inches in diameter and identical in style, size, and appearance to the sample shown in Appendix A. The upper portion of the annular space between the second and third circles shall bear whichever of the following phrases is applicable to the registrant:

1. "Registered Architect"; "Registered Professional Engineer" together with the branch of engineering in which registered; "Registered Professional Geologist"; "Registered Professional Landscape Architect"; or "Registered Land Surveyor."
2. The inscription "Arizona U.S.A." shall appear at the bottom of the annular space between the second and third circles; the inner circle shall contain the name of the registrant, registration number, and the words "date signed."

B. The registrant may order the seal through any vendor and shall pay the cost of its manufacture. Immediately upon receipt of the seal and before using the seal for any purpose, the registrant shall file with the Board, for its records, on a form provided by the Board, an imprint of the seal with an original signature superimposed over it and an affidavit regarding the use of the seal. The Board, within 10 working days of receipt of the form from the registrant, shall disapprove any seal that does not meet the exact specifications of subsection (A) and require that the registrant obtain and pay for another seal that

meets those specifications before sealing any work. Engineers registered in more than one branch shall secure and use a seal for each branch of engineering in which registration has been granted.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-304. Use of Seals

A. A registrant shall place a permanently legible imprint of the registrant's seal and signature on the following:
1. Each sheet of drawings or maps;
2. Each of the master sheets when reproduced into a single set of finished drawings or maps;
3. Either the cover, title, index, or table of contents page, first sheet of each set of project specifications;
4. Either the cover, index page, or first sheet of each addenda or change order to plans, contract documents or specifications;
5. Either the cover, index page, or first sheet of bound details when prepared to supplement project drawings or maps;
6. Either the cover, title, index, or table of contents page, or first sheet of any report, specification, or other professional document prepared by a registrant or the registrant's bona fide employee;
7. The signature line of any letter or other professional document prepared by a registrant, or the registrant's bona fide employee; and
8. Shop drawings that require professional services or work as described in the Act. Examples of shop drawings that do not require a seal include drawings that show only:
   a. Sizing and dimensioning information for fabrication purposes;
   b. Construction techniques or sequences;
   c. Components with previous approvals or designed by the registrant of record; or
   d. Modifications to existing installations that do not affect the original design parameters and do not require additional computations.
9. Public Works projects which require the signature of each professional involved in the project.

B. A registrant shall apply a label that describes the name of the project and an original imprint of the registrant's seal and signature on all video cassettes that contain copies of professional documents.

C. In the event that a copy of a professional document is provided to a client, regulatory body, or any other person for any reason by computer disk, tape, CD, or any other electronic form, and the document does not meet the requirements of subsection (D), the registrant shall mark the copy of the professional document: "Electronic copy of final document; sealed original document is with (identify the registrant's name and registration number)."

D. A registrant shall sign, date, and seal a professional document:
1. Before the document is submitted to a client, contractor, any regulatory or review body, or any other person, unless the document is marked "preliminary," "draft," or "not for construction" except when the document is work product intended for use by other members of a design team; and
2. In all cases, if the document is prepared for the purpose of dispute resolution, litigation, arbitration, or mediation.

E. For purposes of subsection (A), all original documents shall include:
1. An original seal imprint or a computer-generated seal that matches the seal on file at the Board's office;
2. An original signature that does not obscure either the registrant's printed name or registration number; and
3. The date the document was sealed.

F. Methods of transferring a seal other than an original seal imprint or a computer-generated seal are not acceptable.

G. An electronic signature, as an option to a permanently legible signature, in accordance with A.R.S. Title 41 and Title 44, is acceptable for all professional documents. The registrant shall provide adequate security regarding the use of the seal and signature.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1084, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 282, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-305. Repealed

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 1911, effective October 7, 2013 (Supp. 13-3). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

R4-30-306. Securing and Using Identifying Markers

A. Registered land surveyors shall obtain at their expense identifying markers such as tags, caps, or embossed nails which shall show the registrant's Arizona Registration Number as issued by the Board, and each registration number shall be prefixed by the letters L.S.

B. Registered land surveyors shall securely attach an identifying marker to every permanent survey point set when making land boundary surveys.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4).

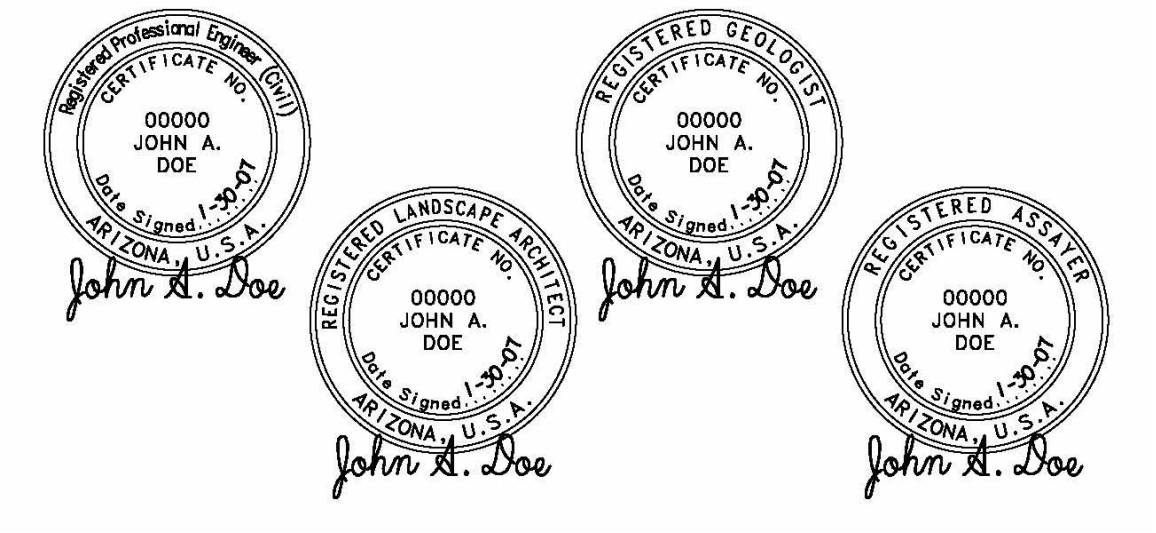
R4-30-307. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

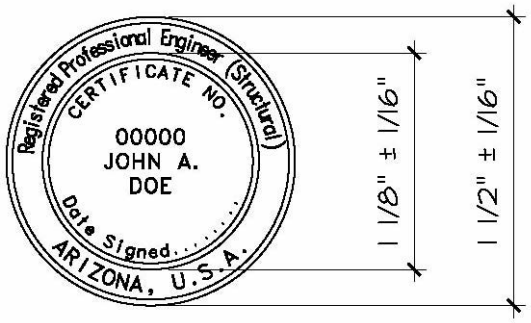
Appendix A. Sample Seals

Samples:
Sign your name across lower portion of the seal. Do not cover your name or registration number with your signature.



** ENGINEERS MUST LIST BRANCH – Agriculture, Architectural, Chemical, Civil. Control Systems, Electrical, Environmental, Fire Protection, Geological, Industrial, Mechanical, Mining, Metallurgical, Nuclear, Petroleum, Sanitary, or Structural. The original seal must be the following size:

Outer circle shall be 1 1/2" ± 1/16"
Inner circle shall be 1 1/8" ± 1/16"



Historical Note
Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 282, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

Appendix B. Repealed

Historical Note
Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). New Appendix made by final rulemaking at 14 A.A.R. 282, effective March 8, 2008 (Supp. 08-1). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

Appendix C. Repealed

Historical Note
Adopted effective August 3, 1983 (Supp. 83-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

Appendix D. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

Appendix E. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

Appendix F. Repealed

Historical Note

Adopted effective December 18, 1991 (Supp. 91-4).
Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

32-101. Purpose; definitions

A. The purpose of this chapter is to provide for the safety, health and welfare of the public through the promulgation and enforcement of standards of qualification for those individuals who are registered or certified and seeking registration or certification pursuant to this chapter.

B. In this chapter, unless the context otherwise requires:

1. "Advertising" includes business cards, signs or letterhead provided by a person to the public.

2. "Alarm" or "alarm system":

(a) Means any mechanical or electrical device that is designed to emit an audible alarm or transmit a signal or message if activated and that is used to detect an unauthorized entry into a building or other facility or alert other persons of the occurrence of a medical emergency or the commission of an unlawful act against a person or in a building or other facility.

(b) Includes:

(i) A silent, panic, holdup, robbery, duress, burglary, medical alert or proprietor alarm that requires emergency personnel to respond.

(ii) A low-voltage electric fence.

(c) Does not include a telephone call diverter or a system that is designed to report environmental and other occurrences and that is not designed or used to alert or cause other persons to alert public safety personnel.

3. "Alarm agent":

(a) Means a person, whether an employee, an independent contractor or otherwise, who acts on behalf of an alarm business and who tests, maintains, services, repairs, sells, rents, leases or installs alarm systems.

(b) Does not include any action by a person that:

(i) Is performed in connection with an alarm system located on the person's own property or the property of the person's employer.

(ii) Is acting on behalf of an alarm business whose work duties do not include visiting the location where an alarm system installation occurs.

4. "Alarm business":

(a) Means any person who, either alone or through a third party, engages in the business of either of the following:

(i) Providing alarm monitoring services.

(ii) Selling, leasing, renting, maintaining, repairing or installing a nonproprietor alarm system or service.

(b) Does not include any of the following:

(i) A person or company that purchases, rents or uses an alarm that is affixed to a motor vehicle.

(ii) A person who owns or conducts a business of selling, leasing, renting, installing, maintaining or monitoring an alarm that is affixed to a motor vehicle.

(iii) A person who installs a nonmonitored proprietor alarm for a business that the person owns, is employed by or

manages.

(iv) The installation or monitoring of fire alarm systems.

(v) An alarm system that is operated by a city or town.

5. "Alarm subscriber" means any person who:

(a) Leases, rents or purchases any monitored alarm system or service from an alarm business.

(b) Leases or rents an alarm system.

(c) Contracts with an alarm business for alarm monitoring, installation, repair or maintenance services.

6. "Architect" means a person who, by reason of knowledge of the mathematical and physical sciences and the principles of architecture and architectural engineering acquired by professional education and practical experience, is qualified to engage in the practice of architecture and is registered as an architect pursuant to this chapter.

7. "Architectural practice" means any professional service or creative work requiring architectural education, training and experience, and the application of the mathematical and physical sciences and the principles of architecture and architectural engineering to such professional services or creative work as consultation, evaluation, design and review of construction for conformance with contract documents and design, in connection with any building, planning or site development. A person is deemed to practice or offer to practice architecture who in any manner represents that the person is an architect or is able to perform any architectural service or other services recognized by educational authorities as architecture.

8. "Board" means the state board of technical registration.

9. "Controlling person":

(a) Means a person who is designated by an alarm business.

(b) Does not include an alarm agent.

10. "Engineer" means a person who by reason of engineering education, training and experience may apply engineering principles and interpret engineering data.

11. "Engineering practice" means any professional service or creative work requiring engineering education, training and experience in applying engineering principles and interpreting engineering data to engineering activities that clearly impact the health, safety and welfare of the public and the engineering design of buildings, structures, products, machines, processes and systems to the extent that the engineering education, training and experience requirements prescribed by sections 32-122 and 32-122.01 are necessary to protect the health, safety and welfare of the public. The services or creative work may include providing planning services, studies, designs, design coordination, drawings, specifications and other technical submissions, surveying as prescribed in paragraph 22, subdivisions (d) and (e) of this subsection, and reviewing construction or other design products for the purposes of monitoring compliance with drawings and specifications related to engineered works. A person employed on a full-time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be deemed to be practicing engineering for the purposes of this chapter if the person engages in the practice of engineering exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any engineering services for persons other than the person's employer. A person is deemed to practice engineering if the person does any of the following:

(a) Practices any discipline of the profession of engineering or holds out to the public that the person is able and authorized to practice any discipline of engineering.

(b) Represents to the public that the person is a professional engineer by a verbal claim, sign, advertisement, letterhead or card or in any other manner.

(c) Uses a title that implies that the person is a professional engineer.

12. "Engineer-in-training" means a candidate for registration as a professional engineer who both:

(a) Is a graduate in an approved engineering curriculum of four years or more of a school approved by the board or has four years or more of education or experience, or both, in engineering work that meets standards specified by the board in its rules.

(b) Has passed the engineer-in-training examination.

13. "Firm" means any individual or partnership, corporation or other type of association, including the association of a nonregistrant and a registrant who offers to the public professional services regulated by the board.

14. "Geological practice" means any professional service or work requiring geological education, training and experience, and the application of special knowledge of the earth sciences to such professional services as consultation, evaluation of mining properties, petroleum properties and groundwater resources, professional supervision of exploration for mineral natural resources including metallic and nonmetallic ores, petroleum and groundwater, and the geological phases of engineering investigations.

15. "Geologist" means a person, who is not required to be a professional engineer, who by reason of special knowledge of the earth sciences and the principles and methods of search for and appraisal of mineral or other natural resources acquired by professional education and practical experience is qualified to practice geology as attested by registration as a professional geologist. A person who is employed on a full-time basis as a geologist by an employer engaged in the business of developing, mining or treating ores and other minerals is not deemed to be engaged in geological practice for the purposes of this chapter if the person engages in geological practice exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any geological services for persons other than the person's employer.

16. "Geologist-in-training" means a candidate for registration as a professional geologist who both:

(a) Is a graduate of a school approved by the board or has four years or more of education or experience, or both, in geological work that meets standards specified by the board in its rules.

(b) Has passed the geologist-in-training examination.

17. "Home inspection" means a visual analysis for the purposes of providing a professional opinion of the building, any reasonably accessible installed components and the operation of the building's systems, including the controls normally operated by the owner, for the following components of a residential building of four units or less:

(a) Heating system.

(b) Cooling system.

(c) Plumbing system.

(d) Electrical system.

(e) Structural components.

(f) Foundation.

(g) Roof covering.

(h) Exterior and interior components.

(i) Site aspects as they affect the building.

(j) Pursuant to rules adopted by the board, swimming pool and spa.

18. "Home inspection report" means a written report that is prepared for compensation, that is issued after a home inspection and that clearly describes and identifies the inspected systems, structures and components of a completed dwelling and any visible major defects found to be in need of immediate major repair and any recommendations for additional evaluation by appropriate persons.

19. "Home inspector" means an individual who is certified pursuant to this chapter as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.

20. "Landscape architect" means a person who, by reason of professional education or practical experience, or both, is qualified to engage in the practice of landscape architecture as attested by registration as a landscape architect.

21. "Landscape architectural practice":

(a) Means performing professional services such as consultations, investigation, reconnaissance, research, planning, design or responsible supervision in connection with the development of land and incidental water areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings of and approaches to buildings, structures, facilities or other improvements, natural drainage and the consideration and the determination of inherent problems of the land relating to erosion, wear and tear, light or other hazards.

(b) Includes locating and arranging such tangible objects and features as are incidental and necessary to the purposes outlined in this paragraph.

(c) Does not include making cadastral surveys or final land plats for official recording or approval, nor mandatorily include planning for governmental subdivisions.

22. "Land surveying practice" means performing one or more of the following professional services:

(a) Measuring land to determine the position of any monument or reference point that marks a property line, boundary or corner for the purpose of determining the area or description of the land.

(b) Locating, relocating, establishing, reestablishing, setting, resetting or replacing of corner monuments or reference points that identify land boundaries, rights-of-way or easements.

(c) Platting or plotting of lands for the purpose of subdividing.

(d) Measuring by angles, distances and elevations natural or artificial features in the air, on the surface and immediate subsurface of the earth, within underground workings and on the surface or within bodies of water for the purpose of determining or establishing their location, size, shape, topography, grades, contours or water surface and depths, and the preparing and perpetuating field note records and maps depicting these features.

(e) Setting, resetting or replacing points to guide the location of new construction.

23. "Land surveyor" means a person who by reason of knowledge of the mathematical and physical sciences, principles of land surveying and evidence gathering acquired by professional education or practical experience, or both, is qualified to practice land surveying as attested by registration as a land surveyor. A person employed on a full-time basis as a land surveyor by an employer engaged in the business of developing, mining or treating ores or other minerals is not deemed to be engaged in land surveying practice for purposes of this chapter if the person engages in land surveying practice exclusively for and as an employee of such employer and does not represent that the person is

available and is not represented as being available to perform any land surveying services for persons other than the person's employer.

24. "Land surveyor-in-training" means a candidate for registration as a professional land surveyor who both:

(a) Is a graduate of a school and curriculum approved by the board or has four years or more of education or experience, or both, in land surveying work that meets standards specified by the board in its rules.

(b) Has passed the land surveyor-in-training examination.

25. "Low-voltage electric fence" means a fence that meets all of the following requirements:

(a) Has an electric fence energizer that is powered by a commercial storage battery with a rated voltage of not more than twelve volts and that produces an electric charge on contact with the fence.

(b) Is completely enclosed by a nonelectric fence or wall.

(c) Is continuously monitored.

(d) Is attached to ancillary components or equipment such as closed circuit television systems, access controls, battery recharging devices and video cameras.

(e) Does not exceed ten feet in height or two feet higher than the nonelectric fence or wall described in subdivision (b) of this paragraph, whichever is higher.

(f) Has identification warning signs attached at intervals of not more than sixty feet.

(g) Is not installed in an area zoned exclusively for single family or multifamily residential use.

(h) Does not enclose property that is used for residential purposes.

26. "Monitored alarm" means a device that is designed to detect an entry on any premises and that if activated generates a notification signal.

27. "Person" means any individual, firm, partnership, corporation, association or other organization.

28. "Principal" means an individual who is an officer of the corporation or is designated by a firm as having full authority and responsible charge of the services offered by the firm.

29. "Professional engineer" means a person who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering and is registered as a professional engineer pursuant to this chapter.

30. "Proprietor alarm" means any alarm or alarm system that is owned by an alarm subscriber who has not contracted with an alarm business.

31. "Registrant" means a person who is registered or certified by the board.

32. "Registration" means a registration or certification that is issued by the board.

32-106. Powers and duties

A. The board shall:

1. Adopt rules for the conduct of its meetings and performance of duties imposed on it by law.

2. Adopt an official seal for attestation of certificates of registration and other official papers and documents.

3. Consider and act on or delegate the authority to act on applications for registration or certification.

4. Conduct examinations for in-training and professional registration, except for an alarm business, a controlling person or an alarm agent.

5. Hear and act on complaints or charges or direct an administrative law judge to hear and act on complaints and charges.

6. Compel attendance of witnesses, administer oaths and take testimony concerning all matters coming within its jurisdiction. In exercising these powers, the board may issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence it deems relevant to an investigation or hearing.

7. Keep a record of its proceedings.

8. Keep a register that shows the date of each application for registration or certification, the name of the applicant, the practice or branch of practice in which the applicant has applied for registration, if applicable, and the disposition of the application.

9. Do other things necessary to carry out the purposes of this chapter.

B. The board shall specify the proficiency designation in the branch of engineering in which the applicant has designated proficiency on the certificate of registration and renewal card issued to each registered engineer and shall authorize the engineer to use the title of registered professional engineer. The board shall decide what branches of engineering it shall recognize.

C. The board may hold membership in and be represented at national councils or organizations of proficiencies registered under this chapter and may pay the appropriate membership fees. The board may conduct standard examinations on behalf of national councils and may establish fees for those examinations.

D. The board may employ and pay on a fee basis persons, including full-time employees of a state institution, bureau or department, to prepare and grade examinations given to applicants for registration or review an applicant's submissions of required documents for home inspector certification and regulation and may fix the fee to be paid for these services. These employees are authorized to prepare, grade and monitor examinations, review an applicant's submissions of required documents for home inspector certification and regulation and perform other services the board authorizes, and to receive payment for these services from the technical registration fund. The board may contract with an organization to administer the registration examination, including selecting the test site, scheduling the examination, billing and collecting the fee directly from the applicant and grading the examination if a national council of which the board is a member or a professional association approved by the board does not provide these services. If a national council of which the board is a member or a professional association approved by the board does provide these services, the board shall enter into an agreement with the national council or professional association to administer the registration examination.

E. The board may rent necessary office space and pay the cost of this office space from the technical registration fund.

F. The board may adopt rules establishing rules of professional conduct for registrants.

G. The board may require evidence it deems necessary to establish the continuing competency of registrants as a

condition of renewal of licenses.

H. Subject to title 41, chapter 4, article 4, the board may employ persons as it deems necessary.

I. The board shall issue or may authorize the executive director to issue a certificate or renewal certificate to each alarm business and each controlling person and a certification or renewal certification card to each alarm agent if the qualifications prescribed by this chapter are met.

G-2.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 21

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: June 14, 2024

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10, Article 21

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) covers eighteen (18) rules in Title 9, Chapter 10, Article 21 related to Recovery Care Centers. In 2019, pursuant to Laws 2019, Ch. 133, the rules regarding Recovery Care Centers were moved from Title 9, Chapter 10, Article 5 to Title 9, Chapter 10, Article 21 to enable rules to be found more easily with the addition of licensing rules for intermediate care facilities.

Under A.R.S. § 36-448.51, "recovery care center" is defined as "a health care institution or subdivision of a health care institution that provides medical and nursing services limited to recovery care services."

"Recovery care services" is defined as "postsurgical and postdiagnostic medical and nursing services provided to patients for whom, in the opinion of the attending physician, it is reasonable to expect an uncomplicated recovery. Such patients are not expected to require intensive care services, coronary care services, or critical care services. Recovery care services do not include surgery services, radiology services, pediatric services or obstetrical services."

The Department did not propose a course of action in its previous 5YRR for these rules, approved by the Council in April 2019.

Proposed Action

The Department plans to amend via rulemaking some of the rules in the article covered by this 5YRR to address the matters identified with understandability, effectiveness, and consistency and submit a Notice of Final Rulemaking to the Council by January 2025.

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:

Since the previous five-year review report, the Department conducted one rulemaking to address the requirements in a revised statute: the Department believes that these rule changes—that are more easily understood, complied with, and enforced—may have provided a significant benefit to the affected persons, including the Department, recovery care centers, health care providers, patients, and their families, and the general public. 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. This conclusion agrees with a prior five-year review report in which it was determined that the actual effects of changes to the rule were as anticipated.

Stakeholders are identified as newborns and infants who are tested for certain congenital disorders, their families, individuals and entities that conduct the testing, the Department, and society in general.

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?

Except for one inconsistency with another rule and a few rules that could be made more clear, concise, and understandable, the Department has determined that the 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 objectives.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department states no written criticisms of the rules have been received over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are generally clear, concise and understandable, however the understandability of the rules below could be further improved by:

R9-10-2105 amending a grammatical error in subsection (F)(6) by changing the word "of" to "for"

R9-10-2107 removing duplicative unnecessary language in subsection (A) referring to the statutory definition of a recovery care center

R9-10-2109 amending a grammatical error in subsection (2)(c) by adding the word "the" between risks and benefits

R9-10-2111 amending a grammatical error in subsection (A)(5)(a) by changing the word "by" to "to"

6. Has the agency analyzed the rules' consistency with other rules and statutes?

R9-10-2113 The rule is not consistent with A.R.S. § 32-1909. Subsection (E) of R9-10-2113 could be amended to add a cross-reference to include policies and procedures that are established, documented, and implemented for donated medication.

R9-10-2118 The rule is consistent with other rules and statutes, however, it could be improved by removing in subsection (A), the reference to architectural plans and specifications for Department approval, because Laws 2022, Ch.34 removes the Department's authority to approve architectural plans, and in place requires facilities to provide a notarized attestation from a licensed architect.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department states the rules are generally effective in achieving its objectives, with the following exception:

R9-10-2115 subsection (C)(4)'s effectiveness could be improved 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 states 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 states there are no federal laws that correspond to these rules.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

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.

11. Conclusion

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) covers eighteen (18) rules in Title 9, Chapter 10, Article 21 related to Recovery Care Centers. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301.

The Department plans to amend via rulemaking some of the rules in the article covered by this 5YRR to address the matters identified with understandability, effectiveness, and consistency and submit a Notice of Final Rulemaking to the Council by January 2025.

Council staff recommend approval of this 5YRR.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

March 27, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, 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 21, Five-Year-Review Report for Health Care Institutions: Licensing – Recovery Care Centers

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 10, Article 21, Recovery Care Centers, which is due on April 30, 2024.

The Department reviewed the rules in 9 A.A.C. 10, Article 21, 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: 2024.03.27 10:21:06 -07'00'

Stacie Gravito
Director's Designee

SG:lf

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 21. Recovery Care Centers

March 2024

1. **Authorization of the rule by existing statutes:**

General Statutory Authority: A.R.S. §§ 36-132(A)(1) and (A)(17) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-405, 36-406, and 36-448.51 through 36-448.55

2. **The objective of each rule:**

Rule	Objective
R9-10-2101	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-10-2102	To establish minimum requirements and responsibilities for a recovery care center's governing authority and administrator.
R9-10-2103	To establish minimum requirements for a recovery care center's quality management program.
R9-10-2104	To establish minimum requirements for persons who contract with the licensee to provide recovery care services.
R9-10-2105	To establish minimum standards for recovery care center personnel and documentation of personnel member qualifications.
R9-10-2106	To establish minimum requirements and responsibilities for a recovery care center's governing authority regarding medical staff that is authorized to provide care at a recovery care center.
R9-10-2107	To establish minimum requirements for admission.
R9-10-2108	To establish minimum requirements for discharge of a patient.
R9-10-2109	To establish minimum requirements for transfer to ensure that a patient's health and safety are not compromised as a result of a transfer.
R9-10-2110	To establish minimum standards for patient rights.
R9-10-2111	To establish minimum requirements for resident medical records.
R9-10-2112	To establish minimum requirements for nursing services provided by a recovery care center.
R9-10-2113	To establish minimum requirements for medication services provided by a recovery care center.
R9-10-2114	To establish minimum requirements for ancillary services provided by a recovery care center.
R9-10-2115	To establish minimum requirements for food services provided by a recovery care center.
R9-10-2116	To establish minimum emergency and safety standards for a recovery care center.
R9-10-2117	To establish minimum environmental standards for a recovery care center.
R9-10-2118	To establish minimum physical plant standards for a recovery care center.

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
R9-10-2115	The rule is effective but could be improved in subsection (C)(4), 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 ___ 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
R9-10-2113	The rule is not consistent with A.R.S. § 32-1909. Subsection (E) of R9-10-2113 could be amended to add a cross-reference to include policies and procedures that are established, documented, and implemented for donated medication.
R9-10-2118	The rule is consistent with other rules and statutes, however, could be improved by removing in subsection (A), the reference to architectural plans and specifications for Department approval, because Laws 2022, Ch.34 removes the Department's authority to approve architectural plans, and in place requires facilities to provide a notarized attestation from a licensed architect.

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
R9-10-2105	The rule is clear, concise, and understandable, however, the understandability could be improved by amending a grammatical error in subsection (F)(6) by changing the word "of" to "for."
R9-10-2107	The rule is clear, concise, and understandable, however, the understandability could be improved by removing duplicative unnecessary language in subsection (A) referring to the statutory definition of a recovery care center.
R9-10-2109	The rule is clear, concise, and understandable, however, the understandability could be improved by amending a grammatical error in subsection (2)(c) by adding the word "the" between risks and benefits.

R9-10-2111	The rule is clear, concise, and understandable, however, the understandability could be improved by amending a grammatical error in subsection (A)(5)(a) by changing the word "by" to "to".

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):**

Arizona Revised Statutes ("A.R.S.") § 36-405(A) requires the Arizona Department of Health Services ("Department") to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to ensure the public health, safety, and welfare. It further requires that the standards and requirements related to construction, equipment, sanitation, staffing, and recordkeeping pertaining to the administration of medical, nursing, and personal care services according to generally accepted practices of health care. A.R.S. § 36-405(B)(1) allows the Director to classify and sub-classify 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. Pursuant to Arizona Administrative Code ("A.A.C.") R9-10-102(A)(6), one subclass of health care institution is a "[r]ecovery care center." As defined in A.R.S. § 36-448.51(1), a "[r]ecovery care center" means "a health care institution or subdivision of a health care institution that provides medical and nursing services limited to recovery care services." "Recovery care services," as defined in A.R.S. § 36-448.51(2), means "postsurgical and postdiagnostic medical and nursing services provided to patients for whom, in the opinion of the attending physician, it is reasonable to expect an uncomplicated recovery. Such patients are not expected to require intensive care services, coronary care services, or critical care services. Recovery care services do not include surgery services, radiology services, pediatric services or obstetrical services."

Prior to 2013, the rules for recovery care centers were adopted in 9 A.A.C. 10, Article 14. In 2013, the rules in 9 A.A.C. 10, Article 14 were revised and moved to 9 A.A.C. 10, Article 5 as part of an exempt rulemaking to comply with Laws 2011, Ch. 96, Laws 2013, Ch. 10, § 13, amended Laws 2011, Ch. 96 to extend time for the Department to further revise the rules in 9 A.A.C. 10 under exempt rulemaking authority to April 30, 2014. In 2019, pursuant to Laws 2019, Ch. 133, the rules in 9 A.A.C. 10, Article 5 were moved again to 9 A.A.C. 10, Article 21 to enable rules to be found more easily with the addition of licensing rules for intermediate care facilities. An economic, small business, and consumer impact statement was not required for these rulemakings pursuant to Laws 2011, Ch. 96, Laws 2013, Ch. 10, and Laws 2019, Ch. 133 as part of the exempt rulemaking authority. However, the Department believes that the annual costs and revenue changes are assumed to be designed as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when

$10,000 or greater in additional costs or revenues. Stakeholders for these rulemakings include the Department, Arizona recovery care centers, health care providers, patients and their families, and the general public.

Currently, there are 4 licensed recovery care centers in Arizona as of March 2024. In 2023, the Department did not receive any initial applications nor did the Department conduct any complaint surveys. The Department did complete 4 compliance surveys and received $250.00 in monetary penalties as a result of one late renewal. No recovery care centers closed in 2023.

The Department has completed one rulemaking to amend the rules since the previous five-year review report. The rules in R9-10-2118 were amended through final expedited rulemaking found at 25 A.A.R. 3481, with an immediate effective date of November 5, 2019. The revision updated the incorporations by reference to the National Fire Protection Association's current codes and standards, to the new section in R9-10-104.01 to provide clarifications on the incorporations by reference. The Department believes the costs of these amended rules were minimal and provided a significant benefit to recovery care centers, health care providers, patients and their families, 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, recovery care centers, health care providers, patients, and their families, and the general public. 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 previous five-year review report, the Department did not propose any amendments to the rules.

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 purpose of recovery care center rules is to establish comprehensive minimum standards and requirements for the operation, personnel, services, patient rights, and safety measures to ensure consistent and high-quality care for patients at a recovery care center. The Department believes that the substantive content of the rules is the minimum necessary to protect the health and safety of these patients, health care providers at a recovery care center, and the general public. Thus, the probable benefits of the rules outweigh the probable costs of the rules. Since the requirements are consistent with national standards, the requirements are also the least burdensome method to achieve this purpose.

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 21.

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 some of the rules in 9 A.A.C. 10, Article 21 to address the matters identified in this five-year review report through a rulemaking and submit a Notice of Final Rulemaking to the Council by January 2025. The Department believes this would be sufficient time to gather stakeholder input during the rulemaking process.

ATTACHMENT A

ECONOMIC IMPACT COMPARISON

The recovery care center licensing rules were adopted February 1, 1994 in response to legislation enacted in 1992. The legislation and rules reflected changes in the economy of health care resulting from the reluctance of third party payors to pay for inpatient hospital recovery services when patients were expected to have an uncomplicated recovery from surgery or diagnostic procedures. Recovery care centers were intended to provide an alternative to inpatient hospital postsurgical and postdiagnostic medical and nursing care.

The Department completed an economic impact statement for the February 1994 recovery care center rulemaking, a copy of which is attached to this five-year-review report. The 1994 economic impact statement assessed benefits and costs resulting from the new rules. Costs to the Department for recovery care center licensing include expenses related to licensing inspections and complaint investigations, conducted by the Department's Office of Medical Facilities Licensing. The following table compares the information from the economic impact statement for the rules with the current economic impact estimate. Based on a review of this information, the Department believes that with respect to the increase in the number of new recovery care centers requesting licensing, the actual economic impact of the rules is consistent with the economic impact statement prepared in February 1994. However, with respect to insurance companies, hospitals, and nursing staff agencies, the actual economic impact is inconsistent with the February 1994 economic impact statement.

<table>
<tr><th>Original Statement</th><th>Current Estimate</th></tr>
<tr><td>The Department determined that the anticipated increase in recovery care centers requesting licensing would result in a minimal increase in the Department's costs.[+] The Department anticipated that it could absorb the recovery care center licensing program without hiring additional staff, although existing staff might be required to work a minimum of overtime to conduct the additional licensing surveys.</td><td>The 1994 economic impact statement anticipated a slight increase in the number of recovery care centers requesting licensing based on the fact that the Department licensed only two additional facilities since licensing the first recovery care center in November 1982. At the time the rules were promulgated, there were three existing recovery care centers and the Department anticipated licensing at least two additional centers. As predicted in the 1994 economic impact statement, the number of recovery care centers has increased only slightly since February 1, 1994, as shown in the table below.

<table>
<tr><th>Period Start</th><th>Total Facilities at Start</th><th>Number of Initial Licensings</th><th>Period End</th><th>Total Facilities at End</th></tr>
<tr><td>Feb. 1, 1994</td><td>3</td><td>3</td><td>Feb. 1, 1999</td><td>6</td></tr>
<tr><td>Feb. 1, 1999</td><td>6</td><td>3</td><td>Feb. 1, 2004</td><td>5</td></tr>
<tr><td>Feb. 1, 2004</td><td>5</td><td>0</td><td>June 30, 2004</td><td>5</td></tr>
</table>

In the five-year period following enactment of the rules, beginning February 1, 1994 and ending February 1, 1999, licensed recovery care centers increased from three to six. Between February 1, 1999 and February 1, 2004, the Department issued three initial licenses for recovery care centers and four centers closed. As a result, there were five licensed recovery care centers as of February 1, 2004. Between February 1, 2004 and June 30, 2004, no initial licenses were issued and the number of recovery care centers remained at 5. As of June 30 2004, the average cost for issuing an initial license was $912.59. From February 1, 1994 through June 30, 2004 (10.4 years), there were six initial licenses issued, for a total cost of $5,476 or an average of $527 per year. Consequently, costs to the Department for initial licensing of recovery care centers during this period have been minimal, consistent with the 1994 economic impact statement's projections.
The Department's costs for licensing of recovery care centers during the twelve-month period beginning July 1, 2003 and ending June 30, 2004 are as follows:
Initial Licenses: To issue an initial license, the Department spends about 16.0 hours in</td></tr>
</table>

[+] In the 1994 economic impact statement and in this economic impact comparison, "minimal" means less than $5,000, "moderate" means between $5,000 and $10,000, and "substantial" means over $10,000.

	surveyor, management, and support staff time (programmatic hours) and 2.5 hours in administrative time (administrative hours). The average cost for issuing an initial license is $912.59. However, since the Department issued no initial licenses during this period for recovery care centers, there were no costs. **Renewal Licenses:** To issue a renewal license, the Department spends about 30.17 programmatic hours and 2.5 administrative hours. The average cost for issuing a renewal license is $1,835.92 and the Department issued three renewal licenses. During this period, costs for recovery care center renewal licenses totaled $5,508. **Complaint Investigation:** Data is insufficient to establish average programmatic and administrative hours and costs for recovery care center complaint investigations. There were no complaint investigations conducted in this 12-month period and, therefore, no related costs. Consequently, total costs to the Department for licensing of recovery care centers from July 1, 2003 through June 30, 2004 have been **moderate.**
The Department determined that insurance companies' utilization of recovery care centers for postsurgical and postdiagnostic care would result in cost effectiveness. Insurance plan members will be encouraged to use recovery care centers because they are less expensive than hospitals, thereby lowering overall costs on membership benefit payments and resulting in a **substantial** decrease in costs and increased revenues for insurance companies.	Contrary to the 1994 economic impact statement's projections, insurance companies did not increase their utilization of recovery care centers for postsurgical and postdiagnostic care. Instead, insurance companies have been reluctant to pay for recovery care center services and patients utilizing recovery care centers typically pick up the cost themselves. Consequently, insurance companies may have lower costs on benefit payments because of their refusal to reimburse for recovery care center services, rather than cost effectiveness.
The Department determined that hospitals would experience a decrease in the number of short stay patients because recovery care centers could treat people for less cost than hospitals. Hospitals will lose the business of those patients whose care is the least complicated and, therefore, the most profitable, resulting in a **substantial** decrease in revenues for hospitals.	Contrary to the 1994 economic impact statement's projections, the additional recovery care center beds licensed by the Department did not have a substantial impact on the number of short stay patients in hospitals. Patients who are discharged from hospitals and nursing homes needing additional care use healthcare service providers such as home health agencies or nursing staff agencies, rather than recovery care centers. In addition, hospital inpatient units and recovery care centers serve different patient populations. Patients who have had "outpatient surgical services," as defined in R9-10-1701, do not have planned inpatient stays following the surgical procedures and would not be admitted as an inpatient to a hospital unless there was an unexpected event causing the need for admission. Another factor influencing the utilization of recovery care centers is the lack of Medicare reimbursement. Medicare will not reimburse for admission to an inpatient facility following an outpatient procedure, and the

	primary users of recovery care center services are individuals who have had outpatient procedures. Therefore, recovery care center utilization has no impact on hospital revenues generated by inpatient stays.
The Department determined that nursing care institutions might experience a decrease in the number of short stay residents. Since a nursing care institution's revenue comes primarily from residents who move into a facility and stay the remainder of their lives, short stay residents account for a very small percentage of a nursing care institution's revenue base. Therefore, it was anticipated that recovery care centers would have a **minimal** financial impact on nursing care institutions.	Consistent with projections in the 1994 economic impact statement, recovery care centers have had only a **minimal** impact on nursing care institutions, since short stay patients make up only a small percentage of a nursing care institution's revenue base.
The Department determined that nursing staff agencies would experience a decrease in the number of people requesting private duty nurses, resulting in a **moderate** decrease in revenues for nursing staff agencies.	Contrary to the February 1994 economic impact statement, recovery care centers have had a **minimal** impact on nursing staff agencies. Patients who are discharged from hospitals and nursing homes needing additional care typically return home and use the services of nursing staff agencies or home health agencies, instead of recovery care centers.
The Department determined that patients with an uncomplicated recovery from a surgical or diagnostic procedure would have an option of receiving care in a more cost effective environment, resulting in a **substantial** benefit to consumers. Recovery care centers can treat people for less cost than hospitals. Additionally, insurance companies will encourage members to use recovery care centers thereby lowering overall costs on membership benefit payments.	Contrary to the February 1994 economic impact statement, patients who are eligible for admission to a recovery care center do not have the option of receiving postdiagnostic or postsurgical care as an inpatient in a hospital. In addition, insurance companies typically do not reimburse for admissions to recovery care centers and costs for stays in recovery care centers are borne by the patients themselves. Patients who are eligible for recovery care center admission are not eligible for inpatient hospital admission and they experience no cost savings from using a recovery care center.
The Department determined that patients would have a decreased risk of infection because a recovery care center does not treat people with communicable diseases. This will provide a benefit to consumers, **but the dollar amount is unknown.**	The benefits of the rules are consistent with the February 1994 economic impact statement.

The Department determined that patients will receive recovery care services in a noninstitutional environment, which will provide a benefit to consumers, **but the dollar amount is unknown.**	The benefits of the rules are consistent with the February 1994 economic impact statement.

The Department believes the regulatory costs from the 9 A.A.C. 10, Article 14 rules are outweighed by:

- Increased revenue to recovery care centers; and
- Protection of the health and safety of patients who utilize recovery care center services.

c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases at the pain management clinic; 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; and
2. Infection control documentation is maintained for at least 12 months after the date of documentation.

C. A medical director shall ensure that soiled linen and clothing are kept:
1. In a covered container, and
2. Separate from clean linen and clothing.

D. A licensee shall:
1. Obtain a fire inspection conducted according to the timeframe established by the local fire department or the State Fire Marshal;
2. Make and document any repairs or corrections stated on the fire inspection report;
3. Maintain documentation of a current fire inspection;
4. Ensure that a written emergency plan is established, documented, and implemented that includes procedures for protecting the health and safety of patients and other individuals if circumstances arise in the pain management clinic that immediately threaten the life or health of patients and other individuals, such as a fire, natural disaster, loss of electrical power, or threat or incidence of violence; and
5. Ensure that an evacuation drill is conducted at least once every six months that includes all personnel members on the premises on the day of the evacuation drill.

E. A licensee shall ensure that a pain management clinic 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 A.A.C. R9-1-412, 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 A.A.C. R9-1-412, that is in working order; or
2. Both of the following:
a. A smoke detector installed in each hallway of the pain management clinic that is:
i. Maintained in an operable condition;
ii. Either battery operated or, if hard-wired into the electrical system of the pain management clinic, 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 pain management clinic;
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.

Historical Note
New Section made by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4).

R9-10-2010. Environmental and Physical Plant Standards

A. A licensee shall ensure that the premises:
1. Provide lighting and ventilation to ensure the health and safety of a patient;
2. Are maintained in a clean condition;
3. Are free from a condition or situation that may cause a patient to suffer physical injury;
4. Are maintained free from insects and vermin;
5. Are smoke-free; and
6. Are sufficient to accommodate:
a. The services stated in the pain management center's scope of services, and
b. An individual accepted as a patient by the pain management center.

B. A licensee shall ensure that if a pain management clinic collects urine specimens from a patient, the pain management clinic has at least one bathroom on the premises that:
1. 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; and
2. Is for the exclusive use of the pain management clinic.

Historical Note
New Section made by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4).

ARTICLE 21. RECOVERY CARE CENTERS

R9-10-2101. 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:

"Recovery care services" has the same meaning as in A.R.S. § 36-448.51.

Historical Note
New Section R9-10-2101 renumbered from R9-10-501 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2102. Administration

A. A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of a recovery care center;
2. Establish in writing:
a. A recovery care center's scope of services, and
b. Qualifications for an administrator;
3. Designate an administrator, in writing, who has the qualifications established in subsection (A)(2)(b);

4. Grant, deny, suspend, or revoke the clinical privileges of a medical staff member according to medical staff bylaws;
5. Adopt a quality management program according to R9-10-2103;
6. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
7. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
   a. Expected not to be present on a recovery care center's premises for more than 30 calendar days, or
   b. Not present on a recovery care center's premises for more than 30 calendar days; and
8. Except as provided in subsection (A)(7), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.

B. An administrator:
1. Is directly accountable to the governing authority of a recovery care center for the daily operation of the recovery care center and all services provided by or at the recovery care center;
2. Has the authority and responsibility to manage a recovery care center; and
3. Except as provided in subsection (A)(7), designates, in writing, an individual who is present on the recovery care center's premises and accountable for the recovery care center when the administrator is not present on the recovery care center premises.

C. 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 patient care;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Cover cardiopulmonary resuscitation training required in R9-10-2105(G) including:
      i. The method and content of cardiopulmonary resuscitation training,
      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 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 services as ordered;
   h. Cover patient rights including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
   i. Cover specific steps for:
      i. A patient to file a complaint, and
      ii. The recovery care center to respond to a patient's complaint;
   j. Cover health care directives;
   k. Cover medical records, including electronic medical records;
   l. Cover a quality management program, including incident reports and supporting documentation;
   m. Cover contracted services;
   n. Cover tissue and organ procurement and transplant; and
   o. Cover when an individual may visit a patient in a recovery care center;
2. Policies and procedures for recovery care services are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover patient screening, admission, transfer, discharge planning, and discharge;
   b. Cover the provision of recovery care services;
   c. Include when general consent and informed consent are required;
   d. Cover prescribing a controlled substance to minimize substance abuse by a patient;
   e. Cover dispensing, administering, and disposing of medications;
   f. 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;
   g. Cover infection control; and
   h. Cover environmental services that affect patient care;
3. Policies and procedures are reviewed at least once every three years and updated as needed;
4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
5. 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 a recovery care center, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the recovery care center.

Historical Note

New Section R9-10-2102 renumbered from R9-10-502 and amended by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2103. Quality Management

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.

Historical Note
New Section R9-10-2103 renumbered from R9-10-503 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2104. 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.

Historical Note
New Section R9-10-2104 renumbered from R9-10-504 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2105. Personnel
A. 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; and
3. Sufficient personnel members are present on a recovery care center's premises with the qualifications, skills, and knowledge necessary to:
a. Provide the services in the recovery care center's scope of services,
b. Meet the needs of a patient, and
c. Ensure the health and safety of a patient.

B. An administrator shall ensure that an individual who is a baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision as defined in 4 A.A.C. 6, Article 1.

C. An administrator shall ensure that a personnel member, or an employee or a volunteer who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the recovery care center, and
2. As specified in R9-10-113.

D. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
3. Documentation of:
a. The individual's qualifications, including skills and knowledge applicable to the employee's job duties;
b. The individual's education and experience applicable to the employee's job duties;
c. The individual's completed orientation and in-service education as required by policies and procedures;
d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
e. The individual's compliance with the requirements in A.R.S. § 36-411;
f. Cardiopulmonary resuscitation training, if required for the individual, according to R9-10-2102(C)(1)(e);
g. First aid training, if the individual is required to have according to this Article and policies and procedures; and
h. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (C).

E. An administrator shall ensure that personnel records are:
1. Maintained:
a. Throughout the individual's period of providing services in or for the recovery care center, and
b. For at least 24 months after the last date the individual provided services in or for the recovery care center; and
2. For a personnel member who has not provided physical health services or behavioral health services at or for the recovery care center during the previous 12 months, provided to the Department within 72 hours after the Department's request.

F. An administrator shall ensure that:

1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
2. A personnel member completes orientation before providing behavioral health services or physical health services;
3. 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;
4. A director of nursing develops, documents, and implements a plan to provide in-service education specific to the duties of a personnel member;
5. A personnel member's in-service education is documented, to include:
   a. The personnel member's name,
   b. The date of the training, and
   c. The subject or topics covered in the training; and
6. A work schedule of each personnel member is developed and maintained at the recovery care center for at least 12 months from the date of the work schedule.

G. An administrator shall ensure that a nursing personnel member:
1. Is 18 years of age or older,
2. Is certified in cardiopulmonary resuscitation within the first month of employment,
3. Maintains current certification in cardiopulmonary resuscitation, and
4. Attends additional orientation that includes patient care and infection control policies and procedures.

Historical Note

New Section R9-10-2105 renumbered from R9-10-505 and amended by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2106. Medical Staff

A. A governing authority shall require that:
1. The organized medical staff is directly accountable to the governing authority for the quality of care provided by a medical staff member to a patient in a recovery care center;
2. The medical staff bylaws and medical staff regulations are approved according to the medical staff bylaws and governing authority requirements;
3. A medical staff member complies with medical staff bylaws and medical staff regulations;
4. The medical staff includes at least two physicians who have clinical privileges to admit patients to the recovery care center;
5. A medical staff member is available to direct patient care;
6. Medical staff bylaws or medical staff regulations are established, documented, and implemented for the process of:
   a. Conducting peer review according to A.R.S. Title 36, Chapter 4, Article 5;
   b. Appointing members to the medical staff, subject to approval by the governing authority;
   c. Establishing committees, including identifying the purpose and organization of each committee;
   d. Appointing one or more medical staff members to a committee;
   e. Requiring that each patient has a medical staff member who coordinates the patient's care;
   f. Defining the responsibilities of a medical staff member to provide medical services to the medical staff member's patient;
   g. Defining a medical staff member's responsibilities for the transfer of a patient;
   h. Specifying requirements for oral, telephone, and electronic orders, including which orders require identification of the time of the order;
   i. Establishing a time-frame for a medical staff member to complete a patient's medical record; and
   j. Establishing criteria for granting, denying, revoking, and suspending clinical privileges; and
7. The organized medical staff reviews the medical staff bylaws and the medical staff regulations at least once every three years and updates the bylaws and regulations as needed.

B. An administrator shall ensure that:
1. A medical staff member provides evidence of freedom from infectious tuberculosis as specified in R9-10-113 before providing services at the recovery care center and at least once every 12 months thereafter;
2. A record for each medical staff member is established and maintained that includes:
   a. A completed application for clinical privileges,
   b. The dates and lengths of appointment and reappointment of clinical privileges,
   c. The specific clinical privileges granted to the medical staff member including revision or revocation dates for each clinical privilege, and
   d. A verification of current Arizona health care professional active license according to A.R.S. Title 32; and
3. Except for documentation of peer review conducted according to A.R.S. § 36-445, a record under subsection (B)(2) is provided to the Department for review:
   a. For a current medical staff member, within 2 hours after the Department's request, or
   b. Within 72 hours after the time of the Department's request if the individual is no longer a current medical staff member.

Historical Note

New Section R9-10-2106 renumbered from R9-10-506 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2107. Admission

A. An administrator shall ensure that a physician only admits patients to the recovery care center who require recovery care services, as defined in A.R.S. § 36-448.51.

B. An administrator shall ensure that the following documents are in a patient's medical record at the time the patient is admitted to the recovery care center:
1. A medical history and physical examination performed or approved by a member of the recovery care center's medical staff within 30 calendar days before the patient's admission to the recovery care center,
2. A discharge summary from the referring health care institution or physician,
3. Physician orders, and
4. Documentation concerning health care directives.

Historical Note

New Section R9-10-2107 renumbered from R9-10-507 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2108. Discharge

A. For a patient, an administrator shall ensure that discharge planning:
1. Identifies the specific needs of the patient after discharge, if applicable;
2. If a discharge date has been determined, identifies the anticipated discharge date;
3. Includes the participation of the patient or the patient's representative;
4. Is completed before discharge occurs;
5. Provides the patient or the patient's representative with written information identifying classes or subclasses of health care institutions and the level of care that the health care institutions provide that may meet the patient's assessed and anticipated needs after discharge, if applicable; and
6. Is documented in the patient's medical record.

B. For a patient discharge or a transfer of the patient, an administrator shall ensure that:
1. A discharge summary is developed that includes:
   a. A description of the patient's medical condition and the medical services provided to the patient, and
   b. The signature of the medical practitioner coordinating the patient's medical services;
2. A discharge order for the patient is received from a medical practitioner coordinating the patient's medical services before discharge, unless the patient leaves the recovery care center against a medical staff member's advice;
3. Discharge instructions are developed and documented; and
4. The patient or the patient's representative is provided with a copy of the discharge instructions.

Historical Note
New Section R9-10-2108 renumbered from R9-10-508 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2109. Transfer

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.

Historical Note
New Section R9-10-2109 renumbered from R9-10-509 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2110. Patient Rights

A. An administrator shall ensure:
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 include:
   a. How and when a patient or the patient's representative is informed of the 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 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 a recovery care center's medical staff, personnel members, employees, volunteers, or students; 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 proposed treatment alternatives, associated risks, and possible complications;
   d. Is informed of the following:
      i. The recovery care center's policy on health care directives, and
      ii. The patient complaint process;
   e. Consents to photographs of the patient before the patient is photographed, except that a patient may be photographed when admitted to a recovery care 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 have access to a telephone;

5. To be advised of the recovery care center's policy regarding health care directives;
6. To associate and communicate privately with individuals of the patient's choice;
7. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
8. To receive a referral to another health care institution if the health care institution is not authorized or not able to provide physical health services or behavioral health services needed by the patient;
9. To participate or have the patient's representative participate in the development of, or decisions concerning treatment;
10. To participate or refuse to participate in research or experimental treatment; and
11. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

Historical Note

New Section R9-10-2110 renumbered from R9-10-510 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2111. Medical Records

A. An administrator shall ensure that:
1. A patient's 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 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. 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 staff according to policies and procedures; and
   c. If the order is a verbal order, authenticated by the medical staff 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 by 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 that include the maximum timeframe to retrieve an onsite or off-site patient's medical record at the request of a medical staff or authorized personnel member; and
7. A patient's medical record is protected from loss, damage, or unauthorized use.

B. If a recovery care 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 patient's 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. The patient's name,
   b. The patient's address,
   c. The patient's date of birth, and
   d. Any known allergies;
2. The date of admission and, if applicable, the date of discharge;
3. The admitting diagnosis;
4. A discharge summary from the referring health care institution or physician;
5. If applicable, documented general consent and informed consent by the patient or the patient's representative;
6. The medical history and physical examination required in R9-10-2107(B)(1);
7. A copy of the patient's health care directive, if applicable;
8. The name and telephone number of the patient's medical practitioner;
9. 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. Is a legal guardian, a copy of the court order establishing guardianship; or
      ii. 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;
10. Orders;
11. Nursing assessment;
12. Treatment plans;
13. Progress notes;
14. Documentation of recovery care center services provided to a patient;
15. The disposition of the patient after discharge;
16. The discharge plan;
17. A discharge summary, if applicable;
18. Transfer documentation from the referring health care institution or physician;
19. If applicable:
   a. A laboratory report,
   b. A radiologic report,
   c. A diagnostic report, and
   d. A consultation report;
20. 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;
21. If applicable, documentation that evacuation from the recovery care center would cause harm to the patient; and
22. 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 on a PRN basis:
      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 administered on a PRN basis:
i. An assessment of the patient's behavior before administering the psychotropic medication, and
ii. The effect of the psychotropic medication administered;
e. The signature of the individual administering or observing the patient self-administer the medication; and
f. Any adverse reaction a patient has to the medication.

D. An administrator shall ensure that a patient's medical record is completed within 30 calendar days after the patient's discharge.

Historical Note
New Section R9-10-2111 renumbered from R9-10-511 and amended by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2112. Nursing Services

A. An administrator shall appoint a registered nurse as the director of nursing who has the authority and responsibility to manage nursing services at a recovery care center.

B. A director of nursing shall:
1. Ensure that policies and procedures are developed, documented, and implemented to protect the health and safety of a patient that cover nursing assessments;
2. Designate, in writing, a registered nurse to manage nursing services when the director of nursing is not present on a recovery care center's premises;
3. Ensure that a recovery care center is staffed with nursing personnel according to the number of patients and their health care needs;
4. Ensure that a patient receives medical services, nursing services, and health-related services based on the patient's nursing assessment and the physician's orders; and
5. Ensure that medications are administered by a nurse licensed according to A.R.S. Title 32, Chapter 15 or as otherwise provided by law.

C. An administrator shall ensure that a registered nurse completes a nursing assessment of each patient, which addresses patient care needs, when the patient is admitted to the recovery care center.

D. An administrator shall ensure that a licensed nurse provides a patient with written discharge instructions, based on the patient's health care needs and physician's instructions, before the patient is discharged from the recovery care center.

Historical Note
New Section R9-10-2112 renumbered from R9-10-512 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2113. Medication Services

A. 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 for documenting medication administration; and
d. Procedures to ensure that a patient's medication regimen and method of administration is reviewed by a medical practitioner to ensure the medication regimen meets the patient's needs; 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. 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 is documented in the patient's medical record;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law;
3. A medication administered to a patient:
a. Is administered in compliance with an order, and
b. Is documented in the patient's medical record.

C. 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; and
3. If pharmaceutical services are provided on the premises:
a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
i. Develop a drug formulary,
ii. Update the drug formulary at least every 12 months,
iii. Develop medication usage and medication substitution policies and procedures, and
iv. Specify which medications and medication classifications are required to be stopped automatically after a specific time period unless the ordering medical staff member specifically orders otherwise;
b. The pharmaceutical services are provided under the direction of a pharmacist;
c. The pharmaceutical services comply with ARS Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
d. A copy of the pharmacy license is provided to the Department upon request.

D. When medication is stored at a recovery care 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 to protect the health and safety of a patient 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.

E. 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 recovery care center's director of nursing.

Historical Note

New Section R9-10-2113 renumbered from R9-10-513 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2114. Ancillary Services

An administrator shall ensure that:

1. Laboratory services are provided on the premises, or are available through contract, with a laboratory that holds a certificate of accreditation or certificate of compliance issued by the U.S. Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967; and
2. Pharmaceutical services are provided on the premises, or are available through contract, by a pharmacy licensed according to A.R.S. Title 32, Chapter 18.

Historical Note

New Section R9-10-2114 renumbered from R9-10-514 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2115. Food Services

A. An administrator shall ensure that:
1. The recovery care center has a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
2. A copy of the recovery care center's food establishment license or permit is maintained; and
3. If a recovery care center contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the recovery care center:
   a. A copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the recovery care center; and
   b. The recovery care center is able to store, refrigerate, and reheat food to meet the dietary needs of a patient.

B. An administrator shall:
1. Designate a food service manager who is responsible for food service in the recovery care center; and
2. Ensure that a current therapeutic diet reference manual is available to the food service manager.

C. A food service manager shall ensure that:
1. Food is prepared:
   a. Using methods that conserve nutritional value, flavor, and appearance; and
   b. In a form to meet the needs of a patient such as cut, chopped, ground, pureed, or thickened;
2. 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 day before the first meal on the food menu will be 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;
3. Meals and snacks provided by the recovery care center are served according to posted menus;
4. Meals and snacks for each day are planned using the applicable guidelines in http://www.health.gov/dietaryguidelines/2010.asp;
5. A patient is provided:
   a. A diet that meets the patient's nutritional needs and, if applicable, the orders of the patient's physician;
   b. Three meals a day with not more than 14 hours between the evening meal and breakfast except as provided in subsection (C)(5)(d);
   c. The option to have a daily evening snack identified in subsection (C)(5)(d)(ii) or other snack; and
   d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
      i. A patient agrees; and
      ii. The patient is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
6. A patient requiring assistance to eat is provided with assistance that recognizes the patient's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
7. Water is available and accessible to a patient.

Historical Note

New Section R9-10-2115 renumbered from R9-10-515 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2116. 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. Basic life support procedures, including the administration of oxygen and cardiopulmonary resuscitation; and
2. Transfer arrangements for patients who require care not provided by the recovery care center.

B. An administrator shall ensure that emergency treatment is provided to a patient admitted to the recovery care center according to 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 other employees, and, if necessary, implemented that includes:

a. When, how, and where patients will be relocated, including:
   i. Instructions for the evacuation or transfer of patients,
   ii. Assigned responsibilities for each employee and personnel member, and
   iii. A plan for providing continuing services to meet patient's needs;
b. How each patient's medical record will be available to individuals providing services to the patient during a disaster;
c. A plan to ensure each patient's medication will be available to administer to the patient during a disaster; and
d. A plan for obtaining food and water for individuals present in the recovery care center or the recovery care center's relocation site during a disaster;

2. The disaster plan required in subsection (C)(1) is reviewed at least once every 12 months;
3. Documentation of a disaster plan review required in subsection (C)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
   a. The date and time of the disaster plan review;
   b. The name of each personnel member, 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 patients:
   a. Is conducted at least once every six months;
   b. Includes all individuals on the premises except for;
      i. A patient whose medical record contains documentation that evacuation from the recovery care center would cause harm to the patient, and
      ii. Sufficient personnel members to ensure the health and safety of patients not evacuated according to subsection (C)(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 patients to evacuate to a designated area;
   c. If applicable:
      i. An identification of patients needing assistance for evacuation, and
      ii. An identification of patients 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 on each hallway of each floor of the recovery care center.

D. An administrator shall:
1. Obtain a fire inspection conducted according to the timeframe established by the local fire department or the State Fire Marshal,
2. Make any repairs or corrections stated on the inspection report, and
3. Maintain documentation of a current fire inspection.

Historical Note
New Section R9-10-2116 renumbered from R9-10-516 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2117. Environmental Standards

A. An administrator shall ensure the recovery care center's infection control policies and procedures include:
1. Development and implementation of a written plan for preventing, detecting, reporting, and controlling communicable diseases and infection;
2. Handling and disposal of biohazardous medical waste; and
3. Sterilization, disinfection, and storage of medical equipment and supplies.

B. An administrator shall ensure that:
1. A recovery care center's premises and equipment are:
   a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness or infection; and
   b. Free from a condition or situation that may cause a patient or an individual to suffer physical injury;
2. A pest control program is implemented and documented;
3. Equipment used to provide recovery care services 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;
4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
5. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
6. Soiled linen and clothing are:
   a. Collected in a manner to minimize or prevent contamination;
   b. Bagged at the site of use; and
   c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas;
7. Garbage and refuse are:
   a. Stored in covered containers lined with plastic bags, and
   b. Removed from the premises at least once a week;
8. Heating and cooling systems maintain the recovery care center at a temperature between 70° F and 84° F;
9. Common areas:
   a. Are lighted to assure the safety of patients, and
   b. Have lighting sufficient to allow personnel members to monitor patient activity;
10. The supply of hot and cold water is sufficient to meet the personal hygiene needs of patients and the cleaning and sanitation requirements in this Article;
11. Oxygen containers are secured in an upright position;
12. Poisonous or toxic materials stored by the recovery care center are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
13. Combustible or flammable liquids and hazardous materials stored by the recovery care center are stored in the

original labeled containers or safety containers in a locked area inaccessible to patients;

14. If pets or animals are allowed in the recovery care center, pets or animals are:
    a. Controlled to prevent endangering the patients and to maintain sanitation; and
    b. Licensed consistent with local ordinances;
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.

C. An administrator shall ensure that:
1. Smoking tobacco products is not permitted within a recovery care center; and
2. Smoking tobacco products may be permitted outside a recovery care center if:
    a. Signs designating smoking areas are conspicuously posted, and
    b. Smoking is prohibited in areas where combustible materials are stored or in use.

Historical Note

New Section R9-10-2117 renumbered from R9-10-517 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-2118. Physical Plant Standards

A. An administrator shall ensure that recovery care center's patient rooms and service areas comply with the applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01, in effect on the date the recovery care center submitted architectural plans and specifications to the Department for approval, according to R9-10-104.

B. An administrator shall ensure that the premises and equipment are sufficient to accommodate:
1. The services stated in the recovery care center's scope of services; and
2. An individual accepted as a patient by the recovery care center.

C. An administrator shall ensure that the recovery care center does not allow more than two beds per room.

Historical Note

New Section R9-10-2118 renumbered from R9-10-518 by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

ARTICLE 22. NURSING-SUPPORTED GROUP HOMES

R9-10-2201. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the definitions in A.R.S. § 36-551 apply in this Article unless otherwise specified.

Historical Note

New Section made by exempt rulemaking at 28 A.A.R. 927 (May 6, 2022), with an immediate effective date of April 15, 2022 (Supp. 22-2).

R9-10-2202. Supplementary Application Requirements and Documentation Submission Requirements

A. In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as a nursing-supported group home shall include:
1. In a Department-provided format, whether the applicant is requesting authorization:
    a. To admit residents who:
        i. Are on a ventilator,
        ii. Have a tracheostomy tube, or
        iii. Receive total parenteral nutrition; or
    b. To provide:
        i. Services to individuals under 18 years of age, including the licensed capacity requested;
        ii. Restraint;
        iii. Clinical laboratory services; or
        iv. Respiratory care services; and
2. A copy of the applicant's service provider award letter with the Division.

B. A licensee shall submit to the Department, with the relevant fees required in R9-10-106(C) and in a Department-provided format:
1. The information required in subsection (A)(1), as applicable; and
2. Documentation of the licensee's service provider contract with the Division.

Historical Note

New Section made by exempt rulemaking at 28 A.A.R. 927 (May 6, 2022), with an immediate effective date of April 15, 2022 (Supp. 22-2).

R9-10-2203. Administration

A. A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of a nursing-supported group home;
2. Establish, in writing, the nursing-supported group home's scope of services;
3. Designate, in writing, an administrator for the nursing-supported group home who:
    a. Is at least 21 years old; and
    b. Meets one of the following:
        i. Is a registered nurse,
        ii. Is a nursing care institution administrator, or
        iii. Has a minimum of three-years' experience working as an administrator or personnel member in a nursing-supported group home or other health care institution licensed under this Chapter;
4. Adopt a quality management program according to R9-10-2204;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who meets the requirements in subsection (A)(3), if the administrator is:
    a. Expected not to be present on the premises of the nursing-supported group home for more than 30 calendar days, or

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 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 to promote 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 educating 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 coordinating 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 enforcing 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 and behavioral-supported 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 a licensing period shall not 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.

36-448.51. Definitions

In this article, unless the context otherwise requires:

1. "Recovery care center" means a health care institution or subdivision of a health care institution that provides medical and nursing services limited to recovery care services.

2. "Recovery care services" means postsurgical and postdiagnostic medical and nursing services provided to patients for whom, in the opinion of the attending physician, it is reasonable to expect an uncomplicated recovery. Such patients are not expected to require intensive care services, coronary care services, or critical care services. Recovery care services do not include surgery services, radiology services, pediatric services or obstetrical services.

36-448.55. Medical staff; requirements; nursing care

A. A recovery care center shall have an organized medical staff responsible to the governing authority for the quality of medical care provided to patients and for the ethical and professional practices of its members. Subject to final action by the governing authority, the medical staff shall adopt bylaws and related procedures for the proper conduct of its activities. The medical staff of a recovery care center shall consist of two or more physicians.

B. A member of the medical staff shall admit patients to the recovery care center in accordance with medical staff bylaws, and patients shall be under the general care of a physician.

C. The medical staff is responsible for assuring the availability of physician services in the event of an emergency.

D. A recovery care center shall have an organized nursing service to provide nursing care to meet the needs of each patient. A recovery care center shall employ a registered nurse as director of nursing who is present at least forty hours each week when patients are in the facility. At least one registered nurse and one other nursing personnel shall be on duty at all times when there are patients in the facility. The nursing department shall be staffed at all times based on the number of patients and their health care needs. A staffing plan shall be maintained that includes individual staffing patterns for each nursing unit.

G-3.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 16, Article 5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: June 14, 2024

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 16, Article 5

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) covers seven (7) rules and one (1) table in Title 9, Chapter 16, Article 5 related to Licensing Speech-Language Pathologist Assistants.

The Department indicates that these rules were first promulgated in December 2009 and effective January 2010. The first 5YRR for these rules was due in December 2014. However, the rules were substantially amended through an exempt rulemaking in July 2014. On September 12, 2014, the Council granted the Department's request to reschedule the 5YRR for these rules. The rescheduled report was due on April 30, 2019.

This prior 5YRR was approved by the Council in July 2019. At that time, the Department stated a plan to revise the rules to address identified issues. The Department completed the prior proposed course of action via expedited rulemaking that went into effect on April 8, 2020. This rulemaking increased the understandability of the rules by simplifying and clarifying some requirements, updated antiquated language and outdated citations and references, and made technical and grammatical changes.

This is thus the second 5YRR for these rules.

Proposed Action

The Department plans to amend via an expedited rulemaking some of the rules in the article covered by this 5YRR to address the matters identified with understandability, effectiveness, and consistency and submit a Notice of Final Expedited Rulemaking to the Council by December 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 indicates that Arizona Revised Statutes (A.R.S.) Title 36, Chapter 17 contains the statutes for licensing speech language pathologist assistants (SLPAs) and A.R.S. § 36-1902(B)(5) specifically authorizes the Department to adopt rules for licensing and regulating SLPAs. The Department states that it adopted rules for licensing SLPAs in 9 A.C.C. 16 Article 5. The rules provide definitions, requirements, disciplinary actions, and methods for a change affecting a licensure.

The Department says as of March 2024, it has issued 3,373 SLPA licenses. Currently, there are 1,711 licensed SLPAs active. In 2023, the Department issued 269 initial licenses and 568 renewal licenses. Additionally, the Department conducted three complaint investigations for SLPAs, and 12 applications were withdrawn or denied. Stakeholders include the Department, SLPAs and those wanting to be licensed as SLPAs.

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 states that the purpose of these rules is to establish clear requirements and processes for licensure, renewal, continuing education, disciplinary actions, and notifications for SLPAs. They indicate that these rules are important to public health because they ensure that SLPAs are properly trained, qualified, and regulated, thereby promoting high standards of care and safeguarding the health and well-being of individuals receiving speech and language therapy services. Thus, the Department believes that the probable benefits of the rules outweigh the probable cost of the rules. The Department also indicates that since the requirements are consistent with national standards, the requirements are also the least burdensome method to achieve this purpose.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department states no written criticisms of the rules have been received over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are generally clear, concise and understandable, however the understandability of the rules below could be further improved by:

R9-16-501 amending a grammatical error in subsection (6) by changing "for m" to "form"

R9-16-503 rewording the language in subsection (A)(2) to flow better and use less of the same language. The Department is proposing the following changes:

2. If a ~~license for a~~ licensee has had a license ~~been~~ revoked or suspended by any state within the previous ~~that~~ two years, documentation that includes:

6. Has the agency analyzed the rules' consistency with other rules and statutes?

R9-16-502 Subsection (C) mentions a "regular license" and is inconsistent with the language used to reference a license. A "regular license" is not mentioned or defined elsewhere in the Chapter or Article. The rule could be improved by amending this subject to specify that it is an initial license.

R9-16-505 The rule is consistent but could be improved by making this Section more consistent with the other rules in Chapter 16 by amending the title from "Enforcement" to "Denial, Suspension, Revocation, Enforcement." Also, the "shall" in subsection (B) should be amended to a "may" for better clarification. In addition, the rule would be more consistent with Chapter 16 and clearer if a new subsection was created to clarify that the Department may deny an application or suspend or revoke a license if a licensee does not correct the deficiencies identified during an investigation according to the plan of correction or an applicant or a licensee provides false or misleading information to the Department.

R9-16-507 The rule is consistent but could be improved by amending it to clarify that a change application and a duplicate application are two different electronic applications submitted in a Department-provided format and removing language related to paper applications.

R9-16-508 The rule is consistent but could be improved by clarifying that the fee for a duplicate license is also the same applicable fee for a change affecting a license, which a duplicate license is generated for.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department states the rules are generally effective in achieving its objectives, with the following exceptions:

R9-16-501 The rule is effective in achieving its objective but could be improved by simplifying the titles that approve accreditation.

R9-16-501 The definition of the term "general education" is not effective in achieving its objective because it does not include all subject matters that can be considered "general education."

R9-16-502 The rule is effective in achieving its objective but could be improved by expanding and clarifying the different pathways of professional certification credentials and education history that an applicant can submit to the Department in their application for licensure.

8. Has the agency analyzed the current enforcement status of the rules?

The Department states 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 states there are no federal laws that correspond to these rules.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

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.

11. Conclusion

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) covers seven (7) rules and one (1) table in Title 9, Chapter 16, Article 5 related to Licensing Speech-Language Pathologist Assistants. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301.

The Department plans to amend via an expedited rulemaking some of the rules in the article covered by this 5YRR to address the matters identified with understandability, effectiveness, and consistency and submit a Notice of Final Expedited Rulemaking to the Council by December 2024.

Council staff recommend approval of this 5YRR.

ARIZONA DEPARTMENT OF HEALTH SERVICES

April 1, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, 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. 16, Article 5, Five-Year-Review Report for Occupational Licensing – Licensing Speech-Language Pathologist Assistants

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 16, Article 5, Licensing Speech-Language Pathologist Assistants, which is due on April 30, 2024.

The Department reviewed the rules in 9 A.A.C. 16, Article 5, 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: 2024.04.01 14:14:48 -07'00'

Stacie Gravito
Director's Designee

SG:lf

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 16. Department of Health Services

Occupational Licensing

Article 5. Licensing Speech-Language Pathologist Assistants

April 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-104(3), 36-132(A)(18), and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-1902(B)(5) and 36-1940.04

2. The objective of each rule:

Rule	Objective
R9-16-501	To define the terms used in Article 5 so requirements are clear and terms are interpreted consistently.
R9-16-502	To specify the requirements for submitting an initial application packet for licensure as a SLPA.
R9-16-503	To specify the requirements for submitting a renewal application packet for licensure as a SLPA.
R9-16-504	To specify continuing education requirements.
R9-16-505	To specify the types of criteria to consider when determining a disciplinary action, the Department may take.
R9-16-506	To specify the process for Department approval of an initial application, a renewal application, and continuing education.
Table 5.1	To specify time-frame duration required for the Department's approval of an initial application, renewal application, and continuing education.
R9-16-507	To provide a licensee with a method for notifying the Department of a change affecting licensure and requesting a duplicate license.

3. Are the rules effective in achieving their objectives? **Yes __** **No _X_**

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
R9-16-501	The rule is effective in achieving its objective but could be improved by simplifying the titles that approve accreditation.
R9-16-501	The definition of the term "general education" is not effective in achieving its objective because it does not include all subject matters that can be considered "general education."

R9-16-502	The rule is effective in achieving its objective but could be improved by expanding and clarifying the different pathways of professional certification credentials and education history that an applicant can submit to the Department in their application for licensure.

4. Are the rules consistent with other rules and statutes? **Yes __ No _X_**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-16-502	Subsection (C) mentions a "regular license" and is inconsistent with the language used to reference a license. A "regular license" is not mentioned or defined elsewhere in the Chapter or Article. The rule could be improved by amending this subject to specify that it is an initial license.
R9-16-505	The rule is consistent but could be improved by making this Section more consistent with the other rules in Chapter 16 by amending the title from "Enforcement" to "Denial, Suspension, Revocation, Enforcement." Also, the "shall" in subsection (B) should be amended to a "may" for better clarification. In addition, the rule would be more consistent with Chapter 16 and clearer if a new subsection was created to clarify that the Department may deny an application or suspend or revoke a license if a licensee does not correct the deficiencies identified during an investigation according to the plan of correction or an applicant or a licensee provides false or misleading information to the Department.
R9-16-507	The rule is consistent but could be improved by amending it to clarify that a change application and a duplicate application are two different electronic applications submitted in a Department-provided format and removing language related to paper applications.
R9-16-508	The rule is consistent but could be improved by clarifying that the fee for a duplicate license is also the same applicable fee for a change affecting a license, which a duplicate license is generated for.

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
R9-16-501	The rule is clear, concise, and understandable, however, the understandability could be improved by amending a grammatical error in subsection (6) by changing "for m" to "form."

R9-16-503	The rule is clear, concise, and understandable, however, the understandability could be improved by rewording the language in subsection (A)(2) to flow better and use less of the same language. The Department is proposing the following changes: 2. If a ~~license for a~~ licensee has had a license ~~been~~ revoked or suspended by any state within the previous ~~that~~ two years, documentation that includes:

7. Has the agency received written criticisms of the rules within the last five years? Yes ___ No _X_

If yes, please fill out the table below:

Rule	Explanation

8. Economic, small business, and consumer impact comparison:

Arizona Revised Statutes (A.R.S.) Title 36, Chapter 17 contains the statutes for licensing speech-language pathologist assistants (SLPAs) and A.R.S. § 36-1902(B)(5) specifically authorizes the Department to adopt rules for licensing and regulating SLPAs. The Department adopted rules for licensing SLPAs in 9 A.A.C. 16, Article 5. The rules provide definitions, requirements for initial and renewal licensing applications, approval time-frames, continuing education requirements, disciplinary actions, and methods for a change affecting licensure.

As of March 2024, the Department has issued 3,373 SLPA licenses, currently, there are 1,711 licensed SLPAs active. In 2023, the Department issued 269 initial licenses and 568 renewal licenses. Additionally, the Department conducted three complaint investigations for SLPAs, and 12 applications were withdrawn or denied.

The rules were last revised by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020. The Department, in its 2019 Licensing Speech-Language Pathologist Assistants five-year-review Report (Report), indicated that the rules' effectiveness could be improved to increase understandability by simplifying and clarifying some requirements, updating antiquated language and outdated citations and references, and making technical and grammatical changes. The Report also indicated that simplifying and streamlining the application and continuing education Sections could improve the rules. In this expedited rulemaking, the Department amended seven Sections and one Table, repealed one Table, and created one new Section. R9-16-501 was amended to update language in definitions, and remove obsolete terms. R9-16-502 was amended to simplify language, including changing the title from "Application for an Initial License" to "Initial Application," and making the rules more clear, concise, and understandable. In addition, R9-16-502 was further amended to clarify that an applicant that may be eligible for licensure under A.R.S. § 36-1922. R9-16-503 was amended to update language to have the attestation include both an applicant authorizing the Department to verify all information provided in the applicant's application packet and verification of completed continuing education to streamline the continuing education requirements in R9-15-504. R9-15-504 was amended to update a reference made in subsection (C)(9) to "Arizona Medical Association," since "Arizona Society of Otolaryngology Head and Neck Surgery" is no longer used. Additional amendments in R9-15-504 were made to remove duplicative

language and simplify requirements. R9-16-505 was amended to add an 'exception for an extension' that an applicant and the Department may agree to and changed "within 30 calendar days" to "within the specified calendar days" in subsection (C)(4). Other changes in R9-16-505 were made to increase the understandability of the rules by simplifying and clarifying some requirements, updating antiquated language and outdated citations and references, and making technical and grammatical changes. Table 5.1 was repealed and then made new under R9-16-506, with the same information except simplified by not including a row for continuing education requirements. R9-16-506 was rewritten and restructured to include time-frames and address items consistent with other licensing rules. R9-16-507 was amended to update the language to be more clear. Lastly, R9-16-508 was created to specify fees.

The Department expects that the changes made in Article 5, the rulemaking do not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated. In addition, the rulemaking implemented, without material change, a course of action proposed in a five-year-review report. Furthermore, the Department expects that clarifying initial application, renewal application, and continuing education requirements do not increase applicants and licensees' costs; and rather, increases benefits for having updated rules that are more effective, clear, and understandable. The Department believes that the benefits of having the rules outweigh the costs associated with the rules.

9. Has the agency received any business competitiveness analyses of the rules? **Yes ___ No _X_**

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the 2019 five-year-review-report, the Department stated a plan to revise the rules to address identified issues. Through expedited rulemaking found in 26 A.A.R 852, the Department completed the 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:

The purpose of these rules is to establish clear requirements and processes for licensure, renewal, continuing education, disciplinary actions, and notifications for SLPAs. These rules are important to public health because they ensure that SLPAs are properly trained, qualified, and regulated, thereby promoting high standards of care and safeguarding the health and well-being of individuals receiving speech and language therapy services. Thus, the probable benefits of the rules outweigh the probable costs of the rules. Since the requirements are consistent with national standards, the requirements are also the least burdensome method to achieve this purpose.

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. 16, Article 5.

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 issuance of an alternative type of permit, license, or authorization is specifically authorized by A.R.S. § 36-1902(A)(4). The Department is authorized to license persons who apply for a license and possess all other qualifications required for licensure as a speech-language pathologist assistant.

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. 16, Article 5 to address matters identified in this five-year-review report in an expedited rulemaking. The Department plans to submit a Notice of Final Expedited Rulemaking to the Council by December 2024. The Department believes this would be sufficient time to gather stakeholder input during the rulemaking process.

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING

ARTICLE 5. LICENSING SPEECH-LANGUAGE PATHOLOGIST ASSISTANTS

R9-16-501. Definitions

In addition to the definitions in A.R.S. § 36-1901, the following definitions apply in this Article unless otherwise specified:

1. "Accredited" means approved by the:
   a. New England Commission of Higher Education,
   b. Middle States Commission on Higher Education,
   c. Higher Learning Commission,
   d. Northwest Commission on Colleges and Universities,
   e. Southern Association of Colleges and Schools Commission on Colleges, or
   f. WASC Senior College and University Commission.
2. "Applicant" means an individual who submits a license application and required documentation for approval to practice as a speech-language pathologist assistant.
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, but 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. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a licensee's professional competence in disciplines that directly relate to the licensee's scope of practice.
5. "Course" means a workshop, seminar, lecture, conference, or class.
6. "Documentation" means information in written, photographic, electronic, or other permanent for m.
7. "General education" means instruction that includes:
   a. Oral communication,
   b. Written communication,
   c. Mathematics,
   d. Computer instruction,
   e. Social sciences, and
   f. Natural sciences.
8. "Observation" means to witness:
   a. The provision of speech-language pathology services to a client, or
   b. A demonstration of how to provide speech-language pathology services to a client.
9. "Semester credit hour" means one earned academic unit of study completed, at an accredited college or university, by:
   a. Attending a 50 to 60 minute class session each calendar week for at least 16 weeks, or
   b. Completing practical work for a course as determined by the accredited college or university.
10. "Speech-language pathologist" means an individual who is licensed under A.R.S. § 36-1940.01.
11. "Speech-language pathology technical course work" means a curriculum that provides knowledge to develop core skills and assume job responsibilities, including:
    a. Language acquisition,
    b. Speech development,
    c. Communication disorders,
    d. Articulation and phonology, and
    e. Intervention techniques for speech and language disorders.
12. "Supervision" means instruction and monitoring provided by a licensed speech-language pathologist as required in A.R.S. § 36-1940.04(E) and (F) to an individual training to become a speech-language pathologist assistant.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Amended by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-502. Initial Application

A. An applicant for licensure shall submit to the Department:

1. An application in a Department-provided format that contains:
   a. The applicant's name, home address, telephone number, and e-mail address;
   b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
   c. If applicable, the name of the applicant's employer and the employer's business address and telephone number;
   d. Whether the applicant has ever been convicted of a felony or of a misdemeanor in this state or another state;

e. If the applicant has been convicted of a felony or a misdemeanor:
   i. The date of the conviction,
   ii. The state or jurisdiction of the conviction,
   iii. An explanation of the crime of which the applicant was convicted, and
   iv. The disposition of the case;
f. Whether the applicant has had a license revoked or suspended by any state;
g. Whether the applicant is currently ineligible for licensure in any state because of a prior license revocation or suspension;
h. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-506;
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 licensed as a speech-language pathologist assistant;
3. If a license for an applicant has been revoked or suspended by any state, 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 licensure in any state because of a prior license revocation or suspension, documentation that includes:
   a. The date of the ineligibility for licensure,
   b. The state or jurisdiction of the ineligibility for licensure, and
   c. An explanation of the ineligibility for licensure;
5. Documentation of the applicant's citizenship or alien status that complies with A.R.S. § 41-1080.
6. A transcript or equivalent documentation issued to the applicant from an accredited college or university, showing completion of at least 60 semester credit hours of general education and speech-language pathology technical course work specified in A.R.S. § 36.1940.04(A) that requires:
   a. No less than 20 semester credit hours of general education, and
   b. No less than 20 semester credit hours of speech-language pathology technical course work;
7. Documentation, signed by a licensed speech-language pathologist as required in A.R.S. §36-1940.04 who provided supervision to the applicant, confirming the applicant's completion of at least 100 hours of clinical interaction that did not include observation; and
8. The application and licensing fees specified in R9-16-508.

B. In addition to complying with subsection (A)(1) through (5), an applicant that may be eligible for licensure under A.R.S. § 36-1922 shall submit documentation to the Department that includes:
1. The name of each state that issued the applicant a current speech-language pathologist assistant, including:
   a. The license number of each current speech-language pathologist assistant license, and
   b. The date each current speech-language pathologist assistant license was issued;
2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
3. For each state named in subsection (B)(1), a statement, signed and dated by the applicant, attesting that the applicant:
   a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which licensure is being requested;
   b. Has met minimum education requirements according to A.R.S. § 36-1940.04;
   c. Has not voluntarily surrendered a license or certification 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. A regular license is valid for two years from the date of issue.

D. The Department shall review the application and required documentation for an initial license to practice as a speech-language pathologist assistant according to R9-16-506 and Table 5.1.

E. If the Department does not issue an initial license to an applicant, the Department shall refund the license fee to the applicant.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-502 repealed; new Section R9-16-502 renumbered from R9-16-503 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Amended by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING

R9-16-503. License Renewal

A. Before the expiration date of a speech-language pathologist assistant license, a licensee shall submit to the Department:

1. An application in a Department-provided format for renewal of a speech-language pathologist assistant license that contains:
   a. The licensee's name, home address, telephone number, and e-mail address;
   b.
   The licensee's current employment, if applicable, including:
      i. The employer's name,
      ii. The licensee's position,
      iii. Dates of employment,
      iv. The address of the employer,
      v. The supervisor's name,
      vi. The supervisor's e-mail address, and
      vii. The supervisor's telephone number;
   c. If applicable, the name of the licensee's supervising speech-language pathologist;
   d. The licensee's license number and date of expiration;
   e. Since the previous license application, whether the licensee has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
   f. If the licensee has been convicted of a felony or a misdemeanor:
      i. The date of the conviction,
      ii. The state or jurisdiction of the conviction,
      iii. An explanation of the crime of which the licensee was convicted, and
      iv. The disposition of the case;
   g. Whether the licensee has had a license revoked or suspended by any state within the previous two years;
   h. Whether the licensee is currently ineligible for licensure in any state because of a prior license revocation or suspension;
   i. Whether the licensee agrees to allow the Department to submit supplemental requests for information under R9-16-506;
   j. An attestation that the licensee has completed continuing education required under A.R.S. 36-1904 and this Article and documentation of completion is available upon request;
   k. An attestation that the information required as part of the renewal application is true and accurate; and
   l. The licensee's signature and date of signature;
2. If a license for a licensee has been revoked or suspended by any state within the previous that 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;
3. If the licensee is currently ineligible for licensure in any state because of a prior license revocation or suspension, documentation that includes:
   a. The date of the ineligibility for licensure,
   b. The state or jurisdiction of the ineligibility for licensure, and
   c. An explanation of the ineligibility for licensure;
4. A renewal fee specified in R9-16-508.

B. According to A.R.S. § 36-1904, the Department shall allow a speech-language pathologist assistant to renew a license within 30 calendar days after the expiration date of the license by submitting to the Department:

1. The renewal application, including documentation required in subsection (A), and
2. Fees specified in R9-16-508.

C. An individual who does not submit a renewal application, documentation; and fees required in subsection (A) or (B), shall reapply for an initial license according to R9-16-502.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-503 renumbered to R9-16-502; new Section R9-16-503 renumbered from R9-16-504 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Amended by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-504. Continuing Education

A. Twenty-four months prior to submitting a renewal application, a licensee shall complete continuing education.

B. Continuing education shall:

1. Directly relate to the practice of speech-language pathology;
2. Have educational objectives that exceed an introductory level of knowledge of speech-language pathology; and

3. Consist of courses that include advances within the last five years in:
   a. Practice of speech-language pathology,
   b. Auditory rehabilitation,
   c. Ethics, or
   d. Federal and state statutes or rules.

C. A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (B):
1. Hearing Healthcare Providers of Arizona,
2. Arizona Speech-Language-Hearing Association,
3. American Speech-Language-Hearing Association,
4. International Hearing Society,
5. International Institute for Hearing Instrument Studies,
6. American Auditory Society,
7. American Academy of Audiology,
8. Academy of Doctors of Audiology,
9. Arizona Medical Association,
10. American Academy of Otolaryngology-Head and Neck Surgery, or
11. An organization determined by the Department to be consistent with an organization in subsection (C)(1) through (10).

D. A speech-language pathologist assistant shall comply with the requirements in A.R.S. § 36-1904.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-504 renumbered to R9-16-503; new Section R9-16-504 renumbered from R9-16-506 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Amended by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-505. Enforcement

A. The Department may, as applicable:
1. Deny, revoke, or suspend an speech-language pathologist assistant license under A.R.S. § 36-1934;
2. Request an injunction under A.R.S. § 36-1937; or
3. Assess a civil money penalty under A.R.S. § 36-1939.

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 a client,
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

Table 1. Renumbered

Historical Note

New Table 1 made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Table 1 renumbered to Table 5.1 by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-506. Time-frames

A. For each type of license issued by the Department under this Article, Table 5.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).

1. An applicant or licensee 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 each type of license issued by the Department under this Article, Table 5.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).

1. The administrative completeness review time-frame begins on the date the Department receives an application and required documentation 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 an application or required documentation is not complete, the notice of deficiencies shall list 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 documents or information.
   c. If the applicant does not submit to the Department all 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 license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. For each type of license issued by the Department under this Article, Table 5.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date of the notice of administrative completeness.

1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department issued or denied the license.
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 documents and information 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 license.

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

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-506 renumbered to R9-16-504; new Section R9-16-506 renumbered from R9-16-507 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

Table 5.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Time to Respond to Notice of Deficiency	Substantive Review Time-Frame	Time to Respond to Comprehensive Written Request
Initial License (R9-16-502)	A.R.S. §§ 36-1904 and 36-1940.04	60	30	30	30	30
Renewal License (R9-16-503)	A.R.S. § 36-1904	60	30	30	30	30

Historical Note

Table 5.1 renumbered from Table 1 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Table 5.1 repealed; new Table 5.1 made and recodified under Section R9-16-506 by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-507. Changes Affecting a License or a Licensee; Request for a Duplicate License

A. A licensee shall submit a notice to the Department in writing within 30 calendar days after the effective date of a change in:
1. The licensee's home address or e-mail address, including the new home address or e-mail address;
2. The licensee's name, including one of the following with the licensee's new name:
   a. Marriage certificate,
   b. Divorce decree, or
   c. Other legal document establishing the licensee's new name; or
3. The place or places, including address or addresses, where the licensee engages in the practice of speech-language pathology.

B. A licensee may obtain a duplicate license by submitting to the Department a written request for a duplicate license in a Department-provided format that contains:
1. The licensee's name and address,
2. The licensee's license number and expiration date,
3. The licensee's signature and date of signature, and
4. A duplicate license fee specified in R9-16-508.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-507 renumbered to R9-16-506; new Section R9-16-507 renumbered from R9-16-508 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Amended by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-508. Fees

A. An applicant shall submit to the Department the following fees:
1. An initial nonrefundable application fee, $100; and
2. An initial license fee, $200.

B. An applicant shall submit to the Department a $200 license fee for renewal.

C. If an applicant submits a renewal license application specified in subsection (B) within 30 calendar days after the license expiration date, the applicant shall submit with the renewal license application a $25 late fee.

D. An applicant for initial licensure is not required to submit the applicable fee in subsection (A), if the applicant submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

E. The fee for a duplicate license is $25.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). R9-16-508 renumbered to R9-16-507 by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

New Section made by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

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 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 to promote 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 educating 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 coordinating 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 enforcing 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 and behavioral-supported 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 a licensing period shall not 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.

36-1902. Powers and duties of the director; advisory committee; members

A. The director shall:

1. Supervise and administer qualifying examinations to test the knowledge and proficiency of applicants for a hearing aid dispenser's license.

2. Designate the time and place for holding examinations for a hearing aid dispenser's license.

3. License persons who apply for and pass the examination for a license and who possess all other qualifications required for the practice of fitting and dispensing hearing aids, the practice of audiology and the practice of speech-language pathology.

4. License persons who apply for a license and who possess all other qualifications required for licensure as a speech-language pathology assistant.

5. Authorize all disbursements necessary to carry out this chapter.

6. Ensure the public's health and safety by adopting and enforcing qualification standards for licensees and applicants for licensure under this chapter.

7. Appoint an advisory committee to assist in examining applicants for a hearing aid dispenser's license and to collaborate with and assist the director in disciplinary matters, if requested, or any other duties prescribed in this chapter.

B. The director may:

1. Purchase and maintain, or rent, equipment and facilities necessary to carry out the examination of applicants for a license.

2. Issue and renew a license.

3. Deny, suspend, revoke or refuse renewal of a license or file a letter of concern, issue a decree of censure, prescribe probation, impose a civil penalty or restrict or limit the practice of a licensee pursuant to this chapter.

4. Make and publish rules that are not inconsistent with the laws of this state and that are necessary to carry out this chapter.

5. Require the periodic inspection of testing equipment and facilities of persons who are engaged in the practice of fitting and dispensing hearing aids, the practice of audiology and the practice of speech-language pathology.

6. Require a licensee to produce customer records of patients involved in complaints on file with the department.

C. The advisory committee appointed pursuant to subsection A, paragraph 7 of this section consists of the following members:

1. The director or the director's designee.

2. Two physicians who are licensed under title 32, chapter 13 or 17, one of whom is a specialist in otolaryngology.

3. Two licensed audiologists, one of whom dispenses hearing aids.

4. Two licensed speech-language pathologists, one of whom provides services in a school setting.

5. Two public members, one of whom is deaf or hard of hearing.

6. One member of the commission for the deaf and the hard of hearing who is not licensed pursuant to this chapter.

7. Two licensed hearing aid dispensers who are not licensed to practice audiology.

8. Two licensed speech-language pathology assistants.

D. Committee members who are licensed under this chapter shall have at least five years' experience immediately preceding the appointment in their field of practice in this state. Committee members shall serve a two-year term.

E. The director shall verify that each audiology licensee has passed a nationally recognized examination approved by the director.

F. The director shall verify that each speech-language pathology licensee has passed a nationally recognized examination approved by the director.

G. The director may recognize a nationally recognized speech-language hearing association or audiology association examination, or both, as an approved examination.

36-1940.04. Speech-language pathology assistants; licensure requirements; scope of practice; supervision

A. A person who wishes to be licensed as a speech-language pathology assistant shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.

2. Submit written evidence satisfactory to the director that the applicant has completed:

(a) An approved training program for speech-language pathology assistants or the equivalent from a nationally or regionally accredited college or university that consisted of a minimum of sixty semester credit hours of coursework with the following curriculum content:

(i) Twenty to forty semester credit hours of general education or a bachelor's degree.

(ii) Twenty to forty semester credit hours of speech-language pathology technical coursework.

(b) A minimum of one hundred hours of clinical interaction that does not include observation, under the supervision of a licensed master's level speech-language pathologist.

3. Not have had a license revoked or suspended by a state within the preceding two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.

B. The director may waive the requirements of subsection A, paragraph 2 of this section if the applicant holds certification as a speech-language pathology assistant from a nationally recognized speech-language hearing association approved by the department in the field for which the applicant is applying for licensure.

C. A speech-language pathology assistant may do the following under the supervision of a licensed speech-language pathologist:

1. Conduct speech and language screenings without interpretation, using screening protocols specified by the supervising speech-language pathologist.

2. Provide direct treatment assistance, including feeding for nutritional purposes to patients, clients or students except for patients, clients or students with dysphagia, identified by the supervising speech-language pathologist by following written treatment plans, individualized education programs, individual support plans or protocols developed by the supervising speech-language pathologist.

3. Document patient, client or student progress toward meeting established objectives as stated in the treatment plan, individual support plan or individualized education program without interpreting the findings and report this information to the supervising speech-language pathologist.

4. Assist the speech-language pathologist in collecting and tallying data for assessment purposes, without interpreting the data.

5. Act as a second-language interpreter during assessments.

6. Assist with informal documentation during an intervention session by collecting and tallying data as directed by the speech-language pathologist, preparing materials and assisting with other clerical duties as specified by the supervising speech-language pathologist.

7. Schedule activities and prepare charts, records, graphs or other displays of data.

8. Perform checks and maintenance of equipment.

9. Participate with the speech-language pathologist in research projects, in-service training and public relations programs.

10. Sign and initial treatment notes for review and cosignature by the supervising speech-language pathologist.

D. A speech-language pathology assistant shall not:

1. Conduct swallowing screening, assessment and intervention protocols, including modified barium swallow studies.

2. Administer standardized or nonstandardized diagnostic tests or formal or informal evaluations or interpret test results.

3. Participate in parent conferences, case conferences or any interdisciplinary team meeting without the presence of the supervising speech-language pathologist, except for individualized education program or individual support plan meetings if the licensed speech-language pathologist has been excused by the individualized education program team or the individual support plan team.

4. Write, develop or modify a patient's, client's or student's treatment plan, individual support plan or individualized education program in any way.

5. Provide intervention for patients, clients or students without following the treatment plan, individual support plan or individualized education program prepared by the supervising speech-language pathologist.

6. Sign any formal documents, including treatment plans, individual support plans, individualized education programs, reimbursement forms or reports.

7. Select patients, clients or students for services.

8. Discharge patients, clients or students from services.

9. Unless required by law, disclose clinical or confidential information orally or in writing to anyone not designated by the speech-language pathologist.

10. Make a referral for any additional service.

11. Communicate with the patient, client or student or with family or others regarding any aspect of the patient, client or student status without the specific consent of the supervising speech-language pathologist.

12. Claim to be a speech-language pathologist.

13. Write a formal screening, diagnostic, progress or discharge note.

14. Perform any task without the express knowledge and approval of the supervising speech-language pathologist.

E. All services provided by a speech-language pathology assistant shall be performed under the direction and supervision of a speech-language pathologist who is licensed pursuant to this chapter.

F. A licensed speech-language pathologist who supervises or directs the services provided by a speech-language pathology assistant shall:

1. Have at least two years of full-time professional experience as a licensed speech-language pathologist.

2. Provide direction and supervision to not more than two full-time or three part-time speech-language pathology assistants at one time.

3. Ensure that the amount and type of supervision and direction provided to a speech-language pathology assistant is consistent with the individual's skills and experience, the needs of the patient, client or student served, the setting in which services are provided and the tasks assigned and provide:

(a) At least twenty percent direct supervision and ten percent indirect supervision of all the time that the speech-language pathology assistant is providing services during the individual's first ninety days of employment. After the first ninety days of the speech-language pathology assistant's employment, the supervising speech-language pathologist may adjust the amount of supervision if the supervising speech-language pathologist determines that the speech-language pathology assistant meets appropriate competencies and skill levels regarding various disorders of communication and related disorders. Minimum ongoing supervision after the first ninety days shall include documentation of direct and indirect supervision provided by the supervising speech-language pathologist and shall include at least one hour of direct supervision weekly and as much indirect supervision as needed to maintain the delivery of quality services. Minimum ongoing supervision after the first ninety days shall include documentation by the supervising speech-language pathologist of the supervisor's direct contact with at least ten percent of the speech-language pathology assistant's patients, clients or students served each quarter. The supervising speech-language pathologist shall ensure that the ten percent direct client contact varies each quarter. The supervising speech-language pathologist shall require direct supervision of a speech-language pathology assistant when services are provided to a medically fragile individual.

(b) At least ten percent direct supervision and ten percent indirect supervision of all the time that the speech-language pathology assistant is providing services during the individual's first thirty days of employment if the speech-language pathology assistant completed supervision pursuant to subdivision (a) of this paragraph at a previous employer and provides documentation of that supervision to the supervising speech-language pathologist. After the first thirty days of the speech-language pathology assistant's employment, the supervising speech-language pathologist may adjust the amount of supervision if the supervising speech-language pathologist determines that the speech-language pathology assistant meets appropriate competencies and skill levels regarding various disorders of communication and related disorders. Minimum ongoing supervision after the first thirty days of employment shall include documentation of direct and indirect supervision provided by the supervising speech-language pathologist and shall include at least one hour of direct supervision weekly and as much indirect supervision as needed to maintain the delivery of quality services. Minimum ongoing supervision after the first ninety days shall include documentation by the supervising speech-language pathologist of the supervisor's direct contact with at least ten percent of the speech-language pathology assistant's patients, clients or students served each quarter. The supervising speech-language pathologist shall ensure that the ten percent direct client contact varies each quarter. The supervising speech-language pathologist shall require direct supervision of a speech-language pathology assistant when services are provided to a medically fragile individual.

4. Inform a patient, client or student when the services of a speech-language pathology assistant are being provided.

5. Document all periods of direct supervision and indirect supervision provided to a speech-language pathology assistant.

G. If more than one speech-language pathologist provides supervision to a speech-language pathology assistant, one of the speech-language pathologists shall be designated as the primary

supervisor who is responsible for coordinating any supervision provided by other speech-language pathologists.

G-4.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: **July 16, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10, Article 5

Summary

This Five Year Review Report (5YRR) from the Arizona Department of Health Services (Department) covers twenty-five (25) rules in Title 9, Chapter 10, Article 5 related to Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF-IIDs). The purpose of the rules is to establish requirements related to the licensing of intermediate care facilities for individuals with intellectual disabilities to protect public health and safety. These facilities are certified by the federal Centers for Medicare and Medicaid Services (CMS). A.R.S. § 36-591(E), requires ICF-IIDs to be licensed under A.R.S. Title 36, Chapter 4, and the Department adopts rules in Article 5, for licensing that is consistent with federal CMS requirements.

This is the first 5YRR since the rules were implemented via exempt rulemaking April 25, 2019, therefore there was no prior proposed course of action.

Proposed Action

The Department anticipates submitting a Notice of Final Rulemaking to the Council to address the issues identified in this report by October 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:**

Intermediate care facilities for individuals with intellectual disabilities are a class of health care institutions that primarily provide health and rehabilitative services to individuals with intellectual disabilities. The facilities are certified by the federal Centers for Medicare and Medicaid Services (CMS), but, until Laws 2019, Ch. 133 was enacted, the facilities were not required to be licensed by the Department. A.R.S. Title 36, Chapter 4, and the Department adopted rules in 9 A.A.C. 10, Article 5, for the licensing, through exempt rulemaking, consistent with federal CMS requirements.

Overall, the Department believes that the rule changes may have provided a significant benefit to intermediate care facilities and residents and their families. 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.

The Department identifies stakeholders as the Department, the Arizona Department of Economic Security, private intermediate care facilities for individuals with intellectual disabilities, residents 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?**

According to the Department, the objective of the rulemaking was to adopt requirements for licensing intermediate care facilities for individuals with intellectual disabilities to comply with Laws 2019, Ch. 133. Thus, the Arizona State Legislature determined that the probable benefits of the rules requiring these facilities to be licensed outweighed the probable costs of rulemaking. The Department agrees. The rules are consistent with CMS requirements with which these facilities are already required to comply, as a condition of CMS certification. Requirements specific to licensure are consistent with requirements for licensing other health care institutions. As such, the Department believes that the rules impose the least burden and costs on the regulated community necessary to achieve the underlying objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department has not received written criticism of the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are generally clear, concise, and understandable with the following exceptions:

- Several rules contain minor punctuation or grammatical errors
- R9-10-501: the rule could be improved by adding a definition for "ICF/IID," as it is an acronym used throughout the Article.
- R9-10-512: the rule can be improved by removing the cross-reference and listening out the individuals to be contacted on behalf of the resident.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are not consistent with other rules and statutes with emphasis provided of the following rules:

- R9-10-503: the definition in subsection (C)(2)(j) regarding "telemedicine" should be amended to adhere to the statutory change that occurred based on Laws 2021, Ch. 320 and revised the definition of "telemedicine"
    - The rule would be more consistent with 42 CFR 483.12(c) if the rule was amended to require reporting to the Department immediately but no later than two hours of an abuse or serious bodily injury; or no later than 24 hours if the violation involves neglect, exploitation, mistreatment, or misappropriation of resident property
- R9-10-510: the rule could be improved in subsection (C)(3) by adding a cross-reference to first training according to R9-10-503(C)(1)(h).
- R9-10-520: The rule is not consistent with A.R.S. § 32-1909, subsection (E)
- R9-10-525: The rule is not consistent with A.R.S. § 36-421,

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are generally effective in achieving their objectives with the following exceptions:

- R9-10-522: The rule could be improved by updating the meal and snack guidelines from 2015 to reference the most recent dietary guidelines
- R9-10-503: The rule could be improved in subsection (I)(1), if the rule required an immediate notification to a resident's representative, family member, or other individual designated by the resident after the resident's death, if there is a significant change in

medical condition, or if the resident has an illness or injury that requires immediate intervention

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states 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 Department indicates that additional statutory licensing requirements are found in A.R.S. § 36-425.05 and A.R.S. § 36-2939(B)(1).

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 that a general permit is not applicable as the rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, and therefore qualifies for an exception under A.R.S. § 41-1037(A)(2).

11. **Conclusion**

This Five Year Review Report from the Arizona Department of Health Services covers twenty-five rules in Title 9, Chapter 10, Article 5 related to Intermediate Care Facilities for Individuals with Intellectual Disabilities. As indicated above, the rules are generally effective in achieving its objectives, enforced as written, and clear, concise, and understandable.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

April 15, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, 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 5, Five-Year-Review Report for Health Care Institutions: Licensing – Intermediate Care Facilities for Individuals with Intellectual Disabilities

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 10, Article 5, Intermediate Care Facilities for Individuals with Intellectual Disabilities, which is due on April 30, 2024.

The Department reviewed the rules in 9 A.A.C. 10, Article 5, 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: 2024.04.15 12:52:43 -07'00'

Stacie Gravito
Director's Designee

SG:lf

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 5. Intermediate Care Facilities for Individuals with Intellectual Disabilities

April 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1) and (17) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-405, 36-406, 36-407, and 36-425.05

2. The objective of each rule:

The purpose of the rules is to establish requirements related to the licensing of intermediate care facilities for individuals with intellectual disabilities to protect public health and safety.

Rule	Objective
R9-10-501	To define terms used in the Article so that a reader can consistently interpret requirements.
R9-10-502	To specify license application requirements, in addition to those in A.R.S. § 36-422 and R9-10-105 that are specific to intermediate care facilities for individuals with intellectual disabilities.
R9-10-503	To establish minimum requirements and responsibilities for the governing authority and administrator of an intermediate care facility for individuals with intellectual disabilities.
R9-10-504	To establish minimum requirements for the quality management program of an intermediate care facility for individuals with intellectual disabilities.
R9-10-505	To establish minimum requirements for persons who contract with the licensee to provide services on behalf of an intermediate care facility for individuals with intellectual disabilities.
R9-10-506	To establish minimum standards for personnel of an intermediate care facility for individuals with intellectual disabilities and minimum standards for documentation of personnel member qualifications.
R9-10-507	To establish minimum requirements for admission and assessment.
R9-10-508	To establish minimum requirements for the transfer or discharge of a resident.
R9-10-509	To establish minimum requirements for the transport of a resident.
R9-10-510	To establish minimum requirements for transportation provided to a resident and for resident outings.
R9-10-511	To establish minimum standards for resident rights.
R9-10-512	To establish minimum requirements for resident medical records.
R9-10-513	To establish minimum requirements for rehabilitation services and for habilitation services provided to a resident.

R9-10-514	To establish minimum requirements for the comprehensive assessment of a resident and the development of an individual program plan for the resident.
R9-10-515	To establish minimum requirements for the use of seclusion or restraint on a resident.
R9-10-516	To establish minimum requirements for physical health services provided to a resident.
R9-10-517	To establish minimum requirements for behavioral care provided to a resident.
R9-10-518	To establish minimum requirements for clinical laboratory services provided on the premises of an intermediate care facility for individuals with intellectual disabilities.
R9-10-519	To establish minimum requirements for respiratory care services provided on the premises of an intermediate care facility for individuals with intellectual disabilities.
R9-10-520	To establish minimum requirements for medication services provided by an intermediate care facility for individuals with intellectual disabilities.
R9-10-521	To establish minimum standards for infection control.
R9-10-522	To establish minimum requirements for food services provided by an intermediate care facility for individuals with intellectual disabilities.
R9-10-523	To establish minimum emergency and safety standards for an intermediate care facility for individuals with intellectual disabilities.
R9-10-524	To establish minimum environmental standards for an intermediate care facility for individuals with intellectual disabilities.
R9-10-525	To establish minimum physical plant standards for an intermediate care facility for individuals with intellectual disabilities.

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
R9-10-522	The rule is effective but could be improved by updating the meal and snack guidelines from 2015 to reference the most recent dietary guidelines, since the guidelines are updated every few years.
R9-10-503	The rule is effective, however, the rule could be improved in subsection (I)(1), if the rule required an immediate notification to a resident's representative, family member, or other individual designated by the resident after the resident's death, if there is a significant change in the resident's medical condition, or if the resident has an illness or injury that requires immediate intervention by an emergency medical services provider or treatment by a health care provide.

4. Are the rules consistent with other rules and statutes? **Yes ___** **No _X_**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-10-503	The rule is consistent with other rules and statutes, however the definition in subsection (C)(2)(j) regarding "telemedicine" could be amended to adhere to the statutory change that occurred based on Laws 2021, Ch. 320, which amended A.R.S. § 36-3601 revising the definition and use of the term "telemedicine" to "telehealth."

R9-10-503	The rule would be more consistent with 42 CFR 483.12(c) if the rules were amended to require reporting to the Department immediately but not later than two hours if the alleged violation involves abuse or results in serious bodily injury; or not later than 24 hours if the alleged violation involves neglect, exploitation, mistreatment, or misappropriation of resident property; and does not result in serious bodily injury.
R9-10-510	The rule is consistent with other rules and statutes, however, the rule could be improved in subsection (C)(3) by adding a cross-reference to first training according to R9-10-503(C)(1)(h).
R9-10-520	The rule is not consistent with A.R.S. § 32-1909, subsection (E) could be amended to add a cross-reference to include policies and procedures are established, documented, and implemented for donated medication.
R9-10-525	The rule is not consistent with A.R.S. § 36-421, as amended by Laws 2022, Ch. 34. The rule could be improved to remove the references to approval of architectural plans and specifications and amended to now require a notarized attestation from an architect for modifications of a health care institution.

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
Multiple	Several rules contain minor punctuation or grammatical errors that do not affect the meaning of the rule or prevent the rule from being clear, concise, and understandable.
R9-10-501	The rule is clear, concise, and understandable, however, the rule could be improved by adding a definition for "ICF/IID," as it is an acronym used throughout the Article.
R9-10-512	The rule is clear, concise, and understandable, however, the rule can be improved by removing the cross-reference and listening out the individuals to be contacted on behalf of the resident.

7. Has the agency received written criticisms of the rules within the last year? **Yes ___** **No _X_**

If yes, please fill out the table below:

Rule	Explanation

8. Economic, small business, and consumer impact:

Arizona Revised Statutes (A.R.S.) §§ 36-132(A)(17) and 36-405 authorize the Arizona Department of Health Services ("Department") to license and regulate health care institutions. A.R.S. § 36-405 further authorizes

the Department to classify and subclassify health care institutions. The Department has implemented A.R.S. §§ 36-132(A)(17) and 36-405 in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Intermediate care facilities for individuals with intellectual disabilities (ICF-IIDs) are a class of health care institutions that primarily provide health and rehabilitative services to individuals with developmental disabilities. These facilities are certified by the federal Centers for Medicare and Medicaid Services (CMS), but, until Laws 2019, Ch. 133 was enacted, the facilities were not required to be licensed by the Department. A.R.S. § 36-591(E), as amended by Laws 2019, Ch. 133, now requires ICF-IIDs to be licensed under A.R.S. Title 36, Chapter 4, and the Department adopted rules in 9 A.A.C. 10, Article 5, for the licensing, through exempt rulemaking, consistent with federal CMS requirements. There are 11 licensed ICF-IIDs in Arizona as of April 1, 2020, of which one is private and the others run under contract with the Arizona Department of Economic Security. Stakeholders for these rules include the Department, the Arizona Department of Economic Security, private ICF-IIDs, residents and their families, and the general public. Annual costs/revenue changes are designated as minimal when more than $0 and $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

In an exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019, the Department adopted requirements related to the licensing of intermediate care facilities for individuals with intellectual disabilities to protect public health and safety. This rulemaking included revising three Sections in 9 A.A.C. 10, Article 1; adopting requirements specific to ICF-IIDs in a new Article 5; and moving the rules for recovery care centers that have been in Article 5, without change, into Article 21. Specific requirements for the governing authorities and administrators of ICF-IIDs; for quality management and contracted services; for admission, assessment, discharge, transfer, transport, and transportation of residents; for services to be provided to residents; for medical records; and for food service were adopted in the new Article 5. In addition, standards for infection control, environmental conditions, and physical plants were adopted. These rules were adopted quickly to respond to unsafe conditions at a private ICF-IID, and there was very little stakeholder involvement.

After allowing a few months of implementation to determine what changes needed to be made to the rules, the Department undertook a second exempt rulemaking at 26 A.A.R. 72 with an effective date of January 1, 2020, to improve the effectiveness of the rules. For the second exempt rulemaking, the Department sought input from stakeholders and changed the rules by including levels of services that an ICF-IID may request and be authorized by the Department to provide. The Department believes that most of the requirements in the rules are consistent with CMS requirements that an ICF-IID would already be following to qualify for CMS certification. Therefore, the addition of these requirements in the rules would impose no additional costs to ICF-IIDs. Requirements related to applying for a license and complying with the administrative and documentation requirements for licensure are consistent with those for all other health care institutions. The costs imposed on ICF-IIDs for obtaining and maintaining a license, which may range from minimal to substantial, were are due to the statutory requirement for licensing, rather than due to the rules themselves. The Department believes that residents and their families received a significant benefit from the Department's oversight of ICF-IIDs, the

increased effectiveness of the services to be provided, and the safety of the facilities. Similarly, the general public may have received a significant benefit from the rules.

R9-10-501 was last revised by exempt rulemaking at 28 A.A.R. 927 (May 6, 2022), with an immediate effective date of April 15, 2022. The rulemaking implemented Laws 2021, Ch. 60, to add a new class of health care institution, nursing-supported group homes, and require them to be licensed under A.R.S. Title 36, Chapter 4. Nursing-supported group homes contract with the Arizona Department of Economic Security to provide continuous nursing support to individuals with developmental disabilities in a community residential setting and, according to A.R.S. § 36-425.07, must be licensed on or before July 1, 2022, to continue operations. The definitions Sections of the rules were amended to remove obsolete terms and add cross-references to the definitions in A.R.S. §§ 36-401 and 36-551 and R9-10-101. The Department believes that those affected by the rules received a significant benefit from having terms used throughout the Article more clearly defined. The Department believes that those affected by the rules received a significant benefit from having terms used throughout the Article more clearly defined.

The rules were last revised by final expedited rulemaking at 28 A.A.R. 1113, with an immediate effective date of May 4, 2022. R9-10-507 was revised to align with the requirements related to tuberculosis screening in health care institutions in A.A.C. R9-10-113, citing guidelines of the U.S. Department of Health and Human Services, and Centers for Disease Control and Prevention (CDC). The CDC updated the recommendations for tuberculosis screening in a manner that removed the requirement for annual screening if certain conditions are met. The Department believes that the rule change has provided a significant benefit to residents and health care works by reducing the amount of tuberculosis screenings.

Overall, the Department believes that these rule changes may have provided a significant benefit to intermediate care facilities and residents and their families. Based on 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.

Not applicable, as this review of new rules is in response to a one-time rulemaking exemption.

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:

A.R.S. § 36-591(E), as amended by Laws 2019, Ch. 133, now requires intermediate care facilities to be licensed by the Department under A.R.S. Title 36, Chapter 4. The objective of this rulemaking was to adopt requirements for licensing intermediate care facilities for individuals with intellectual disabilities to comply with Laws 2019,

Ch. 133. Thus, the Arizona State Legislature determined that the probable benefits of the rules requiring these facilities to be licensed outweighed the probable costs of rulemaking. The Department agrees. The rules are consistent with CMS requirements with which these facilities are already required to comply, as a condition of CMS certification. Requirements specific to licensure are consistent with requirements for licensing other health care institutions. As such, the Department believes that the rules impose the least burden and costs on the regulated community necessary to achieve the underlying objective.

12. Are the rules more stringent than corresponding federal laws? Yes _X__ 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 law, 42 CFR 483, subpart I, contains requirements for CMS certification of intermediate care facilities for individuals with intellectual disabilities. These rules are consistent with the federal requirements. Additional licensing requirements are found in Title 36, Chapter 4. A.R.S. § 36-425.05 concerning Intermediate Care Facilities licensed by the Department of Economic Security, specifically references the licensing requirements outlined in Chapter 4 of Title 36. State licensing requirements must be met in addition to those required in the CFR. A.R.S. § 36-2939(B)(1) mandates that the department, as a program contractor, provides intermediate care facility services to members with developmental disabilities, ensuring that these facilities meet federal standards and include state-owned, state-operated, and contracted private facilities.

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 some of the rules in 9 A.A.C. 10, Article 5 to address the matters identified in this five-year review report through a rulemaking. The amended rules will not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated. The Department plans to submit a Notice of Final Expedited Rulemaking to the Council by October 2024.

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 5. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES

Section

ARTICLE 5. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES

R9-10-501. Definitions

In addition to the definitions in A.R.S. §§ 36-401 and 36-551 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Active treatment" means rehabilitative services and habilitation services provided to a resident to address the resident's developmental disability and, if applicable, medical condition.
2. "Acuity" means a resident's need for medical services, nursing services, rehabilitative services, or habilitation services based on the patient's medical condition or developmental disability.
3. "Acuity plan" means a method for establishing requirements for nursing personnel or therapists by unit based on a resident's acuity.
4. "Advocate" means an individual who:
   a. Assists a resident or the resident's representative to make the resident's wants and needs known,
   b. Recommends a course of action to address the resident's wants and needs, and
   c. Supports the resident or the resident's representative in addressing the resident's wants and needs.
5. "Assistive device" means a piece of equipment or mechanism that is designed to enable an individual to better carry out activities of daily living.
6. "Dental services" means activities, methods, and procedures included in the practice of dentistry, as described in A.R.S § 32-1202.
7. "Direct care" means medical services, nursing services, rehabilitation services, or habilitation services provided to a resident.
8. "Inappropriate behavior" means actions by a resident that may:
   a. Put the resident at risk for physical illness or injury,
   b. Significantly interfere with the resident's care,
   c. Significantly interfere with the resident's ability to participate in activities or social interactions,
   d. Put other residents or personnel members at significant risk for physical injury,
   e. Significantly intrude on another resident's privacy, or
   f. Significantly disrupt care for another resident.

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.

9. "Medical care plan" means a documented guide for providing medical services and nursing services to a resident requiring continuous nursing services that includes measurable objectives and the methods for meeting the objectives.
10. "Nursing care plan" means a documented guide for providing intermittent nursing services to a resident that includes measurable objectives and the methods for meeting the objectives.
11. "Outing" means a social or recreational activity or habilitation services that:
    a. Occur away from the premises, and
    b. May be part of a resident's individual program plan.
12. "Qualified intellectual disabilities professional" means one of the following who has at least one year of experience working directly with individuals who have developmental disabilities:
    a. A physician;
    b. A registered nurse;
    c. A physical therapist;
    d. An occupational therapist;
    e. A psychologist, as defined in A.R.S. § 32-2061;
    f. A speech-language pathologist;
    g. An audiologist, as defined in A.R.S. § 36-1901;
    f. A registered dietitian, as defined in A.R.S. § 36-416;
    g. A licensed clinical social worker under A.R.S. § 32-3293; or
    h. A nursing care institution administrator.
13. "Resident's representative" has the same meaning as "responsible person" in A.R.S. § 36-551.

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). Emergency expired. Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). 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). Section R9-10-501 renumbered to R9-10-2101; new Section R9-10-501 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4). Amended by exempt rulemaking at 28 A.A.R. 927 (May 6, 2022), with an immediate effective date of April 15, 2022 (Supp. 22-2).

R9-10-502. Supplemental Application Requirements and Documentation Submission Requirements

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 ICF/IID shall include:
1. In a Department-provided format, whether the applicant is requesting authorization:
    a. To admit residents who:
        i. Require continuous nursing services,
        ii. Require intermittent nursing services, or
        iii. Do not require nursing services; and
    b. To provide:
        i. Active treatment to individuals under 18 years of age, including the licensed capacity requested;
        ii. Seclusion;
        iii. Clinical laboratory services;
        iv. Respiratory care services, or
        v. Services to residents who have a nursing care plan or medical care plan; and
2. Documentation of the applicant's certification as an ICF/IID by the federal Centers for Medicare and Medicaid Services.

B. A licensee shall submit to the Department, with the relevant fees required in R9-10-106(C) and in a Department-provided format:
1. The information required in subsection (A)(1), as applicable, and
2. The documentation specified in subsection (A)(2).

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). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; 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). Section R9-10-502 re-numbered to R9-10-2102; new Section R9-10-502 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

R9-10-503. Administration

A. A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of an ICF/IID;
2. Establish, in writing, the ICF/IID's scope of services;
3. Designate, in writing, an administrator for the ICF/IID who:
   a. Is at least 21 years old; and
   b. Either:
      i. Is a nursing care institution administrator, or
      ii. Has a minimum of three-years' experience working in an ICF/IID;
4. Adopt a quality management program according to R9-10-504;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who meets the requirements in subsection (A)(3), if the administrator is:
   a. Expected not to be present on the premises of the ICF/IID for more than 30 calendar days, or
   b. Not present on the premises of the ICF/IID for more than 30 calendar days; and
7. Except as permitted in subsection (A)(6), when there is a change of administrator, notify the Department according to A.R.S. § 36-425(I) and, if applicable, submit a copy of the new administrator's license under A.R.S. § 36-446.04 to the Department.

B. An administrator:
1. Is directly accountable to the governing authority of an ICF/IID for the daily operation of the ICF/IID and all services provided by or at the ICF/IID;
2. Has the authority and responsibility to manage the ICF/IID;
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the premises of the ICF/IID and accountable for the ICF/IID when the administrator is not present on the ICF/IID's premises; and
4. Ensures the ICF/IID's compliance with A.R.S. § 36-411 and, as applicable, A.R.S. § 8-804 or § 46-459.

C. An administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that:
   a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
   b. Cover the process for checking on a personnel member through the adult protective services registry established according to A.R.S. § 46-459;
   c. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
   d. Include methods to prevent abuse or neglect of a resident, including:
      i. Training of personnel members, at least annually, on how to recognize the signs and symptoms of abuse or neglect; and
      ii. Reporting of abuse or neglect of a resident;
   e. Include how a personnel member may submit a complaint relating to resident care;
   f. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   g. Cover cardiopulmonary resuscitation training including:
      i. Which personnel members are required to obtain cardiopulmonary resuscitation training,
      ii. The method and content of cardiopulmonary resuscitation training,
      iii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
      iv. The time-frame for renewal of cardiopulmonary resuscitation training, and
      v. The documentation that verifies an individual has received cardiopulmonary resuscitation training;
   h. Cover first aid training;
   i. Include a method to identify a resident to ensure the resident receives active treatment and other physical health services and behavioral care as ordered;
   j. Cover resident rights, including assisting a resident who does not speak English or who has a disability to become aware of resident rights;
   k. Cover specific steps for:
      i. A resident to file a complaint, and
      ii. The ICF/IID to respond to a resident's complaint;
   l. Cover health care directives;
   m. Cover medical records, including electronic medical records;
   n. Cover a quality management program, including incident reports and supporting documentation;
   o. Cover contracted services;
   p. Cover the process for receiving a fee for a resident and refunding a fee for a resident;

q. Cover resident's personal accounts;
r. Cover petty cash funds;
s. Cover fees and refund policies;
t. Cover smoking and the use of tobacco products on the premises; and
u. Cover when an individual may visit a resident in an ICF/IID; and

2. Policies and procedures for active treatment and other physical health services and behavioral care are established, documented, and implemented to protect the health and safety of a resident that:
   a. Cover resident screening, admission, transport, transfer, discharge planning, and discharge;
   b. Cover the provision of active treatment and other physical health services and behavioral care;
   c. Cover acuity, including a process for obtaining sufficient nursing personnel and therapists to meet the needs of residents;
   d. Include when general consent and informed consent are required;
   e. Cover storing, dispensing, administering, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances;
   f. Cover infection control;
   g. Cover interventions to address a resident's inappropriate behavior, including:
      i. The hierarchy for use;
      ii. Use of time outs for inappropriate behavior; and
      iii. Except in an emergency, require positive techniques for behavior modification to be used before more restrictive methods are used;
   h. Cover restraints, both chemical restraints and physical restraints if applicable, that:
      i. Require an order, including the frequency of monitoring and assessing the restraint; and
      ii. Are necessary to prevent imminent harm to self or others, including how personnel members will respond to a resident's sudden, intense, or out-of-control behavior;
   i. Cover seclusion of a resident including:
      i. The requirements for an order, and
      ii. The frequency of monitoring and assessing a resident in seclusion;
   j. Cover telemedicine, if applicable;
   k. Cover environmental services that affect resident care;
   l. Cover the security of a resident's possessions that are allowed on the premises;
   m. Cover methods to encourage participation of a resident's family or friends or other individuals in activities planned according to R9-10-513(C)(2);
   n. Include a method for obtaining an advocate for a resident, if necessary;
   o. Cover resident outings;
   p. Cover the process for obtaining resident preferences for social, recreational, or rehabilitative activities and meals and snacks; and
   q. Cover whether pets and animals are allowed on the premises, including procedures to ensure that any pets or animals allowed on the premises do not endanger the health or safety of residents or the public;
3. Policies and procedures are reviewed at least once every three years and updated as needed;
4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
5. 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 ICF/IID, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the ICF/IID.

D. An administrator shall designate an individual who is:
1. A qualified intellectual disabilities professional to oversee rehabilitation services provided by or on behalf of the ICF/IID; and
2. If the facility is authorized to admit patients who require intermittent nursing services or continuous nursing services, a registered nurse is appointed as director of nursing to oversee nursing services provided by or on behalf of the ICF/IID.

E. If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was admitted or while the resident is not on the premises and not receiving services from an ICF/IID's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the resident as follows:
1. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
2. For a resident 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 resident is receiving services from an ICF/IID'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 resident as follows:
   a. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
   b. For a resident 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 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 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. An administrator shall:
1. Allow a resident advocate to assist a resident or the resident's representative with a request or recommendation, and document in writing any complaint submitted to the ICF/IID;
2. Ensure that a monthly schedule of recreational activities for residents is developed, documented, and implemented; and
3. Ensure that the following are conspicuously posted on the premises:
   a. The current ICF/IID license issued by the Department;
   b. The name, address, and telephone number of:
      i. The Department's Office of Long Term Care, and
      ii. Adult Protective Services of the Department of Economic Security;
   c. A notice that a resident may file a complaint with the Department concerning the ICF/IID;
   d. The monthly schedule of recreational activities; and
   e. One of the following:
      i. A copy of the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect; or
      ii. A notice that the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect are available for review upon request.

H. An administrator 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 medical services provider.

I. An administrator shall:
1. Notify a resident's representative, family member, or other individual designated by the resident within one calendar day after:
   a. The resident's death,
   b. There is a significant change in the resident's medical condition, or
   c. The resident has an illness or injury that requires immediate intervention by an emergency medical services provider or treatment by a health care provider; and
2. For an illness or injury in subsection (I)(1)(c), document the following:
   a. The date and time of the illness or injury;
   b. A description of the illness or injury;
   c. If applicable, the names of individuals who observed the injury;
   d. The actions taken by personnel members, according to policies and procedures;
   e. The individuals notified by the personnel members; and
   f. Any action taken to prevent the illness or injury from occurring in the future.

J. If an administrator administers a resident's personal account at the request of the resident or the resident's representative, the administrator shall:
1. Comply with policies and procedures established according to subsection (C)(1)(q);
2. Designate a personnel member who is responsible for the personal accounts;
3. Maintain a complete and separate accounting of each personal account;
4. Obtain written authorization from the resident or the resident's representative for a personal account transaction;
5. Document an account transaction and provide a copy of the documentation to the resident or the resident's representative upon request and at least every three months;
6. Transfer all money from the resident's personal account in excess of $50.00 to an interest-bearing account and credit the interest to the resident's personal account; and

7. Within 30 calendar days after the resident's death, transfer, or discharge, return all money in the resident's personal account and a final accounting to the resident, the resident's representative, or the probate jurisdiction administering the resident's estate.

K. If a petty cash fund is established for use by residents, the administrator shall ensure that:
1. The policies and procedures established according to subsection (C)(1)(r) include:
   a. A prescribed cash limit of the petty cash fund, and
   b. The hours of the day a resident may access the petty cash fund; and
2. A resident's written acknowledgment is obtained for a petty cash transaction.

L. An administrator shall ensure that an acuity plan is developed, documented, and implemented for each unit in the ICF/IID that:
1. Includes:
   a. A method that establishes the types and numbers of personnel members that are required for each unit in the ICF/IID to ensure resident health and safety, and
   b. A policy and procedure stating the steps the ICF/IID will take to obtain or assign the necessary personnel members to address resident acuity;
2. Is used when making assignments for resident treatment; and
3. Is reviewed and updated, as necessary, at least once every 12 months.

M. An administrator shall establish and document the criteria for determining when a resident's absence is unauthorized, including the criteria for a resident who:
1. Is absent against medical advice,
2. Is under the age of 18, or
3. Does not return to the ICF/IID at the expected time after an authorized absence.

N. An administrator shall ensure that the following are on the premises of the ICF/IID:
1. The most recent inspection report of the ICF/IID conducted by the Arizona Department of Economic Security under A.R.S. § 36-557(G)(1), and
2. Documentation of the most recent monitoring of the ICF/IID conducted by the Arizona Department of Economic Security under A.R.S. § 36-557(G)(2).

Historical Note

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R9-10-504. 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 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, 198, 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). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). 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). Section R9-10-504 renumbered to R9-10-2104; new Section R9-10-504 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-505. 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.

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). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). 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). Section R9-10-505 renumbered to R9-10-2105; new Section R9-10-505 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-506. Personnel

A. An administrator shall ensure that:
1. A personnel member is:
   a. At least 21 years old, or
   b. At least 18 years old and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;
2. An employee is at least 18 years old;
3. A student is at least 18 years old; and
4. A volunteer is at least 21 years old.

B. 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 active treatment or other physical health services or behavioral care expected to be provided by the personnel member according to the established job description, and
      ii. The acuity of the residents receiving active treatment or other physical health services or behavioral care 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 active treatment or other physical health services and behavioral care 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 active treatment or other physical health services or behavioral care 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 active treatment or other physical health services or behavioral care listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
   a. Before the personnel member provides active treatment or other physical health services or and behavioral care, and
   b. According to policies and procedures; and
3. Sufficient personnel members are present on an ICF/IID's premises with the qualifications, skills, and knowledge necessary to:
   a. Provide the services in the ICF/IID's scope of services,
   b. Meet the needs of a resident, and
   c. Ensure the health and safety of a resident.

C. An administrator shall ensure that an organizational chart of the ICF/IID is established, updated as necessary, and maintained on the premises:
1. Outlining the roles, responsibilities, and relationships within the ICF/IID; and
2. Including the name and, if applicable, the license or certification credential of each individual shown on the organizational chart.

D. An administrator shall ensure that, if a personnel member provides services that require a license under A.R.S. Title 32 or 36, the personnel member is licensed under A.R.S. Title 32 or 36, as applicable.

E. An administrator shall ensure that an individual who is a licensed baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision as defined in 4 A.A.C. 6, Article 1.

F. An administrator shall ensure that a personnel member or an employee or volunteer who has or is expected to have direct interaction with a resident for more than eight hours a week provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the ICF/IID, and
2. As specified in R9-10-113.

G. An administrator shall ensure that:
1. The types and numbers of nurses or therapists required according to the acuity plan in R9-10-503(L) are present in each unit in the ICF/IID;
2. Documentation of the nurses or therapists present on the ICF/IID's premises each day is maintained and includes:
   a. The date;
   b. The number of residents;
   c. The name, license or certification credential, and assigned duties of each nurse or therapist who worked that day; and
   d. The actual number of hours each nurse or therapist worked that day; and
3. The documentation of nurses or therapists required in subsection (G)(2) is maintained for at least 12 months after the date of the documentation.

H. An administrator shall ensure that a personnel member is:
1. On duty, on the premises, awake, and able to respond, according to policies and procedures, to injuries, symptoms of illness, or fire or other emergencies on the premises if the ICF/IID provides services to:
   a. More than 16 residents;
   b. A resident who has a nursing care plan or medical care plan; or
   c. A resident who requires additional supervision because the resident:
      i. Is aggressive,
      ii. May cause harm to self or others, or
      iii. May attempt an unauthorized absence; and
2. On duty, on the premises, and able to respond, according to policies and procedures, to injuries, symptoms of illness, or fire or other emergencies on the premises if:
   a. The ICF/IID provides services to 16 or fewer residents, and
   b. None of the residents has a nursing care plan or medical care plan or requires additional supervision according to subsection (H)(1)(c).

I. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
3. Documentation of:
   a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
   b. The individual's education and experience applicable to the individual's job duties;
   c. The individual's compliance with the requirements in A.R.S. § 36-411;
   d. The ICF/IID's check on the individual in the adult protective services registry established according to A.R.S. § 46-459;
   e. Orientation and in-service education as required by policies and procedures;
   f. Training in preventing, recognizing, and reporting abuse or neglect, required according to R9-10-503(C)(1)(d)(i);
   g. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
   h. The individual's qualifications and on-going training for each type of restraint or seclusion used, as required in R9-10-515;
   i. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-503(C)(1)(g);
   j. First aid training, if required for the individual according to this Article or policies and procedures; and
   k. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (F).

J. An administrator shall ensure that personnel records are:
1. Maintained:
   a. Throughout the individual's period of providing services in or for the ICF/IID, and
   b. For at least 24 months after the last date the individual provided services in or for the ICF/IID; and
2. For a personnel member who has not provided active treatment or other physical health services or behavioral care at or for the ICF/IID during the previous 12 months, provided to the Department within 72 hours after the Department's request.

K. An administrator shall ensure that:
1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
2. A personnel member completes orientation before providing active treatment or other physical health services or behavioral care;
3. 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;
4. A plan to provide in-service education specific to the duties of a personnel member is developed, documented, and implemented;
5. A personnel member's in-service education is documented, to include:
a. The personnel member's name,
b. The date of the training, and
c. The subject or topics covered in the training; and
6. A work schedule of each personnel member is developed and maintained at the ICF/IID for at least 12 months after the date of the work schedule.

L. An administrator shall designate a qualified individual to provide:
1. Social services, and
2. Recreational activities.

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 adopted effective April 4, 1994 (Supp. 94-2). 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). Section R9-10-506 renumbered to R9-10-2106; new Section R9-10-506 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Section R9-10-506 renumbered to R9-10-2106; new Section R9-10-506 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

R9-10-507. Admission

An administrator shall ensure that:
1. A resident is admitted only:
a. On a physician's order;
b. If the resident has a developmental disability or cognitive disability, as defined in A.R.S. § 36-551;
c. If the resident's placement evaluation indicates that the resident's needs can be met by the ICF/IID; and
d. Except when the resident's placement evaluation states that the resident would benefit from being part of a group that includes residents of different ages, developmental levels, or social needs, if the resident can be assigned to a room or unit within the ICF/IID with other residents of similar ages, developmental levels, or social needs;
2. The physician's admitting order or placement evaluation documentation includes the active treatment or other physical health services or behavioral care required to meet the immediate needs of a resident, such as habilitation services, medication, and food services;
3. At the time of a resident's admission, a registered nurse conducts or coordinates an initial assessment on a resident to determine the resident's acuity and ensure the resident's immediate needs are met;
4. A resident's needs do not exceed the medical services, rehabilitation services, and nursing services available at the ICF/IID as established in the ICF/IID's scope of services;
5. A resident is assigned to a unit in the ICF/IID based, as applicable, on the patient's:
a. Documented diagnosis,
b. Treatment needs,
c. Developmental level,
d. Social skills,
e. Verbal skills, and
f. Acuity;
6. A resident does not share any space, participate in any activity or treatment, or verbally or physically interact with any other resident that, based on the other resident's documented diagnosis, treatment needs, developmental level, social skills, verbal skills, and personal history, may present a threat to the resident's health and safety;
7. Within 30 calendar days before admission or 10 working days after admission, a medical history and physical examination is completed on a resident by:
a. A physician, or
b. A physician assistant or a registered nurse practitioner designated by the attending physician;
8. Compliance with the requirements in subsection (7) is documented in the resident's medical record;
9. Except as specified in subsection (10), a resident provides evidence of freedom from infectious tuberculosis:
a. Before or within seven calendar days after the resident's admission, and

b. As specified in R9-10-113; and

10. A resident who transfers from an ICF/IID or nursing care institution to the ICF/IID is not required to be rescreened for tuberculosis as specified in R9-10-113 if:
    a. Fewer than 12 months have passed since the resident was screened for tuberculosis, and
    b. The documentation of freedom from infectious tuberculosis required in subsection (9) accompanies the resident at the time of 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 with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). 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). Section R9-10-507 renumbered to R9-10-2107; new Section R9-10-507 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by final expedited rulemaking at 28 A.A.R. 1113 (May 27, 2022), with an immediate effective date of May 4, 2022 (Supp. 22-2).

R9-10-508. Transfer; Discharge

A. An administrator, in coordination with the Arizona Department of Economic Security, Division of Developmental Disabilities, shall ensure that:
1. A resident is transferred or discharged if:
    a. The ICF/IID is not authorized or not able to meet the needs of the resident, or
    b. The resident's behavior is a threat to the health or safety of the resident or other individuals at the ICF/IID; and
2. Documentation of a resident's transfer or discharge includes:
    a. The date of the transfer or discharge;
    b. The reason for the transfer or discharge;
    c. A 30-day written notice except:
        i. In an emergency, or
        ii. If the resident no longer requires rehabilitation services or habilitation services as determined by a physician or the physician's designee;
    d. A notation by a physician or the physician's designee if the transfer or discharge is due to any of the reasons listed in subsection (A)(1); and
    e. If applicable, actions taken by a personnel member to protect the resident or other individuals if the resident's behavior is a threat to the health and safety of the resident or other individuals in the ICF/IID and beyond the ICF/IID's scope of services.

B. Except for a transfer of a resident due to an emergency, an administrator shall ensure that:
1. A qualified intellectual disabilities professional or, if the resident has a nursing care plan or medical care plan, a registered nurse 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 personnel member 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 personnel member accompanying the resident during a transfer.

C. Except in an emergency, a qualified intellectual disabilities professional or, if the resident has a nursing care plan or medical care plan, a registered nurse shall ensure that before a resident is discharged:
1. Written follow-up instructions are developed with the resident or the resident's representative that include:
    a. Information necessary to meet the resident's need for medical services and nursing services; and
    b. The state long-term care ombudsman's name, address, and telephone number;
2. A copy of the written follow-up instructions is provided to the resident or the resident's representative; and
3. A discharge summary:
    a. Is developed by a qualified intellectual disabilities professional or, if the resident has a nursing care plan or medical care plan, a registered nurse;
    b. Authenticated by the resident's attending physician or designee; and

c. Includes:
   i. The resident's need for rehabilitation services or habilitation services at the time of transfer or discharge;
   ii. The resident's need for medical services or nursing services;
   iii. The resident's developmental, behavioral, social, and nutritional status;
   iv. The resident's medical and psychosocial history;
   v. The date of the discharge; and
   vi. The location of the resident after discharge.

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). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). 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). Section R9-10-508 renumbered to R9-10-2108; new Section R9-10-508 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

R9-10-509. Transport

A. Except as provided in subsections (B) and (C), an administrator shall ensure that:
1. A personnel member authorized by policies and procedures 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,
   b. Information from the resident's medical record is provided to a receiving health care institution, and
   c. A personnel member explains risks and benefits of the transport 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 transport;
   c. The mode of transportation; and
   d. If applicable, the name of the personnel member accompanying the resident during a transport.

B. If the transport of a resident is to provide the resident with rehabilitation services or habilitation services off the premises, an administrator shall ensure that:
1. The rehabilitation services or habilitation services are included in the resident's individual program plan,
2. A qualified intellectual disabilities professional coordinates the transport and the services provided to the resident, and
3. The resident is transported according to R9-10-510(A).

C. Subsection (A) does not apply to:
1. Except as provided in subsection (B), transportation according to R9-10-510 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.

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). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). 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). Section R9-10-509 renumbered to R9-10-2109; new Section R9-10-509 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-510. Transportation; Resident Outings

A. An administrator of an ICF/IID that uses a vehicle owned or leased by the ICF/IID to provide transportation to a resident shall ensure that:

1. The vehicle:
   a. Is safe and in good repair,
   b. Contains a first aid kit,
   c. Contains drinking water sufficient to meet the needs of each resident present in the vehicle, and
   d. Contains a working heating and air conditioning system;
2. Documentation of current vehicle insurance and a record of maintenance performed or a repair of the vehicle is maintained;
3. A driver of the vehicle:
   a. Is 21 years of age or older;
   b. Has a valid driver license;
   c. Operates the vehicle in a manner that does not endanger a resident in the vehicle;
   d. Does not leave in the vehicle an unattended:
      i. Child;
      ii. Resident who may be a threat to the health, safety, or welfare of the resident or another individual; or
      iii. Resident who is incapable of independent exit from the vehicle; and
   e. Ensures the safe and hazard-free loading and unloading of residents; and
4. Transportation safety is maintained as follows:
   a. An individual in the vehicle is sitting in a seat, which may include the seat of a wheel chair, and wearing a working seat belt while the vehicle is in motion; and
   b. Each seat in the vehicle is securely fastened to the vehicle and provides sufficient space for a resident's body.

B. An administrator shall ensure that an outing is consistent with the age, developmental level, physical ability, medical condition, and treatment needs of each resident participating in the outing.

C. An administrator shall ensure that:
1. Except when only one resident is participating in an outing, at least two personnel members are present on the outing;
2. In addition to the personnel members required in subsection (C)(1), a sufficient number of personnel members are present on an outing to ensure the health and safety of a resident on the outing;
3. Each personnel member on the outing has documentation of current training in cardiopulmonary resuscitation according to R9-10-503(C)(1)(g) and first aid training;
4. Documentation is developed before an outing that includes:
   a. The name of each resident participating in the outing;
   b. A description of the outing;
   c. The date of the outing;
   d. The anticipated departure and return times;
   e. The name, address, and, if available, telephone number of the outing destination; and
   f. If applicable, the license plate number of a vehicle used to provide transportation for the outing;
5. The documentation described in subsection (C)(4) is updated to include the actual departure and return times and is maintained for at least 12 months after the date of the outing; and
6. Emergency information for a resident participating in the outing is maintained by a personnel member participating in the outing or in the vehicle used to provide transportation for the outing and includes:
   a. The resident's name;
   b. Medication information, including the name, dosage, route of administration, and directions for each medication needed by the resident during the anticipated duration of the outing;
   c. The resident's allergies; and
   d. The name and telephone number of a designated individual, who is present on the ICF/IID's premises, to notify in case of an emergency.

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). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). 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). Section R9-10-510 renumbered to R9-10-2110; new Section R9-10-510 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

R9-10-511. Resident Rights

A. An administrator shall ensure that:
1. The requirements in subsection (B) and the resident rights in subsection (C) are conspicuously posted on the premises;

2. At the time of admission, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C); and
3. Policies and procedures include:
   a. How and when a resident or the resident's representative is informed of resident rights in subsection (C), and
   b. Where resident rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:

1. A resident has privacy in:
   a. Treatment,
   b. Bathing and toileting,
   c. Room accommodations, and
   d. Visiting or meeting with another resident or an individual;
2. A resident is treated with dignity, respect, and consideration;
3. A resident is not subjected to:
   a. Abuse;
   b. Neglect;
   c. Exploitation;
   d. Coercion;
   e. Manipulation;
   f. Sexual abuse;
   g. Sexual assault;
   h. Except as allowed in R9-10-515, seclusion or restraint;
   i. Retaliation for submitting a complaint to the Department or another entity;
   j. Misappropriation of personal and private property by an ICF/IID's personnel members, employees, volunteers, or students; or
   k. Segregation solely on the basis of the resident's disability; and
4. A resident or the resident'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 proposed alternatives to psychotropic medication and the associated risks and possible complications of the psychotropic medication;
   d. Is informed of the following:
      i. The health care institution's policy on health care directives, and
      ii. The resident complaint process;
   e. Consents to photographs of the resident before the resident is photographed, except that the resident may be photographed when admitted to an ICF/IID for identification and administrative purposes;
   f. May manage the resident's financial affairs;
   g. Has access to and may communicate with any individual, organization, or agency;
   h. Except as provided in the resident's individual program plan, has privacy:
      i. In interactions with other residents or visitors to the ICF/IID,
      ii. In the resident's mail, and
      iii. For telephone calls made by or to the resident;
   i. May review the ICF/IID's current license survey report and, if applicable, plan of correction in effect;
   j. May review the resident's financial records within two working days and medical record within one working day after the resident's or the resident's representative's request;
   k. May obtain a copy of the resident's financial records and medical record within two working days after the resident's request and in compliance with A.R.S. § 12-2295;
   l. Except as otherwise permitted by law, consents, in writing, to the release of information in the resident's:
      i. Medical record, and
      ii. Financial records;
   m. May select a pharmacy of choice if the pharmacy complies with policies and procedures and does not pose a risk to the resident;
   n. Is informed of the method for contacting the resident's attending physician;
   o. Is informed of the resident's overall physical and psychosocial well-being, as determined by the resident's comprehensive assessment;
   p. Is provided with a copy of those sections of the resident's medical record that are required for continuity of care free of charge, according to A.R.S. § 12-2295, if the resident is transferred or discharged; and
   q. Except in the event of an emergency, is informed orally or in writing before the ICF/IID makes a change in a resident's room or roommate assignment and notification is documented in the resident's medical record.

C. In addition to the rights in A.R.S. § 36-551.01, 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 treatment that supports and respects the resident's individuality, choices, strengths, and abilities;
3. To choose activities and schedules consistent with the resident's interests that do not interfere with other residents;
4. To participate in social, religious, political, and community activities that do not interfere with other residents;
5. To retain personal possessions including furnishings and clothing as space permits unless use of the personal possession infringes on the rights or health and safety of other residents;
6. To share a room with the resident's spouse if space is available and the spouse consents;
7. To receive a referral to another health care institution if the ICF/IID is not authorized or not able to provide active treatment or other physical health services or behavioral care needed by the resident;
8. To participate or have the resident's representative participate in the development of the resident's individual program plan or decisions concerning treatment;
9. To participate or refuse to participate in research or experimental treatment; 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

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R9-10-512. Medical Records

A. An administrator 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. Recorded only 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. An order is:
   a. Dated when the order is entered in the resident'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 resident's medical record is available to an individual:
   a. Authorized to access the resident's medial record according to policies and procedures;
   b. If the individual is not authorized to access the resident's medical record according to policies and procedures, with the written consent of the resident or the resident's representative; or
   c. As permitted by law; and
6. A resident's medical record is protected from loss, damage, or unauthorized use.

B. If an ICF/IID maintains residents' 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 resident's medical record is recorded by the computer's internal clock.

C. An administrator shall ensure that a resident's medical record contains:
1. Resident information that includes:
   a. The resident's name;
   b. The resident's date of birth; and
   c. Any known allergies, including medication allergies;
2. The admission date and, if applicable, the date of discharge;
3. The admitting diagnosis or presenting symptoms;
4. Documentation of the resident's placement evaluation;
5. Documentation of general consent and, if applicable, informed consent;
6. 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;
7. The name and contact information of an individual to be contacted under R9-10-503(I);
8. Documentation of the initial assessment required in R9-10-507(3) to determine acuity;
9. The medical history and physical examination required in R9-10-516(A)(4);
10. A copy of the resident's living will or other health care directive, if applicable;
11. The name and telephone number of the resident's attending physician;
12. Orders;
13. Documentation of the resident's comprehensive assessment;
14. Individual program plans, including nursing care plans or medical care plans, if applicable;
15. Documentation of active treatment and other physical health services or behavioral care provided to the resident;
16. Progress notes, including data needed to evaluate the effectiveness of the methods, schedule, and strategies being used to accomplish the goals in the resident's individual program plan;
17. If applicable, documentation of restraint or seclusion;
18. If applicable, documentation of any actions other than restraint or seclusion taken to control or address the resident's behavior to prevent harm to the resident or another individual or to improve the resident's social interactions;
19. If applicable, documentation that evacuation from the ICF/IID would cause harm to the resident;
20. The disposition of the resident after discharge;
21. The discharge plan;
22. The discharge summary;
23. Transfer documentation;
24. If applicable:
    a. A laboratory report,
    b. A radiologic report,
    c. A diagnostic report, and
    d. A consultation report;
25. Documentation of freedom from infectious tuberculosis required in R9-10-507(10);
26. Documentation of a medication administered to the resident that includes:
    a. The date and time of administration;
    b. The name, strength, dosage, and route of administration;
    c. The type of vaccine, if applicable;
    d. For a medication administered for pain on a PRN basis:
       i. An evaluation of the resident's pain before administering the medication, and
       ii. The effect of the medication administered;
    e. For a psychotropic medication administered on a PRN basis:
       i. An evaluation of the resident's symptoms before administering the psychotropic medication, and
       ii. The effect of the psychotropic medication administered;
    f. The identification, signature, and professional designation of the individual administering the medication; and
    g. Any adverse reaction a resident has to the medication; and
27. If applicable, a copy of written notices, including follow-up instructions, provided to the resident or the resident's representative.

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). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). 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). Section R9-10-512 renumbered to R9-10-2112; new Section R9-10-512 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

R9-10-513. Rehabilitation Services and Habilitation Services

A. Except as provided in subsection (D), an administrator shall ensure that:
1. Personnel members are available to provide the following rehabilitation services:
   a. Physical therapy, as defined in A.R.S. § 32-2001;

b. Occupational therapy, A.R.S. § 32-3401;
c. Psychological service, as defined in A.R.S. § 32-2061;
d. Speech-language pathology, as defined in A.R.S. § 36-1901; and
e. Audiology, as defined in A.R.S. § 36-1901;

2. Rehabilitation services are provided:
   a. Under the direction of a qualified intellectual disabilities professional according to policies and procedures, and
   b. According to an order;
3. A resident receives the rehabilitation services required in the resident's individual program plan;
4. Unless otherwise required in the resident's individual program plan:
   a. A resident does not remain in bed or in the resident's bedroom;
   b. If the resident is not able to independently move from place to place, even with the use of an assistive device, the resident is moved from place to place in the ICF/IID; and
   c. A resident receiving rehabilitation services is encouraged to participate in activities that are planned according to subsection (C)(2) and are appropriate to objectives in the resident's individual program plan;
5. A qualified intellectual disabilities professional reviews the rehabilitation services provided to a resident and revises the frequency, duration, method, or type of rehabilitation services being provided in the resident's individual program plan:
   a. As necessary, if the resident is losing skills or failing to progress; or
   b. If a goal in the resident's individual program plan has been accomplished and a new objective is to be initiated; and
6. The medical record of a resident receiving rehabilitation services includes:
   a. An order for rehabilitation services that includes the name of the ordering individual and a referring diagnosis;
   b. The resident's individual program plan, including all updates;
   c. The rehabilitation services provided;
   d. The resident's response to the rehabilitation services; and
   e. The authentication of the individual providing the rehabilitation services.

B. Except as provided in subsection (D), an administrator shall ensure that:
1. Personnel members are available to provide a resident with habilitation services required in the resident's individual program plan;
2. A personnel member is only assigned to provide the habilitation services the personnel member has the documented skills and knowledge to perform;
3. A resident receives the habilitation services in the resident's individual program plan;
4. If applicable, a personnel member:
   a. Suggests techniques a resident may use to maintain or improve the resident's independence in performing activities of daily living; and
   b. Provides assistance with, supervises, or directs a resident's personal hygiene according to the resident's individual program plan;
5. A resident receiving habilitation services is encouraged to participate in activities of the resident's choosing that are planned according to subsection (C)(2); and
6. The medical record of a resident receiving habilitation services includes:
   a. The resident's individual program plan, including all updates;
   b. The habilitation services provided;
   c. The resident's response to the habilitation services; and
   d. The authentication of the individual providing the habilitation services.

C. An administrator shall ensure that:
1. 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;
2. Daily social or recreational activities are planned according to residents' preferences, needs, and abilities;
3. 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;
4. Equipment and supplies are available and accessible to accommodate a resident who chooses to participate in a planned activity on the premises;
5. Outings are provided according to R9-10-510(B) and (C); and
6. If necessary and unless otherwise required in the resident's individual program plan, a resident is assisted to participate in outings and other opportunities to leave the premises of the ICF/IID.

D. An administrator is not required to ensure that personnel members providing rehabilitation services or habilitation services are on the premises if no resident of the ICF/IID is on the premises because the residents are:
1. Receiving rehabilitation services off the premises,
2. Receiving habilitation services off the premises,

3. Participating in an outing, or
4. Otherwise absent from the ICF/IID.

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 adopted effective April 4, 1994 (Supp. 94-2). 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). Section R9-10-513 renumbered to R9-10-2113; new Section R9-10-513 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-514. Individual Program Plan

A. An administrator shall ensure that:

1. A comprehensive assessment of a resident:
   a. Is conducted or coordinated by a qualified intellectual disabilities professional, in collaboration with an interdisciplinary team that includes:
      i. The resident's attending physician or designee;
      ii. A registered nurse;
      iii. If the resident is receiving medications as part of active treatment, a pharmacist; and
      iv. Personnel members qualified to provide each type of rehabilitation services identified in a placement evaluation or the initial assessment required in R9-10-507(3);
   b. Is completed for the resident within 30 calendar days after the resident's admission to an ICF/IID;
   c. Is updated:
      i. No later than 12 months after the date of the resident's last comprehensive assessment, and
      ii. When the resident experiences a significant change;
   d. Includes the following information for the resident:
      i. Identifying information;
      ii. An evaluation of the resident's hearing, speech, and vision;
      iii. An evaluation of the resident's ability to understand and recall information;
      iv. An evaluation of the resident's mental status;
      v. Whether the resident demonstrates inappropriate behavior;
      vi. Preferences for customary routine and activities;
      vii. An evaluation of the resident's ability to perform activities of daily living;
      viii. Need for a mobility device;
      ix. An evaluation of the resident's ability to control the resident's bladder and bowels;
      x. Any diagnosis that impacts rehabilitation services or other physical health services or behavioral care that the resident may require;
      xi. Any medical conditions that impact the resident's functional status, quality of life, or need for nursing services;
      xii. An evaluation of the resident's ability to maintain adequate nutrition and hydration;
      xiii. An evaluation of the resident's oral and dental status;
      xiv. An evaluation of the condition of the resident's skin;
      xv. Identification of any medication or treatment administered to the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;
      xvi. Identification of any treatment or medication ordered for the resident;
      xvii. Identification of interventions that may support the resident towards independence;
      xviii. Identification of any assistive devices needed by the resident;
      xix. Identification of the active treatment needed by the resident, including active treatment not provided by the ICF/IID;
      xx. Identification of measurable goals and behavioral objective for the active treatment, in priority order, with time limits for attainment;
      xxi. Identification of the methods, schedule, and strategies to accomplish the goals in subsection (A)(1)(d)(xviii), including the personnel member responsible;
      xxii. Evaluation procedures for determining if the methods and strategies in subsection (A)(1)(d)(xix) are working, including the type of data required and frequency of collection;
      xxiii. Whether any restraints have been used for the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;

xxiv. If the resident demonstrates inappropriate behavior, as reported according to subsection (A)(1)(d)(v), identification of the methods, schedule, and strategies for replacement of the inappropriate behavior with appropriate behavioral expressions, including the hierarchy for use;
xxv. If restraint or seclusion is included in subsection (A)(1)(d)(xxiv), the specific restraints or conditions of seclusion that may be used because of the resident's inappropriate behavior;
xxvi. A description of the resident or resident's representative's participation in the comprehensive assessment;
xxvii. The name and title of the interdisciplinary team members who participated in the resident's comprehensive assessment;
xxviii. Potential for rehabilitation, including the resident's strengths and specific developmental or behavioral health needs; and
xxix. Potential for discharge;
e. Is signed and dated by the qualified intellectual disabilities professional who conducts or coordinates the comprehensive assessment or review; and
f. Is used to determine or update the resident's acuity;
2. If any of the conditions in subsection (A)(1)(d)(v) are answered in the affirmative during the comprehensive assessment or review, a behavioral health professional reviews a resident's comprehensive assessment or review and individual program plan to ensure that the resident's needs for behavioral care are being met;
3. A new comprehensive assessment is not required for a resident who is hospitalized and readmitted to an ICF/IID unless a physician, an individual designated by the physician, a qualified intellectual disabilities professional, or a registered nurse determines the resident has a significant change in condition; and
4. A resident's comprehensive assessment is reviewed at least once every three months after the date of the current comprehensive assessment and if there is a significant change in the resident's condition by:
a. A qualified intellectual disabilities professional; and
b. If the resident has a nursing care plan or medical care plan, a registered nurse.

B. An administrator shall ensure that an individual program plan for a resident:
1. Is developed, documented, and implemented for the resident within seven calendar days after completing the resident's comprehensive assessment required in subsection (A)(1);
2. Includes the acuity of the resident;
3. Is reviewed at least annually by the interdisciplinary team required in subsection (A)(1)(a) and revised based on any change to the resident's comprehensive assessment; and
4. Ensures that a resident is provided rehabilitation services and other physical health services or behavioral care that:
a. Address any medical condition or behavioral care issue identified in the resident's comprehensive assessment, and
b. Assist the resident in maintaining the resident's highest practicable well-being according to the resident's comprehensive assessment.

Historical Note

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R9-10-515. Seclusion; Restraint

A. An administrator shall ensure that:
1. An ICF/IID's policies and procedures for managing a resident's inappropriate behavior, as described in R9-10-503(C)(2)(g) are reviewed, approved, and monitored through the quality management process in R9-10-504; and
2. Restraint is provided according to the requirements in subsection (C).

B. An administrator of an ICF/IID authorized to provide seclusion shall ensure that:
1. Seclusion is provided according to the requirements in subsection (C);
2. If a resident is placed in seclusion, the room used for seclusion:
a. Is approved for use as a seclusion room by the Department;
b. Is not used as a resident's bedroom or a sleeping area;
c. Allows full view of the resident in all areas of the room;
d. Is free of hazards, such as unprotected light fixtures or electrical outlets;
e. Contains at least 60 square feet of floor space; and
f. Except as provided in subsection (B)(3), contains a non-adjustable bed that:
i. Consists of a mattress on a solid platform that is:

(1) Constructed of a durable, non-hazardous material; and
(2) Raised off of the floor;
ii. Does not have wire springs or a storage drawer; and
iii. Is securely anchored in place;
3. If a room used for seclusion does not contain a non-adjustable bed required in subsection (B)(2)(f):
a. A piece of equipment is available that:
i. Is commercially manufactured to safely and humanely restrain a resident's body;
ii. Provides support to the trunk and head of a resident's body;
iii. Provides restraint to the trunk of a resident's body;
iv. Is able to restrict movement of a resident's arms, legs, body, and head;
v. Allows a resident's body to recline; and
vi. Does not inflict harm on a resident's body; and
b. Documentation of the manufacturer's specifications for the piece of equipment in subsection (B)(3)(a) is maintained; and
4. A seclusion room may be used for services or activities other than seclusion if:
a. A sign stating the service or activity scheduled or being provided in the room is conspicuously posted outside the room;
b. No permanent equipment other than the bed required in subsection (B)(2)(f) is in the room;
c. Policies and procedures:
i. Delineate which services or activities other than seclusion may be provided in the room,
ii. List what types of equipment or supplies may be placed in the room for the delineated services, and
iii. Provide for the prompt removal of equipment and supplies from the room before the room is used for seclusion; and
d. The sign required in subsection (B)(4)(a) and equipment and supplies in the room, other than the bed required in subsection (B)(2)(f), are removed before use as a seclusion room.

C. An administrator shall ensure that:
1. Policies and procedures for providing restraint or seclusion are established, documented, and implemented to protect the health and safety of a resident that:
a. Establish the process for resident assessment, including identification of a resident's medical conditions and criteria for the on-going monitoring of any identified medical condition;
b. Identify each type of restraint or seclusion used and include for each type of restraint or seclusion used:
i. The qualifications of a personnel member who can:
(1) Order the restraint or seclusion,
(2) Place a resident in the restraint or seclusion,
(3) Monitor a resident in the restraint or seclusion,
(4) Evaluate a resident's physical and psychological well-being after being placed in the restraint or seclusion and when released from the restraint or seclusion, or
(5) Renew the order for restraint or seclusion;
ii. On-going training requirements for a personnel member who has direct resident contact while the resident is in a restraint or seclusion; and
iii. Criteria for monitoring and assessing a resident including:
(1) Frequencies of monitoring and assessment based on a resident's medical condition and risks associated with the specific restraint or seclusion;
(2) For the renewal of an order for restraint or seclusion, whether an assessment is required before the order is renewed and, if an assessment is required, who may conduct the assessment;
(3) Assessment content, which may include, depending on a resident's condition, the resident's vital signs, respiration, circulation, hydration needs, elimination needs, level of distress and agitation, mental status, cognitive functioning, neurological functioning, and skin integrity;
(4) If a mechanical restraint is used, how often the mechanical restraint is loosened; and
(5) A process for meeting a resident's nutritional needs and elimination needs;
c. Establish the criteria and procedures for renewing an order for restraint or seclusion;
d. Establish procedures for internal review of the use of restraint or seclusion; and
e. Establish medical record and personnel record documentation requirements for restraint and seclusion, if applicable;
2. An order for restraint or seclusion is:
a. Obtained from a physician or registered nurse practitioner, and
b. Not written as a standing order or on an as-needed basis;
3. Restraint or seclusion is:
a. Not used as a means of coercion, discipline, convenience, or retaliation;
b. Only used when all of the following conditions are met:
i. Except as provided in subsection (C)(4), after obtaining an order for the restraint or seclusion;
ii. For the management of a resident's aggressive, violent, or self-destructive behavior;

iii. When less restrictive interventions have been determined to be ineffective; and
iv. To ensure the immediate physical safety of the resident, to prevent imminent harm to the resident or another individual, or to stop physical harm to another individual; and

c. Discontinued at the earliest possible time;

4. If as a result of a resident's aggressive, violent, or self-destructive behavior, harm to the resident or another individual is imminent or the resident or another individual is being physically harmed, a personnel member:
   a. May initiate an emergency application of restraint or seclusion for the resident before obtaining an order for the restraint or seclusion, and
   b. Obtains an order for the restraint or seclusion of the resident during the emergency application of the restraint or seclusion;
5. An order for restraint or seclusion includes:
   a. The name of the physician or registered nurse practitioner ordering the restraint or seclusion;
   b. The date and time that the restraint or seclusion was ordered;
   c. The specific restraint or seclusion ordered;
   d. If a drug is ordered as a chemical restraint, the drug's name, strength, dosage, and route of administration;
   e. The specific criteria for release from restraint or seclusion without an additional order; and
   f. The maximum duration authorized for the restraint or seclusion;
6. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed three continuous hours;
7. If an order for restraint or seclusion of a resident is not provided by the resident's attending physician, the resident's attending physician is notified as soon as possible;
8. A medical practitioner or personnel member does not participate in restraint or seclusion, assess or monitor a resident during restraint or seclusion, or evaluate a resident after restraint or seclusion, and a physician or registered nurse practitioner does not order restraint or seclusion, until the medical practitioner or personnel member, completes education and training that:
   a. Includes:
      i. Techniques to identify medical practitioner, personnel member, and resident behaviors, events, and environmental factors that may trigger circumstances that require restraint or seclusion;
      ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods;
      iii. Techniques for identifying the least restrictive intervention based on an assessment of the resident's medical or behavioral health condition;
      iv. The safe use of restraint and the safe use of seclusion, including training in how to recognize and respond to signs of physical and psychological distress in a resident who is restrained or secluded;
      v. Clinical identification of specific behavioral changes that indicate that the restraint or seclusion is no longer necessary;
      vi. Monitoring and assessing a resident while the resident is in restraint or seclusion according to policies and procedures; and
      vii. Except for the medical practitioner, training exercises in which the personnel member successfully demonstrates the techniques that the medical practitioner or personnel member has learned for managing emergency situations; and
   b. Is provided by individuals qualified according to policies and procedures;
9. When a resident is placed in restraint or seclusion:
   a. The restraint or seclusion is conducted according to policies and procedures;
   b. The restraint or seclusion is proportionate and appropriate to the severity of the resident's behavior and the resident's:
      i. Chronological and developmental age;
      ii. Size;
      iii. Gender;
      iv. Physical condition;
      v. Medical condition;
      vi. Psychiatric condition; and
      vii. Personal history, including any history of physical or sexual abuse;
   c. The physician or registered nurse practitioner who ordered the restraint or seclusion is available for consultation throughout the duration of the restraint or seclusion;
   d. The resident is monitored and assessed according to policies and procedures;
   e. A physician or registered nurse assesses the resident within one hour after the resident is placed in the restraint or seclusion and determines:
      i. The resident's current behavior,
      ii. The resident's reaction to the restraint or seclusion used,
      iii. The resident's medical and behavioral condition, and
      iv. Whether to continue or terminate the restraint or seclusion;
   f. The resident is given the opportunity:
      i. To eat during mealtime, and
      ii. To use the toilet; and
   g. The restraint or seclusion is discontinued at the earliest possible time, regardless of the length of time identified in the order;

10. A medical practitioner or personnel member documents the following information in a resident's medical record before the end of the shift in which the resident is placed in restraint or seclusion or, if the resident's restraint or seclusion does not end during the shift in which it began, during the shift in which the resident's restraint or seclusion ends:
    a. The emergency situation that required the resident to be restrained or put in seclusion,
    b. The times the resident's restraint or seclusion actually began and ended,
    c. The monitoring required in subsection (C)(9)(d),
    d. The time of the assessment required in subsection (C)(9)(e),
    e. The names of the medical practitioners and personnel members with direct resident contact while the resident was in the restraint or seclusion,
    f. The times the resident was given the opportunity to eat or use the toilet according to subsection (C)(9)(f), and
    g. The resident evaluation required in subsection (C)(12);
11. If an emergency situation continues beyond the time limit of an order for restraint or seclusion, the order is renewed according to policies and procedures that include:
    a. The specific criteria for release from restraint or seclusion without an additional order, and
    b. The maximum duration authorized for the restraint or seclusion; and
12. A resident is evaluated after restraint or seclusion is no longer being used for the resident.

Historical Note

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R9-10-516. Physical Health Services

A. An administrator shall ensure that:
1. A resident has an attending physician;
2. An attending physician is available 24 hours a day;
3. An attending physician designates a physician who is available when the attending physician is not available;
4. A physical examination is performed on a resident by a physician or by a physician assistant or registered nurse practitioner designated by the resident's attending physician:
    a. If indicated, based on the resident's placement evaluation or comprehensive assessment; and
    b. At least once every 12 months after the date of admission, including an assessment of the acuity of the resident's medical condition;
5. If a resident's physical examination, placement evaluation, or comprehensive assessment indicates a need for:
    a. Intermittent nursing services, the resident's attending physician, in conjunction with the director of nursing, develops a nursing care plan of treatment for the resident, which is integrated into the resident's individual program plan; or
    b. Continuous nursing services, the resident's attending physician, in conjunction with the director of nursing, develops a medical care plan of treatment for the resident, which is integrated into the resident's individual program plan; and
6. Vaccinations for influenza and pneumonia are available to each resident at least once every 12 months unless:
    a. The attending physician provides documentation that the vaccination is medically contraindicated;
    b. The resident or the resident's representative refuses the vaccination or vaccinations and documentation is maintained in the resident's medical record that the resident or the resident's representative has been informed of the risks and benefits of a vaccination refused; or
    c. The resident or the resident's representative provides documentation that the resident received a pneumonia vaccination within the last five years or the current recommendation from the U.S. Department of Health and Human Services, Center for Disease Control and Prevention.

B. An administrator shall ensure that:
1. Nursing services are available 24 hours a day in an ICF/IID;
2. For an ICF/IID authorized to admit a resident requiring:
    a. Continuous nursing services, a registered nurse is on the premises; or
    b. Intermittent nursing services, a nurse is on the premises according to the schedule in a resident's nursing care plan; and
3. The director of nursing or an individual designated by the director of nursing participates in the quality management program.

C. A director of nursing shall ensure that:

1. A method is established and documented that identifies the types and numbers of nursing personnel that are necessary to provide nursing services to residents based on:
   a. The acuity of the residents, and
   b. The ICF/IID's scope of services;
2. Sufficient nursing personnel, as determined by the method in subsection (C)(1), are on the ICF/IID's premises to meet the needs of a resident for nursing services;
3. A registered nurse participates in the development, review, and updating of a resident's nursing care plan or medical care plan;
4. Personnel members providing direct care to a resident with a nursing care plan or medical care plan receive direction from a nurse;
5. At least once every three months, a nurse:
   a. Assesses the health of a resident without a nursing care plan or medical care plan;
   b. Documents the results in the resident's medical record; and
   c. If the assessment indicates the need for physical health services or behavioral care, initiates action, according to policies and procedures, to address the resident's needs;
6. Nursing personnel provide education and training to:
   a. Residents on hygiene and other behaviors that promote health; and
   b. Personnel members on:
      i. Detecting signs of illness or injury or significant changes in condition,
      ii. First aid, and
      iii. Basic skills for caring for residents;
7. As soon as possible but not more than 24 hours after one of the following events occur, a nurse notifies a resident's attending physician and, if applicable, the resident's representative, if the resident:
   a. Is injured,
   b. Is involved in an incident that requires medical services, or
   c. Has a significant change in condition; and
8. Only a medication required by an order is administered to a resident.

D. An administrator shall ensure that:

1. Dental services are provided to a resident by an individual licensed as:
   a. A dentist under A.R.S. Title 32, Chapter 11, Article 2; or
   b. A dental hygienist under A.R.S. Title 32, Chapter 11, Article 4;
2. If needed, based on a resident's initial assessment, a dentist or dental hygienist in subsection (D)(1) participates as part of an interdisciplinary team in the development of the resident's individual program plan;
3. A resident is provided with a complete dental examination within one month after admission, unless the ICF/IID has documentation of the resident's dental examination completed within 12 months before admission;
4. If a resident's dental examination indicates the resident needs dental treatment:
   a. A dentist or dental hygienist in subsection (D)(1) participates as part of an interdisciplinary team in the review and updating of the resident's individual program plan, and
   b. The resident is provided with dental treatment;
5. A dental examination is performed by a dentist or dental hygienist in subsection (D)(1) on a resident at least once every 12 months and treatment is provided as needed;
6. If needed, a resident is provided with emergency dental services;
7. A resident is provided with education and training in oral hygiene; and
8. A resident's medical record contains documentation of:
   a. Each dental examination of the resident,
   b. All dental treatment provided to the resident, and
   c. The resident's education and training in oral hygiene.

E. An administrator shall ensure that:

1. A resident's vision and hearing are assessed as part of the resident's comprehensive assessment and, if applicable, as part of the update of the comprehensive assessment; and
2. If an issue is identified with the resident's vision or hearing, the resident is provided, as applicable, with:
   a. Treatment to address the identified issue, or
   b. An assistive device to address an issue.

Historical Note

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2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section R9-10-516 renumbered to R9-10-2116; new Section R9-10-516 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

R9-10-517. Behavioral Care

A. An administrator shall ensure that:
1. A resident who receives behavioral care from the ICF/IID is evaluated by a behavioral health professional or medical practitioner:
   a. Within 30 calendar days before the resident is admitted to the ICF/IID 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. A behavioral health professional or medical practitioner:
   a. Documents that the behavioral care needed by the resident is within the ICF/IID's scope of services, and
   b. Includes measurable objectives for the behavioral care and the methods for meeting the objectives in the resident's individual program plan; and
3. The documentation in subsection (A)(2) is included in the resident's medical record.

B. If a resident of an ICF/IID requires behavioral health services provided by a behavioral health professional on an intermittent basis as part of behavioral care, an administrator shall ensure that:
1. The behavioral health services are provided by a behavioral health professional licensed or certified to provide the type of behavioral health services required by the resident; and
2. Except for a psychotropic drug used as a chemical restraint or administered according to an order from a court of competent jurisdiction, informed consent is obtained from a resident or the resident's representative for a psychotropic drug and documented in the resident's medical record before the psychotropic drug is administered to the resident.

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 effective April 4, 1994 (Supp. 94-2). 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. 259, effective January 8, 2019 (Supp. 19-1). Section R9-10-517 renumbered to R9-10-2117; new Section R9-10-517 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-518. Clinical Laboratory Services

If clinical laboratory services are authorized to be provided on an ICF/IID's premises, an administrator shall ensure that:
1. Clinical laboratory services and pathology services are provided through a laboratory that holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
2. A copy of the certificate of accreditation, certificate of compliance, or certificate of waiver in subsection (1) is provided to the Department for review upon the Department's request;
3. The ICF/IID:
   a. Is able to provide the clinical laboratory services delineated in the ICF/IID's scope of services when needed by the residents,
   b. Obtains specimens for the clinical laboratory services delineated in the ICF/IID's scope of services without transporting the residents from the ICF/IID's premises, and
   c. Has the examination of the specimens performed by a clinical laboratory;
4. Clinical laboratory and pathology test results are:
   a. Available to the ordering physician:
      i. Within 24 hours after the test is complete with results if the test is performed at a laboratory on the ICF/IID's premises, or
      ii. Within 24 hours after the test result is received if the test is performed at a laboratory outside of the ICF/IID's premises; and
   b. Documented in a resident's medical record;
5. If a test result is obtained that indicates a resident may have an emergency medical condition, as established in policies and procedures, personnel notify:
   a. The ordering physician,
   b. A registered nurse in the resident's assigned unit,
   c. The ICF/IID's administrator, or

d. The director of nursing;
6. If a clinical laboratory report is completed on a resident, a copy of the report is included in the resident's medical record;
7. If the ICF/IID provides blood or blood products, policies and procedures are established, documented, and implemented for:
   a. Procuring, storing, transfusing, and disposing of blood or blood products;
   b. Blood typing, antibody detection, and blood compatibility testing; and
   c. Investigating transfusion adverse reactions that specify a process for review through the quality management program; and
8. Expired laboratory supplies are discarded according to policies and procedures.

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 effective April 4, 1994 (Supp. 94-2). 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). Section R9-10-518 renumbered to R9-10-2118; new Section R9-10-518 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-519. Respiratory Care Services

If respiratory care services are authorized to be provided on an ICF/IID's premises, an administrator shall ensure that:
1. Respiratory care services are provided under the direction of an attending physician;
2. Respiratory care services are provided according to an order that includes:
   a. The resident's name;
   b. The name and signature of the ordering individual;
   c. The type, frequency, and, if applicable, duration of treatment;
   d. The type and dosage of medication and diluent; and
   e. The oxygen concentration or oxygen liter flow and method of administration;
3. Respiratory care services provided to a resident are documented in the resident's medical record and include:
   a. The date and time of administration;
   b. The type of respiratory care services provided;
   c. The effect of the respiratory care services;
   d. The resident's adverse reaction to the respiratory care services, if any; and
   e. The authentication of the individual providing the respiratory care services; and
4. Any area or unit that performs blood gases or clinical laboratory tests complies with the requirements in R9-10-518.

Historical Note

R9-10-519 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-520. Medication Services

A. An administrator shall ensure that policies and procedures for medication services:
1. Include:
   a. A process for providing information to a resident about medication prescribed for the resident 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 response to a medication, or
      iii. A medication overdose;
   c. Procedures to ensure that a pharmacist reviews a resident's medications at least once every three months and provides documentation to the resident's attending physician and the director of nursing indicating potential medication problems such as incompatible or duplicative medications;
   d. Procedures for documenting medication services; and
   e. Procedures for assisting a resident in obtaining medication; 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. An administrator shall ensure that:
1. Policies and procedures for medication administration:

a. Are reviewed and approved by a pharmacist;
b. Specify the individuals who may:
i. Order medication, and
ii. Administer medication;
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;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law;
3. A medication administered to a resident:
a. Is administered in compliance with an order, and
b. Is documented in the resident's medical record; and
4. If a psychotropic medication is administered to a resident, the psychotropic medication:
a. Is only administered to a resident for a diagnosed medical condition; and
b. Unless clinically contraindicated or otherwise ordered by an attending physician or the attending physician's designee, is gradually reduced in dosage while the resident is simultaneously provided with interventions such as behavior and environment modification in an effort to discontinue the psychotropic medication, unless a dose reduction is attempted and the resident displays behavior justifying the need for the psychotropic medication, and the attending physician documents the necessity for the continued use and dosage.

C. If an ICF/IID provides assistance in the self-administration of medication, an administrator shall ensure that:
1. A resident's medication is stored by the ICF/IID;
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 for the resident;
c. Observing the resident while the resident removes the medication from the container;
d. Verifying that the medication is taken as ordered by the resident's attending physician 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 the resident's attending physician 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 the resident's attending physician dated later than the date on the medication container label; or
e. 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 the resident's attending physician or registered nurse;
4. Training for a personnel member, other than a physician, physician assistant, or registered nurse, in assistance in the self-administration of medication:
a. Is provided by the resident's attending physician, another physician, a physician assistant, or a registered nurse or an individual trained by a physician, physician assistant, 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 physician, physician assistant, 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 resident:
a. Is in compliance with an order, and
b. Is documented in the resident's medical record.

D. An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members; and
2. If pharmaceutical services are provided:
a. The pharmaceutical services are provided under the direction of a pharmacist;
b. The pharmaceutical services comply with A.R.S. 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 ICF/IID, 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 to protect the health and safety of a resident 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.

F. An administrator shall ensure that a personnel member immediately reports a medication error or a resident's adverse reaction to a medication to the resident's attending physician or the physician who ordered the medication and the ICF/IID's director of nursing.

Historical Note

R9-10-520 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-521. Infection Control

An administrator shall ensure that:

1. An infection control program is established, under the direction of an individual qualified according to 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 ICF/IID;
   b. Analysis of the types, causes, and spread of infections and communicable diseases at the ICF/IID;
   c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases at the ICF/IID; 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 that cover:
   a. Handling and disposal of biohazardous medical waste;
   b. Sterilization, disinfection, and storage of medical equipment and supplies;
   c. Using personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable;
   d. Cleaning of an individual's hands when the individual's hands are visibly soiled and before and after providing a service to a resident;
   e. Cleaning of a resident's bedroom, furniture, and bedding after the resident's discharge before the bedroom is reassigned to another resident;
   f. Training of personnel members, employees, and volunteers in infection control practices; and
   g. Work restrictions for a personnel member 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;
5. Soiled linen and clothing are:
   a. Collected in a manner to minimize or prevent contamination;
   b. Bagged at the site of use; and
   c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas;
6. A resident's personal laundry is washed separately from towels, sheets, and bedding; and
7. A personnel member, an employee, or a volunteer washes hands or uses a hand disinfection product after a resident contact and after handling soiled linen, soiled clothing, or potentially infectious material.

Historical Note

R9-10-521 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-522. Food Services

A. An administrator shall ensure that:

1. The ICF/IID has a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
2. A copy of the ICF/IID's food establishment license or permit is maintained;
3. If the ICF/IID contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the ICF/IID:
   a. A copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the ICF/IID; and
   b. The ICF/IID is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
4. A registered dietitian:
   a. Participates as part of an interdisciplinary team for a resident requiring a modified or special diet,
   b. Reviews a food menu before the food menu is used to ensure that a resident's nutritional needs are being met,
   c. Documents the review of a food menu, and
   d. Is available for consultation regarding a resident's nutritional needs; and
5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to ensure that the nutritional needs of a resident are met.

B. A registered dietitian or director of food services shall ensure that:
1. 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;
2. A food menu:
   a. Is prepared at least one week in advance,
   b. Includes the foods to be served on each day,
   c. Is conspicuously posted at least one day before the first meal on the food menu will be 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;
3. Meals and snacks for each day are planned and served using the applicable guidelines in http://www.health.gov/dietaryguidelines/2015.asp;
4. A resident is provided:
   a. A diet that meets the resident's nutritional needs as specified in the resident's comprehensive assessment and individual program plan;
   b. Food served in sufficient quantities to meet the resident's nutritional needs and at an appropriate temperature;
   c. Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(4)(e);
   d. The option to have a daily evening snack identified in subsection (B)(4)(e)(ii) or other snack; and
   e. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
      i. A resident group agrees; and
      ii. The resident is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
5. A resident is provided with food substitutions of similar nutritional value if:
   a. The resident refuses to eat the food served, or
   b. The resident requests a substitution;
6. Recommendations and preferences are requested from a resident or the resident's representative for meal planning;
7. If food is used as a part of a program to manage a resident's inappropriate behavior:
   a. A special diet is included as part of the resident's individual program plan, and
   b. The special diet is reviewed and evaluated by a physician and a dietitian to ensure the special diet meets the resident's nutritional needs;
8. Meals are served to residents at tables in a dining area and in a manner that allows the resident to eat from an upright position, unless otherwise specified in the resident's individual program plan or by an attending physician;
9. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils;
10. Personnel members supervise meals in dining areas to:
    a. Direct a resident's self-help dining procedures,
    b. Ensure a resident consumes enough food to meet the resident's nutritional needs, and
    c. Ensure that a resident eats in a manner consistent with the resident's developmental level;
11. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair; and
12. Water is available and accessible to residents.

Historical Note

R9-10-522 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-523. Emergency and Safety Standards

A. An administrator shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
   a. A floor plan of the facility showing emergency protection equipment, evacuation routes, and exits;
   b. When, how, and where residents will be relocated, including:
      i. Instructions for the evacuation or transfer of residents,
      ii. Assigned responsibilities for each employee and personnel member, and
      iii. A plan for continuing to provide services to meet a resident's needs;
   c. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
   d. A plan for back-up power and water supply;
   e. A plan to ensure a resident's medications will be available to administer to the resident during a disaster;
   f. A plan to ensure a resident is provided nursing services, rehabilitation services, and other services required by the resident during a disaster; and

g. A plan for obtaining food and water for individuals present in the ICF/IID or the ICF/IID's relocation site during a disaster;

2. Personnel members receive training on the content and use of the disaster plan required in subsection (A)(1);
3. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
4. Documentation of a disaster plan review required in subsection (A)(3) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
   a. The date and time of the disaster plan review;
   b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
   c. A critique of the disaster plan review; and
   d. If applicable, recommendations for improvement;
5. A disaster drill for employees is conducted on each shift at least once every three months and documented;
6. An evacuation drill for employees is conducted on each shift at least once every three months and documented;
7. An evacuation drill for residents:
   a. Is conducted at least once each year on each shift and documented; and
   b. Includes all residents on the premises except for:
      i. A resident whose medical record contains documentation that evacuation from the ICF/IID would cause harm to the resident, and
      ii. Sufficient personnel members to ensure the health and safety of residents not evacuated according to subsection (A)(7)(b)(i);
8. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the drill, and includes:
   a. The date and time of the evacuation drill;
   b. The amount of time taken for employees and residents to evacuate to a designated area;
   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
9. An evacuation path is conspicuously posted on each hallway of each floor of the ICF/IID.

B. An administrator shall ensure that, if an ICF/IID has:

1. More than 16 residents or a resident who has a medical care plan or whose medical record contains documentation that evacuation from the ICF/IID would cause harm to the resident:
   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; and
2. Sixteen or fewer residents, none of whom have a medical care plan or whose medical record contains documentation that evacuation from the ICF/IID would cause harm to the resident:
   a. A fire alarm system and a sprinkler system meeting the requirements in subsection (B)(1) are installed and in working order; or
   b. The ICF/IID has:
      i. A fire extinguisher that is:
         (1) Labeled as rated at least 2A-10-BC by the Underwriters Laboratories;
         (2) Accessible to personnel members and inaccessible to residents;
         (3) If a disposable fire extinguisher, replaced when its indicator reaches the red zone; and
         (4) If a rechargeable fire extinguisher, is serviced at least once every 12 months, as documented by 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; and
      ii. Smoke detectors that are:
         (1) 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;
         (2) Either battery operated or, if hard-wired into the electrical system of the ICF/IID, has a back-up battery;
         (3) In working order; and
         (4) Tested at least once a month, with documentation of the test maintained for at least 12 months after the date of the test.

C. 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.

D. An administrator shall ensure that, if applicable, a sign is placed at the entrance to a room or area indicating that oxygen is in use.

Historical Note

R9-10-523 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (Supp. 19-4).

R9-10-524. Environmental Standards

A. An administrator shall ensure that:
1. An ICF/IID's premises and equipment are:
   a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness and infection; and
   b. Free from a condition or situation that may cause a resident or an 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. Equipment used to provide direct care 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;
4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
5. Garbage and refuse are:
   a. In areas used for food storage, food preparation, or food service, stored in a covered container lined with a plastic bag;
   b. In areas not used for food storage, food preparation, or food service, stored:
      i. According to the requirements in subsection (A)(5)(a), or
      ii. In a paper-lined or plastic-lined container that is cleaned and sanitized as often as necessary to ensure that the container is clean; and
   c. Removed from the premises at least once a week;
6. Heating and cooling systems maintain the ICF/IID at a temperature between 70° F and 84° F;
7. Common areas:
   a. Are lighted to assure the safety of residents, and
   b. Have lighting sufficient to allow personnel members to monitor resident activity;
8. 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;
9. The temperature of the hot water does not exceed 120° F;
10. Linens are clean before use, without holes and stains, and not in need of repair;
11. Oxygen containers are secured in an upright position;
12. Poisonous or toxic materials stored by the ICF/IID are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
13. Combustible or flammable liquids stored by the ICF/IID are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
14. If pets or animals are allowed in the ICF/IID, 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 all applicable state laws and rules.

B. An administrator shall ensure that:
1. Smoking tobacco products are not permitted within an ICF/IID; and
2. Smoking tobacco products may be permitted outside an ICF/IID if:
   a. Signs designating smoking areas are conspicuously posted, and
   b. Smoking is prohibited in areas where combustible materials are stored or in use.

C. If a swimming pool is located on the premises, an administrator shall ensure that:
1. At least one personnel member with cardiopulmonary resuscitation training that meets the requirements in R9-10-503(C)(1)(g) is present in the pool area when a resident is in the pool area, and
2. At least two personnel members are present in the pool area when two or more residents are in the pool area.

Historical Note

R9-10-524 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2).

R9-10-525. Physical Plant Standards

A. An administrator shall ensure that, if an ICF/IID has:
1. More than 16 residents, the ICF/IID complies with:
   a. The applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01, that were in effect on the earlier of:
      i. The date the ICF/IID was originally certified as an ICF/IID by the federal Centers for Medicare and Medicaid Services, or
      ii. The date the ICF/IID submitted architectural plans and specifications to the Department for approval according to R9-10-104; and
   b. The requirements for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in R9-10-104.01; and
2. Sixteen or fewer residents, the ICF/IID complies with the requirements for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in R9-10-104.01.

B. An administrator shall ensure that:
1. The premises and equipment are sufficient to accommodate:
   a. The services stated in the ICF/IID's scope of services, and
   b. An individual accepted as a resident by the ICF/IID;
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. Does not open into an area in which food is prepared;
   c. Provides privacy when in use; and
   d. 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 or bedroom is available to a personnel member.

C. An administrator 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;
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 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;
4. An ICF/IID is ventilated by windows or mechanical ventilation, or a combination of both;
5. If required for the residents of the ICF/IID, the corridors are equipped with handrails on each side that are firmly attached to the walls and are not in need of repair;
6. No more than two individuals reside in a resident bedroom; and
7. A resident's bedroom;
   a. Is accessible without passing through a storage area, an equipment room, or another resident's bedroom;
   b. Is constructed and furnished to provide unimpeded access to the door;

c. Has floor-to-ceiling walls with at least one door;
d. Does not open into any area where food is prepared, served, or stored;
e. If a private bedroom, has at least 80 square feet of floor space, not including a closet or bathroom;
f. If a shared bedroom, has at least 60 square feet of floor space for each individual occupying the shared bedroom, not including a closet or bathroom;
g. Has a separate bed, at least 36 inches in width and 72 inches in length, for each resident, consisting of at least a frame and mattress that is clean and in good repair;
h. Has 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;
i. Has furniture to meet the resident's needs and sufficient light for reading;
j. Has an openable window to the outside with window coverings for controlling light and visual privacy, and the location of the window permits a resident to see outside from a sitting position;
k. Has individual storage space for a resident's possessions and assistive devices; and
l. Has a closet with clothing racks and shelves accessible to the resident.

D. If a swimming pool is located on the premises, an administrator shall ensure that:
1. 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 (D)(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; and
2. A life preserver or shepherd's crook is available and accessible in the pool area.

E. An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (D)(1) is covered and locked when not in use.

Historical Note

R9-10-525 made by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by exempt rulemaking, at 26 A.A.R. 72 with an effective date of January 1, 2020 (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 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 to promote 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 educating 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 coordinating 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 enforcing 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 and behavioral-supported 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 a licensing period shall not 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.

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.

36-425.05. Intermediate care facilities for individuals with intellectual disabilities; licensure

On or before January 1, 2020, an intermediate care facility for individuals with intellectual disabilities that is operated by the department of economic security or a private entity shall be licensed pursuant to this chapter and certified pursuant to 42 Code of Federal Regulations part 483, subpart I.

This content is from the eCFR and is authoritative but unofficial.

Title 42 —Public Health
Chapter IV —Centers for Medicare & Medicaid Services, Department of Health and Human Services
Subchapter G —Standards and Certification
Part 483 —Requirements for States and Long Term Care Facilities

Authority: 42 U.S.C. 1302, 1320a-7, 1395i, 1395hh and 1396r.

Subpart I—Conditions of Participation for Intermediate Care Facilities for Individuals with Intellectual Disabilities

Source: 53 FR 20496, June 3, 1988, unless otherwise noted. Redesignated at 56 FR 48918, Sept. 26, 1991.

§ 483.400 Basis and purpose.

This subpart implements section 1905 (c) and (d) of the Act which gives the Secretary authority to prescribe regulations for intermediate care facility services in facilities for individuals with intellectual disabilities or persons with related conditions.

§ 483.405 Relationship to other HHS regulations.

In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR part 80), nondiscrimination on the basis of handicap (45 CFR part 84), nondiscrimination on the basis of age (45 CFR part 91), protection of human subjects of research (45 CFR part 46),

and fraud and abuse (42 CFR part 455). Although those regulations are not in themselves considered conditions of participation under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue, Federal financial assistance.

§ 483.410 Condition of participation: Governing body and management.

(a) ***Standard: Governing body.*** The facility must identify an individual or individuals to constitute the governing body of the facility. The governing body must—

(1) Exercise general policy, budget, and operating direction over the facility;

(2) Set the qualifications (in addition to those already set by State law, if any) for the administrator of the facility; and

(3) Appoint the administrator of the facility.

(b) ***Standard: Compliance with Federal, State, and local laws.*** The facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, and sanitation.

(c) ***Standard: Client records.***

(1) The facility must develop and maintain a recordkeeping system that includes a separate record for each client and that documents the client's health care, active treatment, social information, and protection of the client's rights.

(2) The facility must keep confidential all information contained in the clients' records, regardless of the form or storage method of the records.

(3) The facility must develop and implement policies and procedures governing the release of any client information, including consents necessary from the client, or parents (if the client is a minor) or legal guardian.

(4) Any individual who makes an entry in a client's record must make it legibly, date it, and sign it.

(5) The facility must provide a legend to explain any symbol or abbreviation used in a client's record.

(6) The facility must provide each identified residential living unit with appropriate aspects of each client's record.

(d) ***Standard: Services provided under agreements with outside sources.***

(1) If a service required under this subpart is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement must—

(i) Contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and

(ii) Provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subpart.

(3) The facility must assure that outside services meet the needs of each client.

(4) If living quarters are not provided in a facility owned by the ICF/IID, the ICF/IID remains directly responsible for the standards relating to physical environment that are specified in § 483.470 (a) through (g), (j) and (k).

(e) ***Standard: Licensure.*** The facility must be licensed under applicable State and local law.

[53 FR 20496, June 3, 1988. Redesignated at 56 FR 48918, Sept. 26, 1991, and amended at 57 FR 43925, Sept. 23, 1992]

§ 483.420 Condition of participation: Client protections.

(a) ***Standard: Protection of clients' rights.*** The facility must ensure the rights of all clients. Therefore, the facility must—

(1) Inform each client, parent (if the client is a minor), or legal guardian, of the client's rights and the rules of the facility;

(2) Inform each client, parent (if the client is a minor), or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;

(3) Allow and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, and the right to due process;

(4) Allow individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;

(5) Ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment;

(6) Ensure that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;

(7) Provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;

(8) Ensure that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages and commensurate with their abilities;

(9) Ensure clients the opportunity to communicate, associate and meet privately with individuals of their choice, and to send and receive unopened mail;

(10) Ensure that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;

(11) Ensure clients the opportunity to participate in social, religious, and community group activities;

(12) Ensure that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day; and

(13) Permit a husband and wife who both reside in the facility to share a room.

(b) ***Standard: Client finances.***

(1) The facility must establish and maintain a system that—

(i) Assures a full and complete accounting of clients' personal funds entrusted to the facility on behalf of clients; and

(ii) Precludes any commingling of client funds with facility funds or with the funds of any person other than another client.

(2) The client's financial record must be available on request to the client, parents (if the client is a minor) or legal guardian.

(c) ***Standard: Communication with clients, parents, and guardians.*** The facility must—

(1) Promote participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to a client unless their participation is unobtainable or inappropriate;

(2) Answer communications from clients' families and friends promptly and appropriately;

(3) Promote visits by individuals with a relationship to the client (such as family, close friends, legal guardians and advocates) at any reasonable hour, without prior notice, consistent with the right of that client's and other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate;

(4) Promote visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with the right of that client's and other clients' privacy;

(5) Promote frequent and informal leaves from the facility for visits, trips, or vacations; and

(6) Notify promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

(d) ***Standard: Staff treatment of clients.***

(1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client.

(i) Staff of the facility must not use physical, verbal, sexual or psychological abuse or punishment.

(ii) Staff must not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.

(iii) The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment.

(2) The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.

(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident and, if the alleged violation is verified, appropriate corrective action must be taken.

§ 483.430 Condition of participation: Facility staffing.

(a) ***Standard: Qualified intellectual disability professional.*** Each client's active treatment program must be integrated, coordinated and monitored by a qualified intellectual disability professional who—

(1) Has at least one year of experience working directly with persons with intellectual disability or other developmental disabilities; and

(2) Is one of the following:

(i) A doctor of medicine or osteopathy.

(ii) A registered nurse.

(iii) An individual who holds at least a bachelor's degree in a professional category specified in paragraph (b)(5) of this section.

(b) ***Standard: Professional program services.***

(1) Each client must receive the professional program services needed to implement the active treatment program defined by each client's individual program plan. Professional program staff must work directly with clients and with paraprofessional, nonprofessional and other professional program staff who work with clients.

(2) The facility must have available enough qualified professional staff to carry out and monitor the various professional interventions in accordance with the stated goals and objectives of every individual program plan.

(3) Professional program staff must participate as members of the interdisciplinary team in relevant aspects of the active treatment process.

(4) Professional program staff must participate in on-going staff development and training in both formal and informal settings with other professional, paraprofessional, and nonprofessional staff members.

(5) Professional program staff must be licensed, certified, or registered, as applicable, to provide professional services by the State in which he or she practices. Those professional program staff who do not fall under the jurisdiction of State licensure, certification, or registration requirements, specified in § 483.410(b), must meet the following qualifications:

(i) To be designated as an occupational therapist, an individual must be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.

(ii) To be designated as an occupational therapy assistant, an individual must be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or another comparable body.

(iii) To be designated as a physical therapist, an individual must be eligible for certification as a physical therapist by the American Physical Therapy Association or another comparable body.

(iv) To be designated as a physical therapy assistant, an individual must be eligible for registration by the American Physical Therapy Association or be a graduate of a two year college-level program approved by the American Physical Therapy Association or another comparable body.

(v) To be designated as a psychologist, an individual must have at least a master's degree in psychology from an accredited school.

(vi) To be designated as a social worker, an individual must—

(A) Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

(B) Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body.

(vii) To be designated as a speech-language pathologist or audiologist, an individual must—

(A) Be eligible for a Certificate of Clinical Competence in Speech-Language Pathology or Audiology granted by the American Speech-Language-Hearing Association or another comparable body; or

(B) Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.

(viii) To be designated as a professional recreation staff member, an individual must have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education.

(ix) To be designated as a professional dietitian, an individual must be eligible for registration by the American Dietetics Association.

(x) To be designated as a human services professional an individual must have at least a bachelor's degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counseling, and psychology).

(xi) If the client's individual program plan is being successfully implemented by facility staff, professional program staff meeting the qualifications of paragraph (b)(5) (i) through (x) of this section are not required—

(A) Except for qualified intellectual disability professionals;

(B) Except for the requirements of paragraph (b)(2) of this section concerning the facility's provision of enough qualified professional program staff; and

(C) Unless otherwise specified by State licensure and certification requirements.

(c) ***Standard: Facility staffing.***

(1) The facility must not depend upon clients or volunteers to perform direct care services for the facility.

(2) There must be responsible direct care staff on duty and awake on a 24-hour basis, when clients are present, to take prompt, appropriate action in case of injury, illness, fire or other emergency, in each defined residential living unit housing—

(i) Clients for whom a physician has ordered a medical care plan;

(ii) Clients who are aggressive, assaultive or security risks;

(iii) More than 16 clients; or

(iv) Fewer than 16 clients within a multi-unit building.

(3) There must be a responsible direct care staff person on duty on a 24 hour basis (when clients are present) to respond to injuries and symptoms of illness, and to handle emergencies, in each defined residential living unit housing—

(i) Clients for whom a physician has not ordered a medical care plan;

(ii) Clients who are not aggressive, assaultive or security risks; and

(iii) Sixteen or fewer clients,

(4) The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

(d) ***Standard: Direct care (residential living unit) staff.***

(1) The facility must provide sufficient direct care staff to manage and supervise clients in accordance with their individual program plans.

(2) Direct care staff are defined as the present on-duty staff calculated over all shifts in a 24-hour period for each defined residential living unit.

(3) Direct care staff must be provided by the facility in the following minimum ratios of direct care staff to clients:

(i) For each defined residential living unit serving children under the age of 12, severely and profoundly retarded clients, clients with severe physical disabilities, or clients who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the staff to client ratio is 1 to 3.2.

(ii) For each defined residential living unit serving moderately retarded clients, the staff to client ratio is 1 to 4.

(iii) For each defined residential living unit serving clients who function within the range of mild retardation, the staff to client ratio is 1 to 6.4.

(4) When there are no clients present in the living unit, a responsible staff member must be available by telephone.

(e) ***Standard: Staff training program.***

(1) The facility must provide each employee with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(2) For employees who work with clients, training must focus on skills and competencies directed toward clients' developmental, behavioral, and health needs.

(3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of clients.

(4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual program plans for each client for whom they are responsible.

[53 FR 20496, June 3, 1988, as amended at 86 FR 26335, May 13, 2021; 86 FR 61620, Nov. 5, 2021; 88 FR 36510, June 5, 2023]

§ 483.440 Condition of participation: Active treatment services.

(a) ***Standard: Active treatment.***

(1) Each client must receive a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services described in this subpart, that is directed toward—

(i) The acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(ii) The prevention or deceleration of regression or loss of current optimal functional status.

(2) Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

(b) ***Standard: Admissions, transfers, and discharge.***

(1) Clients who are admitted by the facility must be in need of and receiving active treatment services.

(2) Admission decisions must be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources.

(3) A preliminary evaluation must contain background information as well as currently valid assessments of functional developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(4) If a client is to be either transferred or discharged, the facility must—

(i) Have documentation in the client's record that the client was transferred or discharged for good cause; and

(ii) Provide a reasonable time to prepare the client and his or her parents or guardian for the transfer or discharge (except in emergencies).

(5) At the time of the discharge, the facility must—

(i) Develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client, parents (if the client is a minor) or legal guardian, provide a copy to authorized persons and agencies; and

(ii) Provide a post-discharge plan of care that will assist the client to adjust to the new living environment.

(c) ***Standard: Individual program plan.***

(1) Each client must have an individual program plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to—

(i) Identifying the client's needs, as described by the comprehensive functional assessments required in paragraph (c)(3) of this section; and

(ii) Designing programs that meet the client's needs.

(2) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. Participation by the client, his or her parent (if the client is a minor), or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team must perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment must take into consideration the client's age (for example, child, young adult, elderly person) and the implications for active treatment at each stage, as applicable, and must—

(i) Identify the presenting problems and disabilities and where possible, their causes;

(ii) Identify the client's specific developmental strengths;

(iii) Identify the client's specific developmental and behavioral management needs;

(iv) Identify the client's need for services without regard to the actual availability of the services needed; and

(v) Include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development and auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and as applicable, vocational skills.

(4) Within 30 days after admission, the interdisciplinary team must prepare for each client an individual program plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by paragraph (c)(3) of this section, and the planned sequence for dealing with those objectives. These objectives must—

(i) Be stated separately, in terms of a single behavioral outcome;

(ii) Be assigned projected completion dates;

(iii) Be expressed in behavioral terms that provide measurable indices of performance;

(iv) Be organized to reflect a developmental progression appropriate to the individual; and

(v) Be assigned priorities.

(5) Each written training program designed to implement the objectives in the individual program plan must specify:

(i) The methods to be used;

(ii) The schedule for use of the method;

(iii) The person responsible for the program;

(iv) The type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;

(v) The inappropriate client behavior(s), if applicable; and

(vi) Provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(6) The individual program plan must also:

(i) Describe relevant interventions to support the individual toward independence.

(ii) Identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found.

(iii) Include, for those clients who lack them, training in personal skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs), until it has been demonstrated that the client is developmentally incapable of acquiring them.

(iv) Identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan must specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support.

(v) Provide that clients who have multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

(vi) Include opportunities for client choice and self-management.

(7) A copy of each client's individual program plan must be made available to all relevant staff, including staff of other agencies who work with the client, and to the client, parents (if the client is a minor) or legal guardian.

(d) ***Standard: Program implementation.***

(1) As soon as the interdisciplinary team has formulated a client's individual program plan, each client must receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual program plan.

(2) The facility must develop an active treatment schedule that outlines the current active treatment program and that is readily available for review by relevant staff.

(3) Except for those facets of the individual program plan that must be implemented only by licensed personnel, each client's individual program plan must be implemented by all staff who work with the client, including professional, paraprofessional and nonprofessional staff.

(e) ***Standard: Program documentation.***

(1) Data relative to accomplishment of the criteria specified in client individual program plan objectives must be documented in measureable terms.

(2) The facility must document significant events that are related to the client's individual program plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

(f) ***Standard: Program monitoring and change.***

(1) The individual program plan must be reviewed at least by the qualified intellectual disability professional and revised as necessary, including, but not limited to situations in which the client—

(i) Has successfully completed an objective or objectives identified in the individual program plan;

(ii) Is regressing or losing skills already gained;

(iii) Is failing to progress toward identified objectives after reasonable efforts have been made; or

(iv) Is being considered for training towards new objectives.

(2) At least annually, the comprehensive functional assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed, and the individual program plan must be revised, as appropriate, repeating the process set forth in paragraph (c) of this section.

(3) The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, parents, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior, and persons with no ownership or controlling interest in the facility to—

(i) Review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

(ii) Insure that these programs are conducted only with the written informed consent of the client, parent (if the client is a minor), or legal guardian; and

(iii) Review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other area that the committee believes need to be addressed.

(4) The provisions of paragraph (f)(3) of this section may be modified only if, in the judgment of the State survey agency, Court decrees, State law or regulations provide for equivalent client protection and consultation.

§ 483.450 Condition of participation: Client behavior and facility practices.

(a) ***Standard: Facility practices—Conduct toward clients.***

(1) The facility must develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures must—

(i) Promote the growth, development and independence of the client;

(ii) Address the extent to which client choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;

(iii) Specify client conduct to be allowed or not allowed; and

(iv) Be available to all staff, clients, parents of minor children, and legal guardians.

(2) To the extent possible, clients must participate in the formulation of these policies and procedures.

(3) Clients must not discipline other clients, except as part of an organized system of self-government, as set forth in facility policy.

(b) ***Standard: Management of inappropriate client behavior.***

(1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior. These policies and procedures must be consistent with the provisions of paragraph (a) of this section. These procedures must—

(i) Specify all facility approved interventions to manage inappropriate client behavior;

(ii) Designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

(iii) Insure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective; and

(iv) Address the following:

(A) The use of time-out rooms.

(B) The use of physical restraints.

(C) The use of drugs to manage inappropriate behavior.

(D) The application of painful or noxious stimuli.

(E) The staff members who may authorize the use of specified interventions.

(F) A mechanism for monitoring and controlling the use of such interventions.

(2) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of clients are adequately protected.

(3) Techniques to manage inappropriate client behavior must never be used for disciplinary purposes, for the convenience of staff or as a substitute for an active treatment program.

(4) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's individual program plan, in accordance with § 483.440(c) (4) and (5) of this subpart.

(5) Standing or as needed programs to control inappropriate behavior are not permitted.

(c) ***Standard: Time-out rooms.***

(1) A client may be placed in a room from which egress is prevented only if the following conditions are met:

(i) The placement is a part of an approved systematic time-out program as required by paragraph (b) of this section. (Thus, emergency placement of a client into a time-out room is not allowed.)

(ii) The client is under the direct constant visual supervision of designated staff.

(iii) The door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.

(2) Placement of a client in a time-out room must not exceed one hour.

(3) Clients placed in time-out rooms must be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, unprotected electrical outlets.

(4) A record of time-out activities must be kept.

(d) ***Standard: Physical restraints.***

(1) The facility may employ physical restraint only—

(i) As an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied;

(ii) As an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(iii) As a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(2) Authorizations to use or extend restraints as an emergency must be:

(i) In effect no longer than 12 consecutive hours; and

(ii) Obtained as soon as the client is restrained or stable.

(3) The facility must not issue orders for restraint on a standing or as needed basis.

(4) A client placed in restraint must be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage must be kept.

(5) Restraints must be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

(6) Opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each two hour period in which restraint is employed, and a record of such activity must be kept.

(7) Barred enclosures must not be more than three feet in height and must not have tops.

(e) ***Standard: Drug usage.***

(1) The facility must not use drugs in doses that interfere with the individual client's daily living activities.

(2) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual program plan that is directed specifically towards the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(3) Drugs used for control of inappropriate behavior must not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(4) Drugs used for control of inappropriate behavior must be—

(i) Monitored closely, in conjunction with the physician and the drug regimen review requirement at § 483.460(j), for desired responses and adverse consequences by facility staff; and

(ii) Gradually withdrawn at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team, unless clinical evidence justifies that this is contraindicated.

§ 483.460 Condition of participation: Health care services.

(a) ***Standard: Physician services.***

(1) The facility must ensure the availability of physician services 24 hours a day.

(2) The physician must develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24-hour licensed nursing care. This plan must be integrated in the individual program plan.

(3) The facility must provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

(i) Evaluation of vision and hearing.

(ii) Immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics.

(iii) Routine screening laboratory examinations as determined necessary by the physician, and special studies when needed.

(iv) Tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of the American College of Chest Physicians or the section of diseases of the chest of the American Academy of Pediatrics, or both.

(4) The intermediate care facility for individuals with intellectual disabilities (ICF/IID) must develop and implement policies and procedures to ensure all of the following:

(i) When COVID-19 vaccine is available to the facility, each client and staff member is offered the COVID-19 vaccine unless the immunization is medically contraindicated or the client or staff member has already been immunized.

(ii) Before offering COVID-19 vaccine, all staff members are provided with education regarding the benefits and risks and potential side effects associated with the vaccine.

(iii) Before offering COVID-19 vaccine, each client or the client's representative receives education regarding the benefits and risks and potential side effects associated with the COVID-19 vaccine.

(iv) In situations where COVID-19 vaccination requires multiple doses, the client, client's representative, or staff member is provided with current information regarding each additional dose, including any changes in the benefits or risks and potential side effects associated with the COVID-19 vaccine, before requesting consent for administration of each additional doses.

(v) The client, or client's representative, has the opportunity to accept or refuse a COVID-19 vaccine, and change their decision;

(vi) The client's medical record includes documentation that indicates, at a minimum, the following:

(A) That the client or client's representative was provided education regarding the benefits and risks and potential side effects of COVID-19 vaccine; and

(B) Each dose of COVID-19 vaccine administered to the client; or

(C) If the client did not receive the COVID-19 vaccine due to medical contraindications or refusal.

(5) To the extent permitted by State law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this section.

(b) ***Standard: Physician participation in the individual program plan.*** A physician must participate in—

(1) The establishment of each newly admitted client's initial individual program plan as required by § 456.380 of this chapter that specified plan of care requirements for ICFs; and

(2) If appropriate, physicians must participate in the review and update of an individual program plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

(c) ***Standard: Nursing services.*** The facility must provide clients with nursing services in accordance with their needs. These services must include—

(1) Participation as appropriate in the development, review, and update of an individual program plan as part of the interdisciplinary team process;

(2) The development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(3) For those clients certified as not needing a medical care plan, a review of their health status which must—

(i) Be by a direct physical examination;

(ii) Be by a licensed nurse;

(iii) Be on a quarterly or more frequent basis depending on client need;

(iv) Be recorded in the client's record; and

(v) Result in any necessary action (including referral to a physician to address client health problems).

(4) Other nursing care as prescribed by the physician or as identified by client needs; and

(5) Implementing, with other members of the interdisciplinary team, appropriate protective and preventive health measures that include, but are not limited to—

(i) Training clients and staff as needed in appropriate health and hygiene methods;

(ii) Control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(iii) Training direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the clients.

(d) ***Standard: Nursing staff.***

(1) Nurses providing services in the facility must have a current license to practice in the State.

(2) The facility must employ or arrange for licensed nursing services sufficient to care for clients health needs including those clients with medical care plans.

(3) The facility must utilize registered nurses as appropriate and required by State law to perform the health services specified in this section.

(4) If the facility utilizes only licensed practical or vocational nurses to provide health services, it must have a formal arrangement with a registered nurse to be available for verbal or onsite consultation to the licensed practical or vocational nurse.

(5) Non-licensed nursing personnel who work with clients under a medical care plan must do so under the supervision of licensed persons.

(e) ***Standard: Dental services.***

(1) The facility must provide or make arrangements for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists either through organized dental services in-house or through arrangement.

(2) If appropriate, dental professionals must participate, in the development, review and update of an individual program plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(3) The facility must provide education and training in the maintenance of oral health.

(f) ***Standard: Comprehensive dental diagnostic services.*** Comprehensive dental diagnostic services include—

(1) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility (unless the examination was completed within twelve months before admission);

(2) Periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(3) A review of the results of examination and entry of the results in the client's dental record.

(g) ***Standard: Comprehensive dental treatment.*** The facility must ensure comprehensive dental treatment services that include—

(1) The availability for emergency dental treatment on a 24-hour-a-day basis by a licensed dentist; and

(2) Dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

(h) ***Standard: Documentation of dental services.***

(1) If the facility maintains an in-house dental service, the facility must keep a permanent dental record for each client, with a dental summary maintained in the client's living unit.

(2) If the facility does not maintain an in-house dental service, the facility must obtain a dental summary of the results of dental visits and maintain the summary in the client's living unit.

(i) ***Standard: Pharmacy services.*** The facility must provide or make arrangements for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

(j) ***Standard: Drug regimen review.***

(1) A pharmacist with input from the interdisciplinary team must review the drug regimen of each client at least quarterly.

(2) The pharmacist must report any irregularities in clients' drug regimens to the prescribing physician and interdisciplinary team.

(3) The pharmacist must prepare a record of each client's drug regimen reviews and the facility must maintain that record.

(4) An individual medication administration record must be maintained for each client.

(5) As appropriate the pharmacist must participate in the development, implementation, and review of each client's individual program plan either in person or through written report to the interdisciplinary team.

(k) ***Standard: Drug administration.*** The facility must have an organized system for drug administration that identifies each drug up to the point of administration. The system must assure that—

(1) All drugs are administered in compliance with the physician's orders;

(2) All drugs, including those that are self-administered, are administered without error;

(3) Unlicensed personnel are allowed to administer drugs only if State law permits;

(4) Clients are taught how to administer their own medications if the interdisciplinary team determines that self administration of medications is an appropriate objective, and if the physician does not specify otherwise;

(5) The client's physician is informed of the interdisciplinary team's decision that self-administration of medications is an objective for the client;

(6) No client self-administers medications until he or she demonstrates the competency to do so;

(7) Drugs used by clients while not under the direct care of the facility are packaged and labeled in accordance with State law; and

(8) Drug administration errors and adverse drug reactions are recorded and reported immediately to a physician.

(l) ***Standard: Drug storage and recordkeeping.***

(1) The facility must store drugs under proper conditions of sanitation, temperature, light, humidity, and security.

(2) The facility must keep all drugs and biologicals locked except when being prepared for administration. Only authorized persons may have access to the keys to the drug storage area. Clients who have been trained to self administer drugs in accordance with § 483.460(k)(4) may have access to keys to their individual drug supply.

(3) The facility must maintain records of the receipt and disposition of all controlled drugs.

(4) The facility must, on a sample basis, periodically reconcile the receipt and disposition of all controlled drugs in schedules II through IV (drugs subject to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 *et seq.,* as implemented by 21 CFR part 308).

(5) If the facility maintains a licensed pharmacy, the facility must comply with the regulations for controlled drugs.

(m) ***Standard: Drug labeling.***

(1) Labeling of drugs and biologicals must—

(i) Be based on currently accepted professional principles and practices; and

(ii) Include the appropriate accessory and cautionary instructions, as well as the expiration date, if applicable.

(2) The facility must remove from use—

(i) Outdated drugs; and

(ii) Drug containers with worn, illegible, or missing labels.

(3) Drugs and biologicals packaged in containers designated for a particular client must be immediately removed from the client's current medication supply if discontinued by the physician.

(n) ***Standard: Laboratory services.***

(1) If a facility chooses to provide laboratory services, the laboratory must meet the requirements specified in part 493 of this chapter.

(2) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialities of service in accordance with the requirements of part 493 of this chapter.

[53 FR 20496, June 3, 1988, as amended at 57 FR 7136, Feb. 28, 1992; 86 FR 26336, May 13, 2021; 86 FR 61621, Nov. 5, 2021]

§ 483.470 Condition of participation: Physical environment.

(a) ***Standard: Client living environment.***

(1) The facility must not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

(2) The facility must not segregate clients solely on the basis of their physical disabilities. It must integrate clients who have ambulation deficits or who are deaf, blind, or have seizure disorders, etc., with others of comparable social and intellectual development.

(b) ***Standard: Client bedrooms.***

(1) Bedrooms must—

(i) Be rooms that have at least one outside wall;

(ii) Be equipped with or located near toilet and bathing facilities;

(iii) Accommodate no more than four clients unless granted a variance under paragraph (b)(3) of this section;

(iv) Measure at least 60 square feet per client in multiple client bedrooms and at least 80 square feet in single client bedrooms; and

(v) In all facilities initially certified, or in buildings constructed or with major renovations or conversions on or after October 3, 1988, have walls that extend from floor to ceiling.

(2) If a bedroom is below grade level, it must have a window that—

(i) Is usable as a second means of escape by the client(s) occupying the room; and

(ii) Is no more than 44 inches (measured to the window sill) above the floor unless the facility is surveyed under the Health Care Occupancy Chapter of the Life Safety Code, in which case the window must be no more than 36 inches (measured to the window sill) above the floor.

(3) The survey agency may grant a variance from the limit of four clients per room only if a physician who is a member of the interdisciplinary team and who is a qualified intellectual disability professional—

(i) Certifies that each client to be placed in a bedroom housing more than four persons is so severely medically impaired as to require direct and continuous monitoring during sleeping hours; and

(ii) Documents the reasons why housing in a room of only four or fewer persons would not be medically feasible.

(4) The facility must provide each client with—

(i) A separate bed of proper size and height for the convenience of the client;

(ii) A clean, comfortable, mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the client's needs, and individual closet space in the client's bedroom with clothes racks and shelves accessible to the client.

(c) ***Standard: Storage space in bedroom.*** The facility must provide—

(1) Space and equipment for daily out-of-bed activity for all clients who are not yet mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to health and safety; and

(2) Suitable storage space, accessible to clients, for personal possessions, such as TVs, radios, prosthetic equipment and clothing.

(d) ***Standard: Client bathrooms.*** The facility must—

(1) Provide toilet and bathing facilities appropriate in number, size, and design to meet the needs of the clients;

(2) Provide for individual privacy in toilets, bathtubs, and showers; and

(3) In areas of the facility where clients who have not been trained to regulate water temperature are exposed to hot water, ensure that the temperature of the water does not exceed 110 °Fahrenheit.

(e) ***Standard: Heating and ventilation.***

(1) Each client bedroom in the facility must have—

(i) At least one window to the outside; and

(ii) Direct outside ventilation by means of windows, air conditioning, or mechanical ventilation.

(2) The facility must—

(i) Maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and

(ii) Ensure that the heating apparatus does not constitute a burn or smoke hazard to clients.

(f) ***Standard: Floors.*** The facility must have—

(1) Floors that have a resilient, nonabrasive, and slip-resistant surface;

(2) Nonabrasive carpeting, if the area used by clients is carpeted and serves clients who lie on the floor or ambulate with parts of their bodies, other than feet, touching the floor; and

(3) Exposed floor surfaces and floor coverings that promote mobility in areas used by clients, and promote maintenance of sanitary conditions.

(g) ***Standard: Space and equipment.*** The facility must—

(1) Provide sufficient space and equipment in dining, living, health services, recreation, and program areas (including adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility) to enable staff to provide clients with needed services as required by this subpart and as identified in each client's individual program plan.

(2) Furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communications aids, braces, and other devices identified by the interdisciplinary team as needed by the client.

(3) Provide adequate clean linen and dirty linen storage areas.

(h) [Reserved]

(i) ***Standard: Evacuation drills.***

(1) The facility must hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to—

(i) Ensure that all personnel on all shifts are trained to perform assigned tasks;

(ii) Ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and

(iii) Evaluate the effectiveness of emergency and disaster plans and procedures.

(2) The facility must—

(i) Actually evacuate clients during at least one drill each year on each shift;

(ii) Make special provisions for the evacuation of clients with physical disabilities;

(iii) File a report and evaluation on each evacuation drill;

(iv) Investigate all problems with evacuation drills, including accidents, and take corrective action; and

(v) During fire drills, clients may be evacuated to a safe area in facilities certified under the Health Care Occupancies Chapter of the Life Safety Code.

(3) Facilities must meet the requirements of paragraphs (i)(1) and (2) of this section for any live-in and relief staff they utilize.

(j) ***Standard: Fire protection*** —

(1) ***General.*** Except as otherwise provided in this section—

(i) The facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter and must proceed in accordance with the Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12-1, TIA 12-2, TIA 12-3, and TIA 12-4.)

(ii) Notwithstanding paragraph (j)(1)(i) of this section, corridor doors and doors to rooms containing flammable or combustible materials must be provided with positive latching hardware. Roller latches are prohibited on such doors.

(iii) Chapters 32.3.2.11.2 and 33.3.2.11.2 of the adopted 2012 Life Safety Code do not apply to a facility.

(iv) Beginning July 5, 2019, an ICF-IID must be in compliance with Chapter 33.2.3.5.7.1, Sprinklers in attics, or Chapter 33.2.3.5.7.2, Heat detection systems in attics of the Life Safety Code.

(2) The State survey agency may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC.

(3) A facility that meets the LSC definition of a residential board and care occupancy must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the Fire Safety Evaluation System for Board and Care facilities (FSES/BC).

(4) If CMS finds that the State has a fire and safety code imposed by State law that adequately protects a facility's clients, CMS may allow the State survey agency to apply the State's fire and safety code instead of the LSC.

(5) ***Facilities that meet the Life Safety Code definition of a health care occupancy.***

(i) In consideration of a recommendation by the State survey agency or Accrediting Organization or at the discretion of the Secretary, may waive, for periods deemed appropriate, specific provisions of the Life Safety Code, which would result in unreasonable hardship upon a residential board and care facility, but only if the waiver will not adversely affect the health and safety of the patients.

(ii) A facility may install alcohol-based hand rub dispensers if the dispensers are installed in a manner that adequately protects against inappropriate access.

(iii) When a sprinkler system is shut down for more than 10 hours, the ICF-IID must:

(A) Evacuate the building or portion of the building affected by the system outage until the system is back in service, or

(B) Establish a fire watch until the system is back in service.

(iv) Beginning July 5, 2019, an ICF-IID must be in compliance with Chapter 33.2.3.5.7.1, sprinklers in attics, or Chapter 33.2.3.5.7.2, heat detection systems in attics of the Life Safety Code.

(v) Except as otherwise provided in this section, ICF-IIDs must meet the applicable provisions and must proceed in accordance with the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12-2, TIA 12-3, TIA 12-4, TIA 12-5 and TIA 12-6).

(A) Chapter 7,8,12 and 13 of the adopted Health Care Facilities Code does not apply to an ICF-IID.

(B) If application of the Health Care Facilities Code required under paragraph (j)(5)(iv) of this section would result in unreasonable hardship for the ICF-IID, CMS may waive specific provisions of the Health Care Facilities Code, but only if the waiver does not adversely affect the health and safety of clients.

(k) ***Standard: Paint.*** The facility must—

(1) Use lead-free paint inside the facility; and

(2) Remove or cover interior paint or plaster containing lead so that it is not accessible to clients.

(l) ***Standard: Infection control.***

(1) The facility must provide a sanitary environment to avoid sources and transmission of infections. There must be an active program for the prevention, control, and investigation of infection and communicable diseases.

(2) The facility must implement successful corrective action in affected problem areas.

(3) The facility must maintain a record of incidents and corrective actions related to infections.

(4) The facility must prohibit employees with symptoms or signs of a communicable disease from direct contact with clients and their food.

(m) The standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. If any changes in this edition of the Code are incorporated by reference, CMS will publish a document in the FEDERAL REGISTER to announce the changes.

(1) National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, *www.nfpa.org,* 1.617.770.3000.

(i) NFPA 99, Standards for Health Care Facilities Code of the National Fire Protection Association 99, 2012 edition, issued August 11, 2011.

(ii) TIA 12-2 to NFPA 99, issued August 11, 2011.

(iii) TIA 12-3 to NFPA 99, issued August 9, 2012.

(iv) TIA 12-4 to NFPA 99, issued March 7, 2013.

(v) TIA 12-5 to NFPA 99, issued August 1, 2013.

(vi) TIA 12-6 to NFPA 99, issued March 3, 2014.

(vii) NFPA 101, Life Safety Code, 2012 edition, issued August 11, 2011;

(viii) TIA 12-1 to NFPA 101, issued August 11, 2011.

(ix) TIA 12-2 to NFPA 101, issued October 30, 2012.

(x) TIA 12-3 to NFPA 101, issued October 22, 2013.

(xi) TIA 12-4 to NFPA 101, issued October 22, 2013.

(2) [Reserved]

[53 FR 20496, June 3, 1988. Redesignated at 56 FR 48918, Sept. 26, 1991, as amended at 68 FR 1387, Jan. 10, 2003; 69 FR 49271, Aug. 11, 2004; 70 FR 15239, Mar. 25, 2005; 71 FR 55340, Sept. 22, 2006; 81 FR 26900, May 4, 2016; 81 FR 64032, Sept. 16, 2016]

§ 483.475 Condition of participation: Emergency preparedness.

The Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) must comply with all applicable Federal, State, and local emergency preparedness requirements. The ICF/IID must establish and maintain an emergency preparedness program that meets the requirements of this section. The emergency preparedness program must include, but not be limited to, the following elements:

(a) ***Emergency plan.*** The ICF/IID must develop and maintain an emergency preparedness plan that must be reviewed, and updated at least every 2 years The plan must do all of the following:

(1) Be based on and include a documented, facility-based and community-based risk assessment, utilizing an all-hazards approach, including missing clients.

(2) Include strategies for addressing emergency events identified by the risk assessment.

(3) Address the special needs of its client population, including, but not limited to, persons at-risk; the type of services the ICF/IID has the ability to provide in an emergency; and continuity of operations, including delegations of authority and succession plans.

(4) Include a process for cooperation and collaboration with local, tribal, regional, State, and Federal emergency preparedness officials' efforts to maintain an integrated response during a disaster or emergency situation.

(b) ***Policies and procedures.*** The ICF/IID must develop and implement emergency preparedness policies and procedures, based on the emergency plan set forth in paragraph (a) of this section, risk assessment at paragraph (a)(1) of this section, and the communication plan at paragraph (c) of this section. The policies and procedures must be reviewed and updated at least every 2 years. At a minimum, the policies and procedures must address the following:

(1) The provision of subsistence needs for staff and clients, whether they evacuate or shelter in place, include, but are not limited to the following:

(i) Food, water, medical, and pharmaceutical supplies.

(ii) Alternate sources of energy to maintain the following:

(A) Temperatures to protect client health and safety and for the safe and sanitary storage of provisions.

(B) Emergency lighting.

(C) Fire detection, extinguishing, and alarm systems.

(D) Sewage and waste disposal.

(2) A system to track the location of on-duty staff and sheltered clients in the ICF/IID's care during and after an emergency. If on-duty staff and sheltered clients are relocated during the emergency, the ICF/IID must document the specific name and location of the receiving facility or other location.

(3) Safe evacuation from the ICF/IID, which includes consideration of care and treatment needs of evacuees; staff responsibilities; transportation; identification of evacuation location(s); and primary and alternate means of communication with external sources of assistance.

(4) A means to shelter in place for clients, staff, and volunteers who remain in the facility.

(5) A system of medical documentation that preserves client information, protects confidentiality of client information, and secures and maintains the availability of records.

(6) The use of volunteers in an emergency or other emergency staffing strategies, including the process and role for integration of State or Federally designated health care professionals to address surge needs during an emergency.

(7) The development of arrangements with other ICF/IIDs or other providers to receive clients in the event of limitations or cessation of operations to maintain the continuity of services to ICF/IID clients.

(8) The role of the ICF/IID under a waiver declared by the Secretary, in accordance with section 1135 of the Act, in the provision of care and treatment at an alternate care site identified by emergency management officials.

(c) ***Communication plan.*** The ICF/IID must develop and maintain an emergency preparedness communication plan that complies with Federal, State, and local laws and must be reviewed and updated at least every 2 years. The communication plan must include the following:

(1) Names and contact information for the following:

(i) Staff.

(ii) Entities providing services under arrangement.

(iii) Clients' physicians.

(iv) Other ICF/IIDs.

(v) Volunteers.

(2) Contact information for the following:

(i) Federal, State, tribal, regional, and local emergency preparedness staff.

(ii) Other sources of assistance.

(iii) The State Licensing and Certification Agency.

(iv) The State Protection and Advocacy Agency.

(3) Primary and alternate means for communicating with the ICF/IID's staff, Federal, State, tribal, regional, and local emergency management agencies.

(4) A method for sharing information and medical documentation for clients under the ICF/IID's care, as necessary, with other health care providers to maintain the continuity of care.

(5) A means, in the event of an evacuation, to release client information as permitted under 45 CFR 164.510(b)(1)(ii).

(6) A means of providing information about the general condition and location of clients under the facility's care as permitted under 45 CFR 164.510(b)(4).

(7) A means of providing information about the ICF/IID's occupancy, needs, and its ability to provide assistance, to the authority having jurisdiction, the Incident Command Center, or designee.

(8) A method for sharing information from the emergency plan that the facility has determined is appropriate with clients and their families or representatives.

(d) ***Training and testing.*** The ICF/IID must develop and maintain an emergency preparedness training and testing program that is based on the emergency plan set forth in paragraph (a) of this section, risk assessment at paragraph (a)(1) of this section, policies and procedures at paragraph (b) of this section, and the communication plan at paragraph (c) of this section. The training and testing program must be reviewed and updated at least every 2 years. The ICF/IID must meet the requirements for evacuation drills and training at § 483.470(i).

(1) ***Training program.*** The ICF/IID must do all the following:

(i) Initial training in emergency preparedness policies and procedures to all new and existing staff, individuals providing services under arrangement, and volunteers, consistent with their expected roles.

(ii) Provide emergency preparedness training at least every 2 years.

(iii) Maintain documentation of the training.

(iv) Demonstrate staff knowledge of emergency procedures.

(v) If the emergency preparedness policies and procedures are significantly updated, the ICF/IID must conduct training on the updated policies and procedures.

(2) ***Testing.*** The ICF/IID must conduct exercises to test the emergency plan at least twice per year. The ICF/IID must do the following:

(i) Participate in an annual full-scale exercise that is community-based; or

(A) When a community-based exercise is not accessible, conduct an annual individual, facility-based functional exercise; or.

(B) If the ICF/IID experiences an actual natural or man-made emergency that requires activation of the emergency plan, the ICF/IID is exempt from engaging in its next required full-scale community-based or individual, facility-based functional exercise following the onset of the emergency event.

(ii) Conduct an additional annual exercise that may include, but is not limited to the following:

(A) A second full-scale exercise that is community-based or an individual, facility-based functional exercise; or

(B) A mock disaster drill; or

(C) A tabletop exercise or workshop that is led by a facilitator and includes a group discussion, using a narrated, clinically-relevant emergency scenario, and a set of problem statements, directed messages, or prepared questions designed to challenge an emergency plan.

(iii) Analyze the ICF/IID's response to and maintain documentation of all drills, tabletop exercises, and emergency events, and revise the ICF/IID's emergency plan, as needed.

(e) ***Integrated healthcare systems.*** If an ICF/IID is part of a healthcare system consisting of multiple separately certified healthcare facilities that elects to have a unified and integrated emergency preparedness program, the ICF/IID may choose to participate in the healthcare system's coordinated emergency preparedness program. If elected, the unified and integrated emergency preparedness program must do all of the following:

(1) Demonstrate that each separately certified facility within the system actively participated in the development of the unified and integrated emergency preparedness program.

(2) Be developed and maintained in a manner that takes into account each separately certified facility's unique circumstances, patient populations, and services offered.

(3) Demonstrate that each separately certified facility is capable of actively using the unified and integrated emergency preparedness program and is in compliance with the program.

(4) Include a unified and integrated emergency plan that meets the requirements of paragraphs (a)(2), (3), and (4) of this section. The unified and integrated emergency plan must also be based on and include all of the following:

(i) A documented community-based risk assessment, utilizing an all-hazards approach.

(ii) A documented individual facility-based risk assessment for each separately certified facility within the health system, utilizing an all-hazards approach.

(5) Include integrated policies and procedures that meet the requirements set forth in paragraph (b) of this section, a coordinated communication plan and training and testing programs that meet the requirements of paragraphs (c) and (d) of this section, respectively.

[81 FR 64032, Sept. 16, 2016, as amended at 84 FR 51824, Sept. 30, 2019]

§ 483.480 Condition of participation: Dietetic services.

(a) ***Standard: Food and nutrition services.***

(1) Each client must receive a nourishing, well-balanced diet including modified and specially-prescribed diets.

(2) A qualified dietitian must be employed either full-time, part-time, or on a consultant basis at the facility's discretion.

(3) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.

(4) The client's interdisciplinary team, including a qualified dietitian and physician, must prescribe all modified and special diets including those used as a part of a program to manage inappropriate client behavior.

(5) Foods proposed for use as a primary reinforcement of adaptive behavior are evaluated in light of the client's nutritional status and needs.

(6) Unless otherwise specified by medical needs, the diet must be prepared at least in accordance with the latest edition of the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

(b) ***Standard: Meal services.***

(1) Each client must receive at least three meals daily, at regular times comparable to normal mealtimes in the community with—

(i) Not more than 14 hours between a substantial evening meal and breakfast of the following day, except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may elapse between a substantial evening meal and breakfast; and

(ii) Not less than 10 hours between breakfast and the evening meal of the same day, except as provided under paragraph (b)(1)(i) of this section.

(2) Food must be served—

(i) In appropriate quantity;

(ii) At appropriate temperature;

(iii) In a form consistent with the developmental level of the client; and

(iv) With appropriate utensils.

(3) Food served to clients individually and uneaten must be discarded.

(c) ***Standard: Menus.***

(1) Menus must—

(i) Be prepared in advance;

(ii) Provide a variety of foods at each meal;

(iii) Be different for the same days of each week and adjusted for seasonal changes; and

(iv) Include the average portion sizes for menu items.

(2) Menus for food actually served must be kept on file for 30 days.

(d) ***Standard: Dining areas and service.*** The facility must—

(1) Serve meals for all clients, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;

(2) Provide table service for all clients who can and will eat at a table, including clients in wheelchairs;

(3) Equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client;

(4) Supervise and staff dining rooms adequately to direct self-help dining procedure, to assure that each client receives enough food and to assure that each client eats in a manner consistent with his or her developmental level: and

(5) Ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or a physician.

G-5.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 13, Article 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: July 15, 2024

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 13, Article 2

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to eight (8) rules in Title 9, Chapter 13, Article 2 regarding Newborn and Infant Screening. Specifically, these rules relate to the Newborn and Infant Screening Program (NBS) within the Department, which currently provides bloodspot testing for fifty-nine (59) congenital disorders, through the Arizona State Laboratory, and follow-up for newborns and infants who had an abnormal screening test result for one of these congenital disorders, allowing these disorders to be identified early, as well as follow-up for a critical congenital heart defect, or hearing loss. These rules specify requirements related to the ordering of tests for certain congenital disorders and reporting congenital disorder test results and hearing test results to the Department, allowing newborns and infants to be treated for these conditions before symptoms develop.

In the prior 5YRR for these rules, which was approved by the Council in June 2019, the Department stated that no rulemaking was planned for these rules. However, subsequent to statutory changes made by Laws 2021, Ch. 409, the Department conducted a rulemaking to address the requirements in the revised statute, effective September 8, 2022.

Proposed Action

In the current report, the Department is proposing to amend rule R9-13-203 to make it consistent with recent statutory changes and amend rules R9-13-203, 204, 205, and 208 to improve their clarity, conciseness, and understandability as outlined in more detail below. The Department proposes submitting a Notice of Final Rulemaking to the Council by November 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 states that the rules in 9 A.C.C. 13, Article 2 result from three rulemakings. On the basis of these rules, 77,810 newborns and infants were screened in 2023 for congenital disorders by bloodspot testing, and 3,828 received follow-up for an abnormal result. The Department indicates that while the number of confirmed cases in 2023 is not yet finalized, there were 121 confirmed cases in 2021 and 112 confirmed cases in 2022 (with a few cases still outstanding). Of the 77,099 babies screened for hearing loss in 2023, 3,351 received follow-up from the Department, and 135 have so far been confirmed with a hearing loss, although these data are not yet complete. In addition, the Department received a report for 69,274 babies screened for a critical congenital heart defect. Of these, 159 field the screening. The Department believes that the actual effects of the changes in the rules were as anticipated.

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 states that these rules specify requirements related to the ordering of tests for certain congenital disorders and reporting congenital disorder test results and hearing test results to the Department, allowing newborns and infants to be treated for these conditions before symptoms develop. The Department indicates that early identification and treatment of these conditions help prevent death or disability resulting from these conditions. Thus, they state, the probable benefits of the rules greatly outweigh the probable costs. The Department believes that except for some needed updates to the rule, which will require them to submit a Notice of Final Rulemaking to the Council (which they plan to do by November 2024), the 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 objectives.

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 generally clear, concise, and understandable except the following rules could be improved:

- **R9-13-203:**
  - The rule would be more concise and understandable if the delayed effective dates in subsections (A)(6)(f) and (g) were removed, since the specified date has now passed. In addition, the rule could be improved if the description of some disorders were changed to be clearer.
- **R9-13-204:**
  - Subsection (C) would be more understandable if it read "subsection (A)(1) or (A)(2)" rather than "subsections (A)(1) or (A)(2)."
- **R9-13-205:**
  - Subsection (B) would be improved if the numeral "5" were replaced with "five," consistent with current formatting standards.
- **R9-13-208:**
  - The rules would be more concise if subsection (A) were removed and subsection (B) revised since the specified date has now passed.

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 statues except for the following:

- **R9-13-203:**
  - The rule is inconsistent with A.R.S. § 36-694(D), in that two new disorders were recently added to the Recommended Uniform Screening Panel, which have not yet been included in the rule. In addition, two more disorders are likely to be added in 2024. The addition of these disorders will necessitate a fee increase.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

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 there are no corresponding federal laws.

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 indicates the rules do not require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Department relates to eight (8) rules in Title 9, Chapter 13, Article 2 regarding Newborn and Infant Screening. These rules specify requirements related to the ordering of tests for certain congenital disorders and reporting congenital disorder test results and hearing test results to the Department, allowing newborns and infants to be treated for these conditions before symptoms develop. The Department is proposing to amend rule R9-13-203 to make it consistent with recent statutory changes and amend rules R9-13-203, 204, 205, and 208 to improve their clarity, conciseness, and understandability. The Department proposes submitting a Notice of Final Rulemaking to the Council by November 2024.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

February 1, 2024

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. 13, Article 2, Five-Year-Review Report for Newborn and Infant Screening

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 13, Article 2, which is due on or before February 29, 2024.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this Report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT
OF HEALTH SERVICES

ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 13. HEALTH PROGRAM SERVICES

ARTICLE 2. NEWBORN AND INFANT SCREENING

February 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1), 36-136(A)(7), and 36-136(G).

Specific Statutory Authority: A.R.S. § 36-694

2. The objective of each rule:

Rule	Objective
R9-13-201	To define terms used in Article 2 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-13-202	To specify the requirements for ordering, and reporting information about, critical congenital heart defect screening.
R9-13-203	To specify: a. The disorders for which a bloodspot test will be screened; b. Requirements for collection of a blood sample and submission of a specimen collection kit; c. The person who pays the fee specified in R9-13-208; and d. Requirements related to home births and the provision of educational materials and information about newborn screening to the parent or guardian of a newborn or infant.
R9-13-204	To specify the requirements for collecting a first specimen.
R9-13-205	To specify the requirements for collecting a second specimen.
R9-13-206	To specify: a. Requirements for reporting results of a bloodspot test; b. Requirements for sending to the Department the results of a test ordered subsequent to an abnormal result from a bloodspot test; and c. The confidentiality of bloodspot test results.
R9-13-207	To specify the requirements for reporting information related to a hearing test conducted on a newborn and from any subsequent test on the newborn or infant.
R9-13-208	To specify the fee for the newborn screening program.

3. Are the rules effective in achieving their objectives? **Yes _X_** **No ___**

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. Are the rules consistent with other rules and statutes? **Yes ___ No _X__**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-13-203	The rule is inconsistent with A.R.S. § 36-694(D), in that two new disorders were recently added to the Recommended Uniform Screening Panel, which have not yet been included in the rule. In addition, two more disorders are likely to be added in 2024. The addition of these disorders will necessitate a fee increase.

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
R9-13-203	The rule would be more concise and understandable if the delayed effective dates in subsections (A)(6)(f) and (g) were removed, since the specified date has now passed. In addition, the rule could be improved if the description of some disorders were changed to be clearer.
R9-13-204	Subsection (C) would be more understandable if it read "subsection (A)(1) or (A)(2)" rather than "subsections (A)(1) or (A)(2)."
R9-13-205	Subsection (B) would be improved if the numeral "5" were replaced with "five," consistent with current formatting standards.
R9-13-208	The rules would be more concise if subsection (A) were removed and subsection (B) revised since the specified date has now passed.

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___No _X_**

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. Economic, small business, and consumer impact comparison:

For many congenital disorders, early detection and treatment are critical in preventing death or a lifetime of disability due to the congenital disorder. Babies born with these disorders are at risk for a number of negative

outcomes, including irreversible morbidity, developmental delays, or even death, if undiagnosed and untreated. With newborn screening, these disorders can be identified and treated early, improving outcomes. In addition, the medical costs and costs for other care for a baby or child with a disorder may be quite significant, but medical care for affected babies who are treated early is typically much less than for those who are diagnosed too late or not at all. The Newborn and Infant Screening Program (NBS) within the Department currently provides bloodspot testing for 59 congenital disorders, through the Arizona State Laboratory, and follow-up for newborns and infants who had an abnormal screening test result for one of these congenital disorders, allowing these disorders to be identified early, as well as follow-up for a critical congenital heart defect, or hearing loss.

The rules in 9 A.A.C. 13, Article 2, result from three rulemakings. On the basis of these rules, 77,810 newborns and infants were screened in 2023 for congenital disorders by bloodspot testing, and 3,828 received follow-up for an abnormal result. While the number of confirmed cases in 2023 is not yet finalized, there were 121 confirmed cases in 2021 and 112 confirmed cases in 2022 (with a few cases still outstanding). Of the 77,099 babies screened for hearing loss in 2023, 3,351 received follow-up from the Department, and 135 have so far been confirmed with a hearing loss, although these data are not yet complete. In addition, the Department received a report for 69,274 babies screened for a critical congenital heart defect. Of these, 159 failed the screening.

In a regular rulemaking effective April 1, 2014, the Department amended the rules in Article 2 to implement Laws 2008, Ch. 225 and Laws 2012, Ch. 299, as well as to make changes identified in the previous five-year-review report. Laws 2008, Ch. 225, § 1, made the Arizona State Laboratory the "only testing facility for the program," removing the requirement for solicitation for testing by a contracted entity. Laws 2012, Ch. 299, § 2, removed the statutory fee cap for a second specimen for newborn screening from A.R.S. § 36-694 and allowed the Department to establish the fee for a second specimen through rulemaking. Three rules (R9-13-204, R9-13-205, and R9-13-206) were last revised as part of this rulemaking. In R9-13-204, subsection (A)(1) was clarified and "parenteral nutrition" added, since both transfusions and parenteral nutrition will adversely affect the results of the bloodspot tests for some congenital disorders. In R9-13-205, clarifying changes were made and a duplicative requirement removed. In R9-13-206, the Arizona State Laboratory was included as the "screening laboratory," and obsolete delayed effective dates were removed. In the EIS, the Department stated that these changes might reduce the burden on stakeholders. The Department believes that the actual effects of the changes were as anticipated.

In an exempt rulemaking effective July 1, 2015, two rules (R9-13-202 and R9-13-207) were last revised. In compliance with Laws 2014, Ch. 171, the Department amended the rules in Article 2 by adding requirements in R9-13-202 for a physician or other person who is required to make a report of a birth to order or cause to be ordered a critical congenital heart defect (CCHD) screening using pulse oximetry, and to report the results of the CCHD screening to the Department. The Department also added requirements for ordering, or causing to be ordered, tests for hearing disorders in R9-13-207. Both the Legislature, in requiring the Department to make these changes through exempt rulemaking, and the Department believed that the benefit in identifying newborns with a

potential critical congenital heart defect or a hearing loss would outweigh the cost of screening. The Department believes that the actual effects of the changes were as anticipated.

The final three rules (R9-13-201, R9-13-203, and R9-13-208) were last revised as part of a regular rulemaking, effective September 8, 2022, to implement Laws 2021, Ch. 409. Laws 2021, Ch. 409, amended A.R.S. § 36-694 to require the Department to adopt all of the disorders included on the Recommended Uniform Screening Panel (RUSP) adopted by the Secretary of the U.S. Department of Health and Human Services. the legislation also authorized the Department to establish a single program fee, by rule, to cover the expenses of operating the Newborn Screening Program. On the basis of Laws 2021, Ch. 409, the number of screened congenital disorders went from 29 to 59, and the cost for screening a newborn went from $36 for a first specimen plus $65 for a second specimen (total of $101) to a program fee of $171. As stated in the EIS, the Department anticipated that persons affected by the rulemaking might include the Department; health insurance providers, including AHCCCS and third-party payors; health care institutions, including hospitals and birth centers; midwives, pediatricians, and other health care providers; parents of newborns; and the general public. Annual cost/revenue changes were designated as minimal when $2,700 or less, moderate when between $2,700 and $27,000, and substantial when $27,000 or greater in additional costs or revenues. A cost was listed as significant when meaningful or important, but not readily subject to quantification. The Department was expected to receive a substantial benefit from the change from a specimen-based fee system to a newborn screening program fee and from the increase in the overall fee. The Department anticipated that AHCCCS and third-party payors could incur a substantial increase in costs when paying for the births under the increased rates for the birth packages required of them by Laws 2021, Ch. 409, which could be partially offset by the elimination of the fee for a second specimen. They could also receive up to a substantial benefit from the addition of the many newly added congenital disorders, since a positive screening result allows targeted diagnostic testing for a disorder, reducing the number of tests before a diagnosis is made and the costs of these tests. The costs to treat the disorder are also generally less with an early diagnosis. Health care institutions were believed to incur some increased costs, depending on the number of initial specimens submitted and the birth package changes, and potentially a moderate-to-substantial decrease or increase in revenue, depending on the services provided to diagnose or treat a screened congenital disorder. The Department stated that health care providers might incur at most a minimal increase in costs due to the rulemaking, and would be expected to receive a significant benefit from knowing that an affected baby, identified through NBS, treated, and cured, is healthy. The Department expected that the increased cost to an individual parent to be at most minimal, either directly from the fee change or indirectly through an increase in a health insurance premium, and that a parent of a baby with a positive result, or of a baby affected with an added disorder or another condition, might receive a significant and perhaps up to a substantial benefit from having the condition diagnosed early. Society in general was expected to receive a significant benefit from having a baby grow up into a healthy and productive member of society because of timely identification and treatment of a disorder detected through the newborn screening program. Although the changes made in the

rulemaking have been in effect for less than two years, the Department estimates that the actual costs described in the NFR are generally consistent with the costs and benefits of the rules.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the previous five-year review report, the Department stated that no rulemaking was planned for these rules. Subsequent to statutory changes made by Laws 2021, Ch. 409, the Department conducted a rulemaking to address the requirements in the revised statute, effective September 8, 2022.

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:

These rules specify requirements related to the ordering of tests for certain congenital disorders and reporting congenital disorder test results and hearing test results to the Department, allowing newborns and infants to be treated for these conditions before symptoms develop. The early identification and treatment of these conditions help prevent death or disability resulting from these conditions. Thus, the probable benefits of the rules greatly outweigh the probable costs. Except as described in paragraphs (4) and (6) of this five-year review report, the Department has determined that the 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 objectives.

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)?

The rules are not related to federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

These rules do not require a regulatory permit, license or agency authorization.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department plans to address the issues identified in paragraphs (4) and (6) of this five-year-review report and to submit a Notice of Final Rulemaking to the Council by November 2024.

TITLE 9. HEALTH SERVICES

CHAPTER 13. DEPARTMENT OF HEALTH SERVICES

HEALTH PROGRAMS SERVICES

ARTICLE 2. NEWBORN AND INFANT SCREENING

Section

ARTICLE 2. NEWBORN AND INFANT SCREENING

R9-13-201. Definitions

In this Article, unless otherwise specified:

1. "Abnormal result" means an outcome that deviates from the range of values established by:
   a. The Department for an analysis performed as part of a bloodspot test or for a hearing test, or
   b. A health care facility or health care provider for critical congenital heart defect screening.
2. "Admission" or "admitted" means the same as in A.A.C. R9-10-101.
3. "AHCCCS" means the Arizona Health Care Cost Containment System.
4. "Amino acid disorder" means a congenital disorder characterized by the abnormal accumulation of an amino acid or another nitrogen-containing molecule due to a defective enzyme.
5. "Arizona State Laboratory" means the entity operated according to A.R.S. § 36-251.
6. "Audiological equipment" means an instrument used to help determine the presence, type, or degree of hearing loss by:
   a. Providing ear-specific and frequency-specific stimuli to an individual; or
   b. Measuring an individual's physiological response to stimuli.
7. "Audiologist" means the same as in A.R.S. § 36-1901.
8. "Birth center" means a health care facility that is not a hospital and is organized for the purpose of delivering newborns.
9. "Blood sample" means capillary or venous blood, and possibly arterial blood but not cord blood, applied to the filter paper of a specimen collection kit.
10. "Bloodspot test" means multiple laboratory analyses performed on a blood sample to screen for the presence of congenital disorders listed in R9-13-203.
11. "Congenital disorder" means an abnormal condition present at birth, as a result of heredity or environmental factors, that impairs normal physiological functioning of a human body.
12. "Critical congenital heart defect" means a heart abnormality or condition present at birth that places a newborn or infant at significant risk of disability or death if not diagnosed soon after birth.
13. "Department" means the Arizona Department of Health Services.

14. "Diagnostic evaluation" means a hearing test performed by an audiologist or a physician to determine whether hearing loss exists, and, if applicable, determine the type or degree of hearing loss.
15. "Discharge" means the termination of inpatient services to a newborn or an infant.
16. "Disorder" means a disease or medical condition that may be identified by a laboratory analysis.
17. "Document" means to establish and maintain information in written, photographic, electronic, or other permanent form.
18. "Educational materials" means printed or electronic information provided by the Department, explaining newborn and infant screening, any of the congenital disorders listed in R9-13-203, hearing loss, or critical congenital heart defect.
19. "Electronic" means the same as in A.R.S. § 44-7002.
20. "Endocrine disorder" means a congenital disorder characterized by an abnormal amount of a hormone being secreted from a gland into the blood stream.
21. "Fatty acid oxidation disorder" means a congenital disorder characterized by the inability of the body to break down fatty acids as a source of energy.
22. "First specimen" means a specimen that is collected from a newborn who is less than five days of age and sent to the Arizona State Laboratory for testing and recording of demographic information.
23. "Guardian" means an individual appointed by a court under A.R.S. Title 14, Chapter 5, Article 2.
24. "Health care facility" means a health care institution, as defined in A.R.S. § 36-401, where obstetrical care or newborn care is provided.
25. "Health care provider" means a physician, physician assistant, registered nurse practitioner, or midwife.
26. "Health-related services" means the same as in A.R.S. § 36-401.
27. "Hearing screening" means a hearing test to determine the likelihood of hearing loss in a newborn or infant.
28. "Hearing test" means an evaluation of each of a newborn's or an infant's ears, using audiological equipment to:
    a. Screen the newborn or infant for a possible hearing loss;
    b. Determine that the newborn or infant does not have a hearing loss; or
    c. Diagnose a hearing loss in the newborn or infant, including determining the type or degree of hearing loss.

29. “Hemoglobinopathy” means a congenital disorder characterized by abnormal production, structure, or functioning of hemoglobin.
30. “Home birth” means delivery of a newborn, outside a health care facility, when the newborn is not hospitalized within 72 hours of delivery.
31. “Hospital” means the same as in A.A.C. R9-10-101.
32. “Hospital services” means the same as in A.A.C. R9-10-201.
33. “Identification code” means a unique set of numbers or letters, or a unique set of both numbers and letters, assigned by the Department to a health care facility, a health care provider, an audiologist, or another person submitting specimen collection kits to the Arizona State Laboratory or hearing test results to the Department.
34. “Infant” means the same as in A.R.S. § 36-694.
35. “Initial specimen” means the earliest specimen that was collected from a newborn or infant and sent to the Arizona State Laboratory for testing.
36. “Inpatient” means an individual who:
    a. Is admitted to a hospital,
    b. Receives hospital services for 24 consecutive hours, or
    c. Is admitted to a birth center.
37. “Inpatient services” means medical services, nursing services, or other health-related services provided to an inpatient in a health care facility.
38. “Medical services” means the same as in A.R.S. § 36-401.
39. “Midwife” means an individual licensed under A.R.S. Title 36, Chapter 6, Article 7, or certified under A.R.S. Title 32, Chapter 15.
40. “Newborn” means the same as in A.R.S. § 36-694.
41. “Newborn care” means medical services, nursing services, and health-related services provided to a newborn.
42. “Nursing services” means the same as in A.R.S. § 36-401.
43. “Obstetrical care” means medical services, nursing services, and health-related services provided to a woman throughout her pregnancy, labor, delivery, and postpartum.
44. “Organ” means a somewhat independent part of a human body, such as a salivary gland, kidney, or pancreas, which performs a specific function.
45. “Organic acid disorder” means a congenital disorder characterized by the abnormal accumulation of organic acids in the blood and urine due to a defective enzyme.
46. “Parent” means a natural, adoptive, or custodial mother or father of a newborn or an infant.

47. “Parenteral nutrition” means the feeding of an individual intravenously through the administration of a formula containing at least glucose and amino acids, as well as possibly lipids, vitamins, and minerals.
48. “Person” means the state, a municipality, district, or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, individual, or other legal entity.
49. “Physician” means an individual licensed under A.R.S. Title 32, Chapters 13, 14, 17, or 29.
50. “Physician assistant” means an individual licensed under A.R.S. Title 32, Chapter 25.
51. “Pulse oximetry” means a non-invasive method of measuring the percentage of hemoglobin in the blood that is saturated with oxygen using a device approved by the U.S. Food and Drug Administration for use with newborns or infants less than six weeks of age.
52. “Registered nurse practitioner” means the same as in A.R.S. § 32-1601.
53. “Second specimen” means a specimen that is sent to the Arizona State Laboratory for testing and recording of demographic information, after being collected from an individual who is at least five days and not older than one year of age.
54. “Sickle cell disease” means a hemoglobinopathy characterized by an abnormally shaped red blood cell resulting from the abnormal structure of the protein hemoglobin.
55. “Sickle cell gene” means a unit of inheritance that is involved in producing an abnormal type of the protein hemoglobin, in which the amino acid valine is substituted for the amino acid glutamic acid at a specific location in the hemoglobin.
56. “Specimen” means a blood sample obtained from and demographic information about a newborn or an infant.
57. “Specimen collection kit” means a strip of filter paper for collecting a blood sample attached to a form for obtaining the information specified in R9-13-203(B)(3) about a newborn or an infant.
58. “Transfer” means a health care facility or health care provider discharging a newborn and sending the newborn to a hospital for inpatient medical services without the intent that the patient will be returned to the sending health care facility or health care provider.
59. “Transfusion” means the infusion of blood or blood products into the body of an individual.

60. "Verify" means to confirm by obtaining information through a source such as the newborn screening program, a health care provider, a health care facility, or a documented record.

61. "Working day" means 8:00 a.m. through 5:00 p.m. Monday through Friday, excluding state holidays.

R9-13-202. Newborn and Infant Critical Congenital Heart Defect Screening

A. A health care facility's designee, a health care provider, or a health care provider's designee shall order critical congenital heart defect screening using pulse oximetry for a newborn to be performed:

1. Between 24 and 48 hours after birth according to the health care facility's or health care provider's policies and procedures, or
2. As late as possible before discharge according to the health care facility's or health care provider's policies and procedures if the newborn is discharged earlier than 24 hours after birth.

B. Before critical congenital heart defect screening is performed on a newborn, a health care facility's designee, a health care provider, or a health care provider's designee shall provide educational materials to the newborn's parent or guardian.

C. When critical congenital heart defect screening is ordered for a newborn, a health care facility's designee, a health care provider, or a health care provider's designee shall submit, in a format specified by the Department, the following information:

1. The newborn's name, gender, race, ethnicity, medical record number, and, if applicable, AHCCCS identification number;
2. Whether the newborn is from a single or multiple birth;
3. If the newborn is from a multiple birth, the birth order of the newborn;
4. The date and time of birth, and the newborn's weight at birth;
5. The identification code or the name and address of the health care facility or health care provider submitting the information;
6. Except as provided in subsection (C)(7), the mother's first and last names, date of birth, name before first marriage, mailing address, telephone number, and, if applicable, AHCCCS identification number;
7. If the newborn's mother does not have physical custody of the newborn, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn;

8. The date, time, and result of the critical congenital heart defect screening;
9. If critical congenital heart defect screening was not performed, the reason critical congenital heart defect screening was not performed;
10. If the newborn was transferred to another health care facility or health care provider before the critical congenital heart defect screening was performed, the name, address, and telephone number of the health care facility or health care provider to which the newborn was transferred; and
11. Whether the newborn has a medical condition that may affect the critical congenital heart defect screening results.

D. In addition to the information in subsection (C), if the reported result of critical congenital heart defect screening for a newborn or infant is abnormal, a health care facility's designee, a health care provider, or a health care provider's designee shall submit to the Department, upon request and in a format specified by the Department, the following information:

1. The dates, times, values of all critical congenital heart defect screening results;
2. The dates, times, and results of any subsequent tests performed as a result of critical congenital heart defect screening;
3. The name, address, and telephone number of the contact person for the health care facility, health care provider, or other person performing the subsequent tests; and
4. If a medical condition is found as a result of critical congenital heart defect screening or subsequent tests, the type of medical condition found and the name of the health care provider who will be responsible for the coordination of medical services for the newborn or infant after the newborn or infant is discharged.

R9-13-203. Newborn and Infant Bloodspot Tests

A. A bloodspot test shall screen for the following congenital disorders:

1. Amino acid disorders, including:
    a. Argininemia, a congenital disorder characterized by an inability to metabolize the amino acid arginine due to defective arginase activity;
    b. Argininosuccinic acidemia, a congenital disorder characterized by an inability to metabolize the amino acid argininosuccinic acid due to defective argininosuccinate lyase activity;
    c. Biopterin defect in cofactor biosynthesis, a congenital disorder characterized by reduced levels of tetrahydrobiopterin due to a defect in an enzyme that produces tetrahydrobiopterin;

d. Biopterin defect in cofactor regeneration, a congenital disorder characterized by reduced levels of tetrahydrobiopterin due to a defect in an enzyme that recycles tetrahydrobiopterin to a usable form after a metabolic reaction;

e. Citrullinemia type I, a congenital disorder characterized by an inability to convert the amino acid citrulline and aspartic acid into argininosuccinic acid due to defective argininosuccinate synthetase activity;

f. Citrullinemia type II, a congenital disorder characterized by a reduction in levels of citrin, which is involved in the transport of glutamate and aspartate, due to a defective *SLC25A13* gene;

g. Homocystinuria, a congenital disorder characterized by abnormal methionine and homocysteine metabolism due to defective cystathione-ß-synthase activity;

h. Hypermethioninemia, a congenital disorder characterized by an elevated level of methionine in the bloodstream;

i. Hyperphenylalaninemia (benign), a congenital disorder characterized by an elevated level of phenylalanine in the bloodstream with few, if any, clinical symptoms;

j. Maple syrup urine disease, a congenital disorder of branched chain amino acid metabolism due to defective branched chain-keto acid dehydrogenase activity;

k. Phenylketonuria, a congenital disorder characterized by abnormal phenylalanine metabolism due to defective phenylalanine hydroxylase activity;

l. Tyrosinemia type I, a congenital disorder characterized by an accumulation of the amino acid tyrosine due to defective fumarylacetoacetate hydrolase activity;

m. Tyrosinemia type II, a congenital disorder characterized by an accumulation of the amino acid tyrosine due to defective tyrosine aminotransferase activity; and

n. Tyrosinemia type III, a congenital disorder characterized by an accumulation of the amino acid tyrosine and metabolic product 4-hydroxyphenylpyruvate due to defective 4-hydroxyphenylpyruvate dioxygenase activity;

2. Endocrine disorders, including:

a. Congenital adrenal hyperplasia, a congenital disorder characterized by decreased cortisol production and increased androgen production due to defective 21-hydroxylase activity; and

b. Congenital hypothyroidism, a congenital disorder characterized by deficient thyroid hormone production;

3. Fatty acid oxidation disorders, including:

a. 2,4 Dienoyl-CoA reductase deficiency, a congenital disorder characterized by an accumulation of the amino acid lysine and some fatty acids due to defective 2,4 dienoyl-CoA reductase activity;

b. Carnitine shuttle disorders, including:

   i. Carnitine palmitoyltransferase I deficiency, a congenital disorder characterized by the defective activity of carnitine palmitoyltransferase I, resulting in the inability of a cell to transport carnitine and acyl-CoA out of the cytosol;

   ii. Carnitine-acylcarnitine translocase deficiency, a congenital disorder characterized by the defective activity of carnitine-acylcarnitine translocase, resulting in the inability of acylcarnitine to enter the mitochondria; and

   iii. Carnitine palmitoyltransferase II deficiency, a congenital disorder characterized by the defective activity of carnitine palmitoyltransferase II, resulting in the inability to transfer acyl-CoA into the mitochondria;

c. Carnitine uptake defect, a congenital disorder characterized by a decrease in the amount of free carnitine due to defective sodium ion-dependent carnitine transporter OCTN2 activity;

d. Glutaric acidemia type II, a congenital disorder characterized by a decrease in the ability to break down proteins and fatty acids due to decreased activity of either electron transfer flavoprotein or electron transfer flavoprotein dehydrogenase;

e. Long-chain 3-hydroxy acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 18 carbon atoms in length due to defective long-chain 3-hydroxy acyl-CoA dehydrogenase activity;

f. Medium-chain acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 6 to 10 carbon atoms in length due to defective medium-chain acyl-CoA dehydrogenase activity;

g. Medium-chain ketoacyl-CoA thiolase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids due to defective ketoacyl-CoA thiolase activity;

h. Medium/short chain L-3 hydroxyacyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are

3 to 10 carbon atoms in length due to defective 3-hydroxyacyl-CoA dehydrogenase activity;

i. Short chain acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 6 or fewer carbon atoms in length due to defective short chain acyl-CoA dehydrogenase activity;

j. Trifunctional protein deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 12 to 18 carbon atoms in length due to defective mitochondrial trifunctional protein activity; and

k. Very long-chain acyl-CoA dehydrogenase deficiency, a congenital disorder characterized by an inability to metabolize fatty acids that are 14 to 18 carbon atoms in length due to defective very long-chain acyl-CoA dehydrogenase activity;

4. Hemoglobinopathies, including:

a. Hemoglobin S/Beta-thalassemia, a sickle cell disease in which an individual has one sickle cell gene and one gene for beta thalassemia, another inherited hemoglobinopathy;

b. Hemoglobin S/C disease, a sickle cell disease in which an individual has one sickle cell gene and one gene for another inherited hemoglobinopathy called hemoglobin C;

c. Sickle cell anemia, a sickle cell disease in which an individual has two sickle cell genes; and

d. Other congenital disorders caused by an abnormal hemoglobin protein;

5. Organic acid disorders, including:

a. 2-Methylbutyrylglycinuria, a congenital disorder characterized by an inability to metabolize the amino acid isoleucine, resulting in elevated levels of 2-methylbutryl carnitine, due to defective short/branched chain acyl-CoA dehydrogenase activity;

b. 2-Methyl-3-hydroxybutyric aciduria or HSD10 disease, a congenital disorder characterized by elevated levels of break-down products of the amino acid isoleucine and a reduction in functional mitochondrial tRNA molecules, which results in impaired mitochondrial synthesis of proteins;

c. 3-Hydroxy-3-methylglutaric aciduria, a congenital disorder characterized by the accumulation of 3-hydroxy-3-methylglutaric acid due to defective 3-hydroxy-3-methylglutaryl-CoA lyase activity;

d. 3-Methylcrotonyl-CoA carboxylase deficiency, a congenital disorder characterized by an accumulation of 3-methylcrotonyl-glycine due to defective 3-methylcrotonyl-CoA carboxylase activity;

e. 3-Methylglutaconic aciduria, a congenital disorder characterized by elevated levels of 3-methylglutaconic acid due to defective 3-methylglutaconyl-CoA hydratase activity or a related enzyme;

f. Beta-ketothiolase deficiency, a congenital disorder characterized by an inability to metabolize 2-methyl-acetoacetyl-CoA due to defective mitochondrial acetoacetyl-CoA thiolase activity;

g. Glutaric acidemia type I, a congenital disorder characterized by an accumulation of glutaric acid due to defective glutaryl-CoA dehydrogenase activity;

h. Holocarboxylase synthase deficiency, a congenital disorder of multiple carboxylase deficiencies characterized by an inability to transport or metabolize biotin that leads to defective activity of propionyl-CoA carboxylase, beta-methylcrotonyl-CoA carboxylase, and pyruvate carboxylase;

i. Isobutyrylglycinuria, a congenital disorder characterized by an inability to metabolize the amino acid valine due to defective isobutyryl-CoA dehydrogenase activity;

j. Isovaleric acidemia, a congenital disorder characterized by an accumulation of isovaleric acid due to defective isovaleryl-CoA dehydrogenase activity;

k. Malonic acidemia, a congenital disorder characterized by an inability to metabolize fatty acids due to defective malonyl-CoA decarboxylase activity;

l. Methylmalonic acidemia (cobalamin disorders), a congenital disorder characterized by an accumulation of methylmalonic acid due to defective activity of methylmalonyl-CoA epimerase or adenosylcobalamin synthetase;

m. Methylmalonic acidemia (mutase deficiency), a congenital disorder characterized by an accumulation of methylmalonic acid due to defective methylmalonyl-CoA mutase activity;

n. Methylmalonic acidemia with homocystinuria, a congenital disorder characterized by the abnormal processing of cobalamin, leading to defective activity of methylmalonyl-CoA mutase and methionine synthase, for both of which cobalamin is a cofactor; and

o. Propionic acidemia, a congenital disorder characterized by an accumulation of glycine and 3-hydroxypropionic acid due to defective propionyl-CoA carboxylase activity; and

6. Other disorders, including:

a. Biotinidase deficiency, a congenital disorder characterized by defective biotinidase activity that causes abnormal biotin metabolism and multiple carboxylase deficiencies;

b. Classic galactosemia, a congenital disorder characterized by abnormal galactose metabolism due to defective galactose-1-phosphate uridyltranferase activity;

c. Cystic fibrosis, a congenital disorder caused by defective functioning of a transmembrane regulator protein and characterized by damage to and dysfunction of various organs, such as the lungs, pancreas, and reproductive organs;

d. Galactoepimerase deficiency, a congenital disorder characterized by abnormal galactose metabolism due to defective UTP-galactose 4-epimerase activity;

e. Galactokinase deficiency, a congenital disorder characterized by abnormal galactose metabolism due to defective galactokinase activity;

f. Beginning May 1, 2023, glycogen storage disease type II or Pompe disease, a congenital disorder characterized by the accumulation of the polysaccharide, glycogen, in lysosomes due to a defect in the lysosomal acid alpha-glucosidase enzyme;

g. Beginning May 1, 2023, mucopolysaccaridosis type I, a congenital disorder characterized by the buildup of the glycosaminoglycans, dermatan sulfate and heparan sulfate, due to defective alpha-L-iduronidase activity;

h. Severe combined immunodeficiency, a congenital disorder usually characterized by a defect in both the T- and B-lymphocyte systems, which typically results in the onset of one or more serious infections within the first few months of life;

i. Spinal muscular atrophy, a congenital disorder characterized by the loss of nerve cells in the spinal cord that control muscle movement due to a defect in the survival motor neuron 1 (*SMN1*) gene;

j. T-cell related lymphocyte deficiency, a congenital disorder characterized by a defect in the T-lymphocyte system, which typically results in a decrease in cell-mediated immunity and unusually severe common viral infections; and

k. X-linked adrenoleukodystrophy, a congenital disorder characterized by the build-up of very long-chain fatty acids due to a deficiency in the adrenoleukodystrophy protein, caused by a defective *ABCD1* gene.

B. When a bloodspot test is ordered for a newborn or an infant, a health care facility's designee, a health care provider, or the health care provider's designee shall:

1. Only use a specimen collection kit supplied by the Department;
2. Collect a blood sample from the newborn or infant on a specimen collection kit;
3. Complete the following information on the specimen collection kit:
   a. The newborn's or infant's name, gender, race, ethnicity, medical record number, and, if applicable, AHCCCS identification number;
   b. The newborn's or infant's type of food or food source;
   c. Whether the newborn or infant is from a single or multiple birth;
   d. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
   e. Whether the newborn or infant has a medical condition that may affect the bloodspot test results;
   f. Whether the newborn or infant received a blood transfusion and, if applicable, the date of the last blood transfusion;
   g. The date and time of birth, and the newborn's or infant's weight at birth;
   h. The date and time of blood sample collection, and the newborn's or infant's weight when the blood sample is collected;
   i. The identification code or the name and address of the health care facility or health care provider submitting the specimen collection kit;
   j. The name, address, and telephone number or the identification code of the health care provider responsible for the management of medical services provided to the newborn or infant;
   k. Except as provided in subsection (B)(3)(l), the mother's first and last names, date of birth, name before first marriage, mailing address, telephone number, and if applicable, AHCCCS identification number; and
   l. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant; and
4. Submit the specimen collection kit to the Arizona State Laboratory no later than 24 hours or the next working day after the blood sample is collected.

C. A health care facility or a health care provider submitting an initial specimen to the Arizona State Laboratory shall pay the Department the fee in R9-13-208.

D. When a home birth not attended by a health care provider is reported to a local registrar, a deputy local registrar, or the state registrar under A.R.S. § 36-333:

1. The local registrar, deputy local registrar, or state registrar shall notify the local health department of the county where the birth occurred; and
2. The local health department's designee shall:
    a. Collect a specimen from the newborn or infant on a specimen collection kit according to the requirements in R9-13-204(A)(2) or R9-13-205(C), and
    b. Submit the specimen collection kit to the Arizona State Laboratory no later than 24 hours or the next working day after the blood sample is collected.

E. A health care facility's designee, a health care provider, or the health care provider's designee shall ensure that:

1. Educational materials are provided to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered, and
2. The newborn's or infant's parent or guardian is informed of the requirement for a second specimen if the second specimen has not been collected.

F. For a home birth, a health care provider or the health care provider's designee shall provide educational materials to the parent or guardian of a newborn or an infant for whom a bloodspot test is ordered.

R9-13-204. First Specimen Collection

A. When a newborn is born in a hospital, the hospital's designee shall collect a first specimen from the newborn according to whichever of the following occurs first:

1. Unless specified otherwise by a physician, physician assistant, or registered nurse practitioner, before administering a transfusion or parenteral nutrition;
2. When the newborn is at least 24 but not more than 72 hours old; or
3. Before the newborn is discharged, unless the newborn:
    a. Is transferred to another hospital before the newborn is 48 hours old; or
    b. Dies before the newborn is 72 hours old.

B. If a newborn is admitted or transferred to a hospital before the newborn is 48 hours old, the receiving hospital's designee shall:

1. Verify that the first specimen was collected before admission or transfer, or

2. Collect a first specimen from the newborn according to the requirements in subsection (A).

C. When a newborn is born in a birth center, the birth center's designee shall collect a first specimen from the newborn according to subsections (A)(1) or (A)(2).

D. For a home birth attended by a health care provider, the health care provider or the health care provider's designee shall collect a first specimen from the newborn according the requirements in subsection (A)(2).

R9-13-205. Second Specimen Collection

A. After a newborn's or an infant's discharge from a health care facility or after a home birth, a health care provider or the health care provider's designee shall:

1. Collect a second specimen from the newborn or infant not older than one year of age at the time of the newborn's or infant's first visit to the health care provider, or
2. Verify that a health care facility or different health care provider has collected a second specimen from the newborn or infant.

B. If a newborn is an inpatient of a health care facility at 5 days of age, the health care facility's designee shall collect a second specimen from the newborn:

1. When the newborn is at least 5 but not more than 10 days old; or
2. If the newborn is discharged from the health care facility when the newborn is at least 5 but not more than 10 days old, before discharge.

C. For a home birth that is not attended by a health care provider, a local health department's designee shall collect a specimen from a newborn or an infant if the local health department's designee has not verified that a second specimen has already been collected from the newborn or infant.

R9-13-206. Reporting Requirements for Specimens

A. The Arizona State Laboratory shall report, in written or electronic format, to the health care provider and, if applicable, health care facility identified on a specimen collection kit:

1. The results of a bloodspot test on a specimen; or
2. For a specimen that does not meet quality standards established by the Arizona State Laboratory in compliance with 42 CFR § 493.1200:
    a. That a bloodspot test was not performed on the specimen; and
    b. The reason the bloodspot test was not performed.

B. A health care facility's designee, a health care provider, or the health care provider's designee, who orders a subsequent test on a newborn or an infant in response to an abnormal result on a bloodspot test, shall send the results of the subsequent test in writing to the Department, if the subsequent test is not performed by the Arizona State Laboratory.

C. Bloodspot test results are confidential subject to the disclosure provisions of 9 A.A.C. 1, Article 3, and A.R.S. §§ 12-2801 and 12-2802.

R9-13-207. Newborn and Infant Hearing Tests

A. Before a hearing test is performed on a newborn or infant, a health care facility's designee, a health care provider, or the health care provider's designee shall provide educational materials to the newborn's or infant's parent or guardian.

B. A health care facility's designee, a health care provider, or the health care provider's designee shall order hearing testing for a newborn or infant to be performed according to the health care facility's or health care provider's policies and procedures that includes:

1. An initial hearing screening ordered to be performed within 30 days after birth or before discharge;
2. A second hearing screening ordered to be performed within 30 days after birth if an abnormal result is obtained in one or both of a newborn's or infant's ears on the initial hearing screening; and
3. Diagnostic evaluation ordered to be performed:
    a. If a newborn or infant has an abnormal result in one or both ears on the second hearing screening;
    b. If a newborn or infant has been admitted to the Neonatal Intensive Care Unit for five days or more and has an abnormal initial hearing screening;
    c. If a newborn or infant has a medical condition that makes diagnostic evaluation more appropriate; or
    d. As clinically indicated.

C. When an initial hearing test is performed on a newborn or infant, a health care facility's designee, a health care provider, or the health care provider's designee shall submit to the Department, as specified in subsection (G), the following information:

1. The newborn's or infant's name, date of birth, gender, and medical record number;
2. Whether the newborn or infant is from a single or multiple birth;
3. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
4. The first and last names and date of birth of the newborn's or infant's mother;

5. The name and identification code of the health care facility of birth;
6. The name and identification code of the health care facility where the initial hearing test was performed or of the health care provider who performed the initial hearing test;
7. The date of the initial hearing test;
8. Whether or not the initial hearing test was performed when the newborn or infant was an inpatient;
9. The audiological equipment used for the initial hearing test and the type of initial hearing test performed; and
10. The initial hearing test result for each of the newborn's or infant's ears.

D. In addition to the information in subsection (C), if the reported results of an initial hearing test on a newborn or infant include an abnormal result, a health care facility's designee, a health care provider, or the health care provider's designee shall submit to the Department, as specified in subsection (G), the following information:

1. Except as provided in subsection (D)(2), the mother's name before first marriage, mailing address, and telephone number;
2. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant;
3. The name of the health care provider who will be responsible for the coordination of medical services for the newborn or infant after the newborn or infant is discharged from the health care facility;
4. The name and telephone number of the person to whom the newborn's or infant's mother or other person who has physical custody of the newborn or infant was referred for a subsequent hearing test;
5. The date of the appointment for a subsequent hearing test, if available; and
6. The health care facility where a subsequent hearing test is scheduled to be performed or the name and address of the health care provider who is scheduled to perform the subsequent test, if available.

E. When a subsequent hearing test is performed on a newborn or an infant after an initial hearing test, the designee of the health care facility, health care provider, or other person that performs the subsequent hearing test shall submit to the Department, as specified in subsection (G), the following information:

1. The newborn's or infant's name, date of birth, and gender;
2. Whether the newborn or infant is from a single or multiple birth;

3. If the newborn or infant is from a multiple birth, the birth order of the newborn or infant;
4. The first and last names and date of birth of the newborn's or infant's mother;
5. The name of the health care facility of birth, if known;
6. The name of the health care facility where the subsequent hearing test was performed, or the name and address of the health care provider who performed the subsequent hearing test;
7. The date of the subsequent hearing test;
8. The audiological equipment used for the subsequent hearing test and type of hearing test performed;
9. The result, including a quantitative result if applicable, for each of the newborn's or infant's ears on the subsequent hearing test;
10. The name, address and telephone number of the contact person for the health care facility, health care provider, or other person that performed the subsequent hearing test, if different from the person specified in subsection (E)(6); and
11. If the subsequent hearing test was a diagnostic evaluation:
    a. Whether the newborn or infant has a hearing loss and, if so, the type and degree of hearing loss;
    b. A copy of the narrative that describes the hearing test performed on the newborn or infant to determine that the newborn or infant does not have a hearing loss or diagnose a hearing loss in the newborn or infant, the results of the hearing test, and the analysis of the hearing test results by the audiologist or physician who performed the hearing test;
    c. Whether the newborn or infant has a medical condition that may affect the hearing test results; and
    d. Whether the newborn or infant has been referred to early intervention services, including a date of referral.

F. In addition to the information in subsection (E), if the reported results of a subsequent hearing test on a newborn or infant include an abnormal result, the person submitting the report on the subsequent hearing test shall submit to the Department, as specified in subsection (G), the following information:

1. Except as provided in subsection (F)(2), the mailing address and telephone number of the newborn's or infant's mother;

2. If the newborn's or infant's mother does not have physical custody of the newborn or infant, the first and last names, mailing address, and telephone number of the person who has physical custody of the newborn or infant;
3. The name of the health care provider who is responsible for the coordination of medical services for the newborn or infant; and
4. If applicable, the name and phone telephone number of the person to whom the newborn's or infant's parent was referred for further hearing tests, evaluation services, specialty care, or early intervention.

G. A health care facility's designee, health care provider, health care provider's designee, or other person required to report under subsections (C), (D), (E), or (F) shall submit, in an electronic format specified by the Department, the information specified in subsections (C), (D), (E), or (F) for hearing tests performed each week by the sixth day of the subsequent week.

R9-13-208. Newborn Screening Program Fee

A. Until November 1, 2022, the fee for the newborn screening program is:
1. For a first specimen, $36; and
2. For a second specimen, $65.

B. Effective November 1, 2022, the fee for the newborn screening program is $171.00.

Statutory Authority for 9 A.A.C. 13, Article 2

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 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 to promote 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 educating 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 coordinating 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 enforcing 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 and behavioral-supported 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 a licensing period shall not 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.

36-694. Report of blood tests; newborn screening program; committee; fee; definitions

A. When a birth or stillbirth is reported, the attending physician or other person required to report the birth shall state on the certificate whether a blood test for syphilis was made on a specimen of blood taken from the woman who bore the child or from the umbilical cord at delivery, as required by section 36-693, and the approximate date when the specimen was taken.

B. When a birth is reported, the attending physician or person who is required to report the birth shall order or cause to be ordered tests for certain congenital disorders, including hearing disorders. The results of tests for these disorders must be reported to the department of health services. The department of health services shall specify in rule the disorders, the process for collecting and submitting specimens and the reporting requirements for test results.

C. When a hearing test is performed on a newborn, the initial hearing test results and any subsequent hearing test results must be reported to the department of health services as prescribed by department rules.

D. The director of the department of health services shall establish a newborn screening program within the department to ensure that the testing for congenital disorders and the reporting of hearing test results required by this section are conducted in an effective and efficient manner. The newborn screening program shall include all congenital disorders that are included on the recommended uniform screening panel adopted by the secretary of the United States department of health and human services for both core and secondary conditions. Beginning January 1, 2022, disorders that are added to the core and secondary conditions list of the recommended uniform screening panel shall be added to this state's newborn screening panel within two years after their addition to the recommended uniform screening panel. The newborn screening program shall include an education program for the general public, the medical community, parents and professional groups. The director shall designate the state laboratory as the only testing facility for the program, except that the director may designate other laboratory testing facilities for conditions or tests added to the newborn screening program on or after July 24, 2014. If the director designates another laboratory testing facility for any condition or test, the director shall require the facility to follow all of the privacy and sample destruction time frames that are required of the state laboratory.

E. The newborn screening program shall establish and maintain a central database of newborns and infants who are tested for hearing loss and congenital disorders that includes information required in rule. Test results are confidential subject to the disclosure provisions of sections 12-2801 and 12-2802.

F. If tests conducted pursuant to this section indicate that a newborn or infant may have a hearing loss or a congenital disorder, the screening program shall provide follow-up services to encourage the child's family to access evaluation services, specialty care and early intervention services.

G. The director shall establish a committee to provide recommendations and advice to the department on at least an annual basis regarding newborn screening best practices and emerging trends.

H. The director may establish by rule a fee that the department may collect for operating the newborn screening program, including contracting for the testing pursuant to this section. The director shall

present any change to the fee for the newborn screening program to the joint legislative budget committee for review.

I. Not later than sixty days after the department adjusts the newborn screening program fee established pursuant to subsection H of this section:

1. Each health insurer that is subject to title 20 shall update its hospital rates that include newborn screening to reflect the increase.

2. For the Arizona health care cost containment system and contractors acting pursuant to chapter 29, article 1 of this title that are not subject to title 20, the Arizona health care cost containment system shall update its hospital rates that include newborn screening to reflect the increase.

J. For the purposes of this section:

1. "Infant" means a child who is twenty-nine days of age to two years of age.

2. "Newborn" means a child who is not more than twenty-eight days of age.

G-6.

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 2, Articles 1 & 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: **June 6, 2024**

SUBJECT: **DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 2, Articles 1 & 2

Summary

This Five Year Review Report (5YRR) from the Department of Transportation (Department) covers seven (7) rules and one (1) Table in Title 17, Chapter 2, Articles 1 and 2. Specifically, Article 1 covers General Provisions and Article 2 covers Ambient Air Quality Standards; Area Designations; and Classifications. The Department is authorized to establish rules necessary for collecting taxes and license fees, ensuring public safety, enforcing the provisions of the law the Director administers, and preventing the abuse and unauthorized use of state highways. The Department has authority over state highways, performs statewide motor vehicle licensing and registration functions, and transportation planning services. A.R.S. § 28-8242(C)(3) provides authority for the Director to operate and maintain the Grand Canyon National Park Airport (GCNPA) located in Tusayan, Arizona. A.R.S. § 28-8419(A) gives the Department authority to adopt rules and establish fees or charges for use of GCNPA facilities.

The Department did not receive approval from the Governor's Office to initiate a rulemaking, so the Department did not complete its prior proposed course of action as indicated in their prior Five Year Review Report.

Proposed Action

The Department intends to submit a Notice of Final Rulemaking by August 30, 2024 to amend the rules and fix the issues identified in this report.

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 states that the economic impact of these rules has remained the same as estimated in the economic impact statement prepared for the rules in 2011, due to similar operating costs and no changes in the rules or fees. They indicated that as it relates to fees and the economic impact of the rules, the proposed removal of the direct phone space fee has no relevance on the rules or any economic impact, as it is an obsolete fee that has not been relevant to the functionality of the rules in years. Stakeholders include the Department and users and tenants of Grand Canyon National Park Airport (GCNPA).

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 indicates that, in rulemaking, it routinely adopts the least costly and least burdensome option for any process or procedure of the regulated public or industry. The Department states that it imposes airport fees and charges at the lowest costs feasible to continue to maintain the financial viability of the airport. The Department has determined that the rules impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department has not received written criticism over the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates the rules are generally are clear, concise, and understandable and in addition to conforming changes, the Department proposes the following changes:

- R17-2-101: definitions should be updated;
- Table 1: typographical error should be corrected;
- R17-2-203(A)(2)(b)(ii) and R17-2-204(A): terms should be updated;
- R17-2-204(B): grammatical errors should be corrected;
- R17-2-206 (5): statutory citations should be corrected.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are generally effective in achieving their objectives with the following exceptions:

- Table 1: fees should be updated

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states 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 Department states there are no corresponding federal laws related to these rules.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates that no rules that were adopted after July 29, 2010 require a permit, license, or agency authorization.

11. **Conclusion**

This Five Year Review Report from the Department of Transportation covers seven rules and one Table in Title 17, Chapter 2, Articles 1 and 2. As indicated above, the rules are consistent with other rules and statutes and are enforced as written. The Department was not able to complete their proposed course of action indicated in their prior 5YRR because they did not receive approval from the Governor's Office to conduct a rulemaking.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

February 26, 2024

VIA EMAIL: grrc@azdoa.gov
Mr. Frank Thorwald, Vice-Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Department of Transportation, A.A.C, Title 17, Chapter 2, Article 1 and Article 2 Five Year Review Report

Dear Mr. Thorwald,

Please find enclosed the Five Year Review Report of the Arizona Department of Transportation (ADOT) for A.A.C. Title 17, Chapter 2, Article 1 and Article 2, which is due on February 29, 2024.

ADOT hereby certifies it is in full compliance with A.R.S. 41-1091.

For questions about this report, please contact Kamaria McDonald, Rules & Policy Analyst, at 623-687-1703 or kmcdonald3@azdot.gov.

Sincerely,

Jennifer Toth
Director

Enclosure: ADOT Five Year Review Report

ADOT

Government Relations and Rules

A.A.C. Title 17 – Transportation

Chapter 2

Department of Transportation

Aeronautics

Article 1 – General Provisions

Article 2 - Grand Canyon National Park Airport - Operation and Management

Five-Year Review Report

Submitted to the Governor's Regulatory Review Council

Feb 28, 2024

FIVE-YEAR REVIEW SUMMARY

A.R.S. § 28-366 authorizes the Director of the Arizona Department of Transportation (ADOT) to establish rules deemed necessary for collecting taxes and license fees, ensuring public safety, enforcing the provisions of the law the Director administers, and preventing the abuse and unauthorized use of state highways. The Department has authority over state highways, performs statewide motor vehicle licensing and registration functions, and transportation planning services. A.R.S. § 28-8242(C)(3) provides authority for the ADOT Director to operate and maintain the Grand Canyon National Park Airport (GCNPA) located in Tusayan, Arizona. A.R.S. § 28-8419(A) gives the Department authority to adopt rules and establish fees or charges for use of GCNPA facilities.

Grand Canyon National Park Airport is the fourth busiest public airport in Arizona. GCNPA has over 100,000 take-offs and landings with about 300,000 passengers boarding private and commercial aircrafts annually. One rule is contained in A.A.C. Title 17, Chapter 2, Article 1, that defines terms relating to the aeronautics rules for GCNPA. Article 2 of this chapter contains six rules regarding operation and management of GCNPA, and one table that lists fees and charges applicable to airport leaseholders, non-leaseholders and businesses operating at GCNPA.

Fees and charges generated from Airport operations or facilities are deposited into the State Aviation Fund, which is appropriated by the Legislature and used to pay for the Airport's operating costs. The Airport is also eligible for airport improvement grants from the Federal Aviation Administration (FAA).

The Department acknowledges that most of the updates indicated in the previous five-year review report were not completed by November 23, 2023, as anticipated. However, the Department is committed to making necessary changes as part of its continuing effort to improve the rules for the GCNPA.

Going forward, the Department anticipates filing a Notice of Proposed Rulemaking to complete the recommended changes by August 30, 2024, if approved by the Governor.

Arizona Department of Transportation

Five-Year Review Report

17 A.A.C. Chapter 2, Articles 1 and 2

February 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 28-366, 28-8204, 28-8242, 28-8419

Specific Statutory Authority: A.R.S. §§ 28-8204 and 28-8419

2. The objective of each rule:

Rule	Objective
R17-2-101	This rule defines the terms used in the rules relating to the operation and management of Grand Canyon National Park Airport (GCNPA) to ensure the understanding of the terms.
R17-2-201	This rule informs airport users and tenants that the fees and charges in Table 1 apply to all airport tenants and users of the airport.
Table 1	This rule informs users and tenants of GCNPA and its facilities about the fees and charges that will be imposed on tenants and users of the airport that support operation of the airport and make the airport self-sustaining.
R17-2-202	This rule contains the requirements for a user operating commercially at GCNPA.
R17-2-203	This rule contains the requirements that a fixed base operator must fulfill before entering a contract with the airport or before operating in this capacity.
R17-2-204	This rule authorizes the Aeronautics Division to enter into leases with businesses on airport property and establishes lease requirements.
R17-2-205	This rule allows airport management to impose parking limitations and lists prohibited activity.
R17-2-206	This rule establishes the procedures for airport management to impound aircraft and vehicles that are abandoned on Airport property by airport users.

3. Are the rules effective in achieving their objectives?

Yes _X__ No ___

The rules are generally effective in achieving their objective, but the Department recommends the following change to increase the effectiveness of the rules:

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
Table 1/Terminal Fees	The Department recommends the removal of the "Direct Phone space" fee from the rules, as it is obsolete and not relevant to the current functionality of the GCNPA.

4. Are the rules consistent with other rules and statutes? Yes _X_ No ___

These rules are consistent with other rules and statutes.

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.

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.

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.

The rules are generally clear, concise, and understandable, but the Department believes the following changes, including grammar and punctuation changes, will increase the clarity, conciseness, and understandability of the rules.

Rule	Explanation
R17-2-101	Strike definition of "ADOT", which is not used; insert definition of Department: "Department has the meaning prescribed in A.R.S. § 28-101." The word "Department" is used in the rules but is not defined. This change provides consistency with other agency rules.
R17-2-101	Insert definition of "Operating agreement" means a contract granting the privilege to conduct commercial operations at the airport in exchange for a specific compensation." Use of the term "operating agreement" as it more accurately describes the contract.

Table 1/Gate Fees/Non-airport leaseholder with aircraft maximum landing weight	Under "Gate Fees" for non-airport leaseholders with a maximum landing weight of "10,000 lbs. to 199,999 lbs., strike "10,000" and insert "100,000" to correct an error and make the weight range tiers consistent with gate fees for airport leaseholders.
R17-2-203(A)(2)(b)(ii)	Strike ", include" insert "includes".
R17-2-204(A)	Strike "Division", insert "Department." Division is an incorrect reference. For Department functions, agency rules refer to Department.
R17-2-204(B)	In the second sentence after "At", insert "a".
R17-2-206 (5)	Amend as follows: "The hearing shall be held in accordance with A.R.S. Title 41, Chapter 6, Article 6~~,~~ and 17 A.A.C. 1, Article 5." The new language references Department rules on hearing procedures.
17 A.A.C. 2, Articles 1 and 2	Throughout the rules, make conforming changes as needed to make the rules clear, concise, and understandable.

7. Has the agency received written criticisms of the rules within the last five years? Yes __ No X_

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. Economic, small business, and consumer impact comparison:

The economic impact of these rules has remained the same as estimated in the economic impact statement prepared for the rules in 2011, due to similar operating costs and no change in the rules or fees. As it relates to fees and the economic impact of the rules, the proposed removal of the direct phone space fee has no relevance on the rules or any economic impact, as it is an obsolete fee that has not been relevant to the functionality of the rules in years.

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?

In the previous Five-Year Review Report, the Department did not receive approval from the Governor's Office for an exemption from the rulemaking moratorium to initiate rulemaking on these rules, so the Department was unable to complete the 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:

In rulemaking, the Department routinely adopts the least costly and least burdensome option for any process or procedure required of the regulated public or industry. The Department imposes airport fees and charges at the lowest costs feasible to continue to maintain the financial viability of the airport. The Department has determined that the rules impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objective.

12. Are the rules more stringent than corresponding federal laws? Yes ___No __X_

The rules are not more stringent than federal law and there is no corresponding federal law directly related to these rules.

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:

R17-2-202, R17-2-203, R17-2-204, and R17-2-205 were last amended with an effective date of January 6, 2007, so the general permit provisions in A.R.S. § 41-1037 are inapplicable. R17-2-101, R17-2-201, Table 1, and R17-2-206 were last amended in a rulemaking that was effective on January 1, 2012. These rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

If the Department receives approval from the Governor's Office to move forward with rulemaking the Department anticipates filing rule changes to the Grand Canyon National Park Airport rules with the Governor's Regulatory Review Council on August 30, 2024.

TITLE 17. TRANSPORTATION

CHAPTER 2. DEPARTMENT OF TRANSPORTATION AERONAUTICS

Chapter heading amended by Notice of Final Rulemaking at 17 A.A.R. 2151, effective January 1, 2012 (Supp. 11-4).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R17-2-01 through R17-2-06, repealed effective May 2, 1990; new Article 1, consisting of Sections R17-2-101 adopted effective May 2, 1990.

ARTICLE 2. GRAND CANYON NATIONAL PARK AIRPORT - OPERATION AND MANAGEMENT

Article 2, consisting of Sections R17-2-201 through R17-2-204 adopted effective May 2, 1990.

ARTICLE 1. GENERAL PROVISIONS

R17-2-101. Definitions

In this Chapter, the following definitions shall apply:

"ADOT" means the Arizona Department of Transportation.

"After-hours" means hours beyond those determined by airport management as appropriate to meet the seasonal demand.

"Aircraft ramp area" means an artificially surfaced section of airport ground designed and used for aircraft parking with access to a taxiway.

"Airport" means the geographical boundaries of the property owned by the Arizona Department of Transportation known as the Grand Canyon National Park Airport.

"Airport business" means any business venture operating inside the boundaries of the Grand Canyon National Park Airport or relying on business generated as a result of the presence of the airport, its customers, or employees.

"Airport gate" means an entryway onto an apron, not on leased property, whether through a fence or a building.

"Airport leaseholder" means a user of the airport under a lease agreement with the Department.

"Airport management" means one or more persons designated by the Director as responsible for the management of the airport and its operations.

"Airport operations area" means an area of the airport, within a fenced perimeter, including a runway, taxiway, apron, or other FAA-mandated safety areas that are used or intended to be used for landing, takeoff, or the surface maneuvering of aircraft.

"Airport terminal building" means a building owned by the airport that is used for accommodating the enplaning and deplaning of passengers and other associated activities.

"Apron" means an artificially surfaced area of ground designed and used for the parking and storage of aircraft at an airport.

"Commercial aviation" means the scheduled or non-scheduled transportation by air of persons or property for compensation or hire under FAA regulations.

"Commercial fuel handling" means the sale, storage, transportation, or distribution of fuels for compensation.

"Commercial ground transportation" means the non-air transportation of persons or property to or from the airport for compensation.

"Commercial service aircraft" means any aircraft while being used for commercial aviation purposes.

"Commercial service aircraft passenger" means a person, other than aircraft flight crew, who enplanes, deplanes, or who is onboard a commercial service aircraft.

"Commercial use ramp" means an apron designated by airport management for the parking of commercial service aircraft and the enplaning or deplaning of commercial service aircraft passengers.

"Direct costs" means labor, materials, and variable overhead expenses that are directly associated with a specific service.

"Direct phone" means telephone service directly to hotels, motels, or other businesses.

"Director" means the Director of the Arizona Department of Transportation or the Director's designee.

"Disabled aircraft" means an aircraft that requires assistance to move from any position on a runway, taxiway, or apron area of the airport.

"Disabled aircraft support equipment" means any equipment used to assist aircraft movement from any position on a runway, taxiway, or apron area of the airport.

"Electronic access security badge" means a credential issued by airport management to a person for identification as an employee of the airport, an airport tenant, or an airport contractor authorized to open electronically controlled gates.

"FAA" means the Federal Aviation Administration of the United States Department of Transportation.

"Fixed base operator" means an airport business that provides airport user services, including but not limited to, commercial fuel handling within the boundaries of the airport.

"Fuel" means all flammable fluids composed of a mixture of selected hydrocarbons manufactured and blended for the purpose of aircraft, railroad, or motor vehicle propulsion.

"Fuel supplier" means an airport business that dispenses fuel to retail customers or into vehicles owned or operated by that business.

"Lease" means a contract granting use or occupation of property during a specified period in exchange for a specified compensation.

"License agreement" means a contract granting use or occupation of a portion of the terminal or other state-owned building in exchange for a specific compensation.

"Maximum landing weight" means the maximum weight at which an aircraft may normally be landed as determined by the

manufacturer.

"NFPA" means the National Fire Protection Association.

"Non-terminal ramp area" means the portion of aircraft ramp area designated by airport management for the parking of aircraft when use of a terminal building is not required.

"Overnight parking" means the act of leaving a motor vehicle unoccupied between the hours of sunset and sunrise on airport property that is not leased.

"Permit holder" means a person, partnership, association, firm, or corporation that owns or operates a business at the airport under a use permit.

"Public use terminal" means a structure designated for use by the general public that is not specifically restricted or dedicated to any one airport business.

"Retail sales" means all sales activities at the airport not directly related to the transportation of persons or property. Sales include but are not limited to food, beverages, souvenirs, sundries, books, newspapers, and magazines.

"Rotorcraft" means a heavier-than-air aircraft that depends principally for its support in flight on the lift generated by one or more rotors.

"Security badge" means a credential issued by airport management to a person for identification as an employee of the airport, an airport tenant, or an airport contractor.

"Self-fuel dispensing or handling" means non-commercial fuel delivery to an aircraft, provided by the owner or operator.

"State" means the state of Arizona or its agents.

"Sunset" and "sunrise" have the same meaning and daily calculation as prescribed by the United States Naval Observatory (USNO), which is available on the internet at http://aa.usno.navy.mil or in hardcopy format from airport management.

"Taxiway" means an artificially surfaced strip of ground designed and used for the ground movement of aircraft at an airport.

"Terminal ramp area" means the portion of aircraft ramp area designated by airport management for the parking of aircraft when use of a terminal building is required.

"Terminal road" means an artificially surfaced strip of ground positioned in front of an airport terminal building, which is designated by airport management for the parking of vehicles and the loading or unloading of passengers.

"Terminal space" means any area within a structure designated as a terminal and used by the public for transitioning between aircraft and ground transportation.

"TSA" means the Transportation Security Administration of the United States Department of Homeland Security.

"Use permit" means a contract granting the privilege to conduct commercial operations at the airport in exchange for a specific compensation.

"Vehicle" means any equipment, other than aircraft, that is used for transporting persons or property.

Historical Note

Adopted effective May 2, 1990 (Supp. 90-2). Amended effective March 17, 1995 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 4437, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 17 A.A.R. 2151, effective January 1, 2012 (Supp. 11-4).

ARTICLE 2. GRAND CANYON NATIONAL PARK AIRPORT - OPERATION AND MANAGEMENT

R17-2-201. Fees and Charges for Services and Use of Facilities and Equipment at the Airport

The fees and charges in Table 1 apply to all tenants and users of the airport and its facilities.

Historical Note

Adopted effective May 2, 1990 (Supp. 90-2). Amended effective February 17, 1994 (Supp. 94-1). Amended by final rulemaking at 12 A.A.R. 4437, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 17 A.A.R. 2151, effective January 1, 2012 (Supp. 11-4).

Table 1. Grand Canyon National Park Airport Fees and Charges

Landing Fees For commercial flight operations landing at the airport including, but not limited to, air carrier, air taxi, air tour, and air freight:	
Single-engine fixed wing, multi-engine fixed wing, or rotorcraft using the airport operations area	$1.05 per 1,000 lbs., or part of 1,000 lbs., of FAA-certified maximum landing weight
Rotorcraft not using the airport operations area	$0.30 per 1,000 lbs., or part of 1,000 lbs., of FAA-certified maximum landing weight
Aircraft Parking Fees For non-commercial service aircraft parking areas within airport boundaries designated by airport management:	
Single-engine fixed wing or rotorcraft	$50.00 per month, if parked in designated public tie-down areas Daily rate is one-tenth of the monthly rate
Multi-engine fixed wing or rotorcraft	$100.00 per month, if parked in designated public tie-down areas Daily rate is one-tenth of the monthly rate
Terminal Fees	
Advertising space	$5.00 per sq. ft. (sign size), per month, for terminal and counter areas $8.00 per sq. ft. (sign size), per month, for outdoor sign space
After-hours terminal use	$200.00 per hour, or part of an hour, in excess of 10 minutes after scheduled terminal closure
Direct phone space	$35.00 per phone unit, per month
Public address system	$35.00 per monthly subscription to use the public address system
Retail sales space	$26.00 per sq. ft., per year
Terminal counter space	$26.00 per sq. ft., per year
Terminal office space	$26.00 per sq. ft., per year

Gate Fees For loading or unloading commercial service aircraft passengers through an unleased airport gate that provides access to or from the aircraft ramp area:	
Airport leaseholder using an aircraft with a maximum landing weight of:	
Less than 12,500 lbs. 12,500 lbs. to 44,999 lbs. 45,000 lbs. to 99,999 lbs. 100,000 lbs. to 199,999 lbs. 200,000 lbs. or greater	$1.00 per flight $5.00 per flight $10.00 per flight $50.00 per flight $75.00 per flight
Non-airport leaseholder using an aircraft with a maximum landing weight of:	
Less than 12,500 lbs. 12,500 lbs. to 44,999 lbs. 45,000 lbs. to 99,999 lbs. 10,000 lbs. to 199,999 lbs. 200,000 lbs. or greater	$1.50 per flight $7.50 per flight $15.00 per flight $100.00 per flight $150.00 per flight
Fuel Flowage Fees	
Fuel flowage	$0.03 per gallon of fuel delivered to the airport, and $0.07 per gallon of fuel sold at the airport
Equipment Use Fees	
Aircraft tug	$100.00 per use
Auxiliary power unit	$100.00 per use
Non-aviation equipment	As negotiated
Passenger stairs	$100.00 per use
Portable heater	$50.00 per use
Miscellaneous Fees	
Clean up of hazardous materials	Direct costs
Disabled aircraft assistance	Direct costs
Disabled aircraft support equipment	Direct costs
Repairs of damage to airport property	Direct costs
Storage of crash debris	$25.00 per sq. ft., per month, or part of a month beyond 72 hours after release of the crash debris by the FAA or National Transportation Safety Board
Use of airport personnel, whether requested or required by regulation, when the FAA Air Control Tower is closed	$100.00 per landing, take-off, or if on standby, for each 30-minute increment
Commercial Ground Transportation Fees All commercial ground transportation use permit holders shall report and pay monthly the following fees and charges as appropriate:	
Daily airport access charge	$100.00 per day charged to any commercial ground transportation company that accesses the airport without an annual airport access permit
Annual airport access permit	$20.00 per vehicle for an airport leaseholder $25.00 per vehicle for a non-airport leaseholder
Commercial ground transportation	$7.00 per vehicle each time the vehicle is used on the airport for the purpose of loading or unloading passengers
Terminal road parking permit	$10.00 per use for an airport leaseholder $20.00 per use for a non-airport leaseholder
Vehicle Parking Fees For areas located within the airport boundaries and designated by airport management for restricted parking:	
Daily commercial ground transportation use permit parking	$10.00 per vehicle, per day, or any portion of a 24-hour period for an airport leaseholder $15.00 per vehicle, per day, or any portion of a 24-hour period for a non-airport leaseholder
Monthly commercial ground transportation use permit parking	$100.00 per vehicle, per month, for an airport leaseholder $150.00 per vehicle, per month, for a non-airport leaseholder
Overnight parking, commercial vehicles in excess of designated number as specified by license agreement as defined in R17-2-101, or use permit, and private vehicles	$10.00 per vehicle, per 24-hour period $100.00 per vehicle, per month, in designated area
Rental car parking	Auto storage, in a designated area, as established by use permit terms

Retail Sales of Goods or Services Fees are a percentage of gross receipts, as defined under A.R.S. § 42-5001, of all retail sales after federal, state, and local taxes, except as negotiated in each use permit. Use permits shall be based on highest bids that are in the best interest of the airport and shall contain provisions for not less than the percentage in this schedule:	
Air tour flights originating at the airport regardless of where the tour was sold	1.5%
Vendor fuel sales	5%
Other	As negotiated
Use of Other Facilities Outside the Terminal	
Use of other facilities outside the terminal	As negotiated
Security Fees For airport employees, airport tenant employees, and airport users for badges and to meet security requirements of the FAA and TSA	
Security badge	$25.00 per year
Replacement security badge	$50.00 for first lost security badge occurrence $100.00 for second lost security badge occurrence $150.00 for third lost security badge occurrence
Unreturned security badge	$200.00 for failure to return security badge at termination of employment (charged to airport tenant)
Electronic access security badge	$30.00 per year for a badge providing access to the airfield and other secured areas
Replacement electronic access security badge	$60.00 for first lost electronic access security badge occurrence $120.00 for second lost electronic access security badge occurrence $180.00 for third lost electronic access security badge occurrence
Unreturned electronic access security badge	$250.00 for failure to return electronic access security badge at termination of employment (charged to airport tenant)
Security screening	$150.00 per flight for use of airport security screening facilities
Security violation charge	$100.00 per violation of airport, FAA, or TSA security regulations $250.00 for each additional violation in a 30-day period
Commercial Use Ramp Fees Exclusion. This fee does not apply to any commercial service aircraft that provides air tours departing from and returning to the airport or to air tour flights that bring commercial service aircraft to the airport for this purpose:	
Terminal ramp area	$15.00 per hour for any commercial service aircraft that does not qualify for the exclusion to a maximum of $60.00 per use
Non-terminal ramp area	$10.00 per hour for any commercial service aircraft that does not qualify for the exclusion to a maximum of $40.00 per use
Water Usage Fees	
Water usage	Water usage fees consist of the total direct cost of water paid by the Department for Airport usage, including all fees and taxes, the actual cost per gallon of all expenses for water testing, repair and maintenance to the water delivery system for the Airport, and an administrative fee of 5%

Historical Note

New Table 1 made by final rulemaking at 12 A.A.R. 4437, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 17 A.A.R. 2151, effective January 1, 2012 (Supp. 11-4).

R17-2-202. Airport Use Permits

A. A user operating commercially at the airport shall first obtain a use permit or be subject to a $100.00 fine for each infraction. Use permits are required for the following activities:
1. Commercial aviation;
2. Commercial ground transportation;
3. Commercial fuel handling; and
4. Airport business.

B. An aircraft owner or operator desiring to dispense fuel to the owner's or operator's own aircraft shall first obtain a self fueling or handling permit or be subject to a $100.00 fine for each infraction.

C. A use permit shall contain, at minimum, provisions governing the following subjects:
1. Minimum insurance coverage in the amount required by the Department of Administration's Risk Management Section, naming the state as co-insured;
2. Billing, payment, and audit procedures and the penalties for non-compliance;
3. Data reporting in a timely manner, upon request of the airport management or other agency. This data may include, but is not limited to:
   a. Gross receipts,
   b. Aircraft landings,
   c. Aircraft tie-downs,
   d. Equipment utilized,
   e. Enplanements,
   f. Gallons and types of fuel pumped, and
   g. Passengers transported each way, to or from the airport;

4. A list of all employees with access to airport security areas and any changes in the list. In addition, the fixed base operator shall provide verification of compliance with employee security checks required under federal, state, and local laws, rules, regulations, and policies governing the use of the airport;
5. Evidence of compliance with all other jurisdictions' requirements for permits, licenses, insurance and certificates; and
6. Detailed descriptions of any space within the public use terminal assigned to the commercial user and provisions describing allowable uses for the space as well as minimum expected maintenance of the facilities provided.

Historical Note
Adopted effective May 2, 1990 (Supp. 90-2). Amended by final rulemaking at 12 A.A.R. 4437, effective January 6, 2007 (Supp. 06-4).

R17-2-203. Minimum Requirements for Fixed Base Operators

A. Before entering into a contract or commencing any operation at the airport as a fixed base operator, each fixed base operator shall:
1. Hold a commercial fuel handling use permit;
2. Submit to airport management, a verified statement that contains a detailed description of the scope of the intended operation. This statement shall include:
   a. The means and methods that will be employed to accomplish the aviation operation, including how the operating standards and requirements will be met; and
   b. The nature of ownership and the responsible parties. If the responsible party is:
      i. An individual, include the person's name and address;
      ii. A partnership, include the names and addresses of all the partners; or
      iii. A corporation, association, or other organization, include the names of the president, vice president, secretary, and managing officer or managing employee;
3. Possess a minimum of three years experience, within the past five years, in managing a fixed base operation at an airport.
   a. The experience requirement applies either to:
      i. The individual owner, if a sole proprietorship;
      ii. One of the partners, if a partnership; or
      iii. The permanent full-time managing officer or employee, if a corporation.
   b. If more than one person shares the full-time management responsibilities and duties of the organization, their collective management experience may be used to satisfy subsection (A)(3) if that experience encompasses each particular service or operation proposed;
4. Provide to airport management, a complete certified financial statement, prepared by an independent accounting firm;
5. Provide to airport management, evidence of current public liability insurance coverage in the minimum amount required by the Department of Administration's Risk Management Section, naming the state as co-insured. Hangarkeeper's liability insurance may be required if aircraft are on the premises for safekeeping, storage, service, or repair; and
6. Submit to airport management, a verified statement that there is a commitment from a fuel supplier to supply fuel. The commitment shall specify the types and volumes of fuel available to the fixed base operator.

B. Upon commencing operations, a fixed base operator shall:
1. Provide to airport management, an annual financial statement at the close of the state's fiscal year;
2. Obtain and keep current, during the term of the use permit, all required federal, state, and local licenses and ensure compliance with all federal, state, and local laws, rules, regulations, and policies governing the use of the airport;
3. Remain available as required by airport management, either individually or in connection with the other fixed base operators situated at the airport, to provide service and to respond to emergencies during after-hours;
4. Report all data pertaining to gallons and types of fuel pumped and other types of information as required by additional use permits. Reports shall be provided to the airport management and other requesting agencies in a timely manner;
5. Report all activity for which fees are established and pay all fees before the 10th calendar day of each month;
6. Retain all financial records at the airport for five years and comply with all auditing requirements in the use permit;
7. Provide airport management with a list of all employees with access to airport security areas and notify airport management of any changes;
8. Provide verification of compliance with employee security checks required under federal, state, and local laws, rules, regulations, and policies governing the use of the airport;
9. Comply with all FAA and NFPA inspection criteria;
10. Provide airport management with a copy of written fueling operations procedures, safety and inspection manuals, and records, as required by FAA and NFPA regulations; and
11. Maintain an approved, written, spill-prevention contingency and control plan that meets all applicable federal and state standards.

Historical Note
Adopted effective May 2, 1990 (Supp. 90-2). Amended by final rulemaking at 12 A.A.R. 4437, effective January 6, 2007 (Supp. 06-4). Section heading corrected per Department's request as amended by final rulemaking at 12 A.A.R. 4437, effective January 6, 2007 (Supp. 09-2).

R17-2-204. Airport Ground Leases

A. The Division may enter into leases of airport property for the operation of businesses that foster the development of the airport.

B. All leases of airport property, other than the existing or any future public use terminal facility, shall be based on a competitive sealed proposal process as specified in A.R.S. § 41-2534. At minimum, leases shall be based on a price per square foot of property as valued through an appraisal of that property. In addition, leases shall contain provisions for not less than the percentage in the following schedule:
1. Food and beverage - 5%
2. Rental of personal property - 10%
3. Retail sales of merchandise - 10%
4. Other - As negotiated

Historical Note
Adopted effective May 2, 1990 (Supp. 90-2). Amended by final rulemaking at 12 A.A.R. 4437, effective January

6, 2007 (Supp. 06-4).

R17-2-205. Airport Parking Limitations; Prohibited Activities

A. For a special occasion, or during an emergency, airport management may impose parking limitations as circumstances require.

B. A person or entity using the airport and its facilities shall not:
1. Park a vehicle in an area designated a no parking zone as indicated by a sign or red painted curb;
2. Drive or park a vehicle in any area on airport property that is closed by the use of a barricade, chain, or other traffic control device;
3. Park a vehicle on a pedestrian path, sidewalk, or safety zone;
4. Park a vehicle in a manner or location that obstructs another parked vehicle; or
5. Camp on airport property.

Historical Note

Adopted effective March 17, 1995 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 4437, effective January 6, 2007 (Supp. 06-4).

R17-2-206. Airport Impoundment Procedures; Notice of Impound

This Section applies to all persons or entities using the airport and its facilities:
1. Airport management may remove and impound any aircraft or other vehicle found on state property if an owner has:
   a. Parked the aircraft or vehicle in an area designated and posted as a restricted area;
   b. Parked the aircraft or vehicle in violation of this Article;
   c. Abandoned the aircraft or vehicle on airport property for more than 14 days without prior notification and permission of airport management;
   d. Failed to pay parking fees for 15 days after the date a parking statement is attached to the aircraft or vehicle, indicating that a parking fee is due; or
   e. Parked the aircraft or vehicle in a manner or location that constitutes a hazard or impediment to the general public or to the movement and operation of aircraft or emergency equipment.
2. Notice of Impound.
   a. An authorized agent of the airport's management, at the time of removal for impound, shall post a Notice of Impound as near to the location from which the aircraft or vehicle was removed as is practical, and a copy of the notice shall be mailed to the address listed on the:
      i. Aircraft or vehicle,
      ii. Vehicle registration in the aircraft or vehicle, or
      iii. Airport records.
   b. If no address is available under subsection (2)(a), airport management, within a period of 10 business days from the date of impoundment, shall twice publish the Notice of Impound in a daily newspaper with a general circulation in Coconino County. The notice shall describe the:
      i. Aircraft or vehicle,
      ii. Parking violation that necessitated the impoundment,
      iii. Location to which the aircraft or vehicle was impounded,
      iv. Name and address of the person to contact regarding the impoundment, and
      v. Owner's right to file a request for a hearing under subsection (5).
3. Airport management shall ensure that:
   a. A vehicle is removed by a tow truck registered with the Department of Public Safety, and
   b. An aircraft is removed by a fixed base operator that has complied with R17-2-203.
4. Costs to owner. The owner of an aircraft or vehicle is responsible for all costs involved in the removal, impoundment, and storage of the aircraft or vehicle, plus any costs incurred by publication of the Notice of Impound.
5. Hearing requests. Any person subject to a decision made by airport management under this Chapter may request a hearing with the Director. The person shall submit a written request for the hearing to the Department not more than 30 days after the action taken by airport management. The hearing shall be held in accordance with A.R.S. Title 41, Chapter 6, Article 6.

Historical Note

Adopted effective March 17, 1995 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 4437, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 17 A.A.R. 2151, effective January 1, 2012 (Supp. 11-4).

§ 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

§ 28-8204. State owned airports; fees

The director may establish fees for use of state owned airports and appurtenant facilities, including the following:

1. Landing and takeoff for commercial aircraft.

2. Aircraft tiedown.

3. Vehicle parking.

4. Equipment use.

5. Aircraft servicing.

6. Facility use.

7. Damages to equipment or facilities.

8. Janitorial or custodial services.

9. Terminal and land space rental.

10. Commission on sales at the airport.

11. Ground transportation use of the airport facility in serving passengers who are arriving or departing.

12. Use of advertising space.

13. Fuel flowage, storage, transportation and handling.

§ 28-8242. Powers and duties

A. The department:

1. Shall cooperate with all state, local and federal organizations to encourage and advance the safe and orderly development of aviation in this state.

2. May:

(a) Assemble and distribute to the public information relating to aviation, landing fields, navigational aids and other matters pertaining to aviation.

(b) Accept, in the name of this state, federal monies made available for the advancement of aviation.

(c) Represent this state on issues of routing structures and rate schedules concerning commercial airline traffic.

(d) Accept and receive federal and other public or private monies for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports and other air navigation facilities and sites for air navigation facilities or for any other purpose authorized by this section. The department shall deposit, pursuant to sections 35-146 and 35-147, these monies in the state aviation fund.

(e) Facilitate the development of a regional airport.

(f) Loan monies from the state aviation fund to an airport authority that enters into an agreement with the United States for an airport development project if the airport authority designates in its agreement with the United States that payment of federal participating monies shall be made to the department acting as the agent of the airport authority and enters into an agreement with the department appointing the department as agent of the airport authority to receive all federal participating monies. The department shall deposit, pursuant to sections 35-146 and 35-147, all monies received pursuant to this subdivision in the state aviation fund. For the purposes of this subdivision, "airport authority" means the governing body of a public airport operating pursuant to sections 28-8423 and 28-8424 or a joint powers airport authority.

B. Notwithstanding section 38-623, the director may authorize personnel of the department to use rental aircraft in the performance of their duties at the prevailing hourly rate. The rental fee is a charge against monies appropriated for in-state and out-of-state travel.

C. The director shall:

1. Contract for the operation of state owned airports.

2. In conjunction with local authorities, plan, build and develop airports, airport terminals and other related navigational facilities.

3. Operate and maintain the Grand Canyon national park airport located in the Kaibab national forest, Coconino county.

4. Provide on the department's website information on resources for operating a model aircraft, including safety guidelines established by a nationwide aeronautics community-based organization.

5. Provide on the department's website pictures that show examples of critical facilities, as defined in section 13-3729, to provide unmanned aircraft operators with information on what is considered a critical facility. A picture or any written description on the website may not identify the owner or operator of the critical facility or the location of the critical facility.

History:

Amended by L. 2018, ch. 260,s. 38, eff. 8/3/2018. Amended by L. 2016, ch. 170,s. 2, eff. 8/5/2016.

§ 28-8419. Airport rules, fees and charges; limitation

A. The department, in the operation and maintenance of the Grand Canyon national park airport, and the governing body of a city or town or the board of supervisors of a county may adopt rules and establish fees or charges for use of airport facilities.

B. The governing body of a city or town or the board of supervisors of a county may authorize an officer, board or body of the city, town or county to adopt rules and establish fees and charges, subject to approval by the governing body before the fees and charges are effective.

C. This section does not:

1. Authorize the governing body of a city or town or the board of supervisors of a county to restrict or limit the length or width of an airstrip or runway used for the landing and takeoff of aircraft, and any such restriction or limitation is void.

2. Affect the zoning authority of counties, cities or towns pursuant to other provisions of law.

G-7.

BOARD OF PSYCHOLOGIST EXAMINERS
Title 4, Chapter 26, Articles 1-3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: **Aug 6, 2024**

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

FROM: Council Staff

DATE: **July 9, 2024**

SUBJECT: **BOARD OF PSYCHOLOGIST EXAMINERS**
Title 4, Chapter 26, Articles 1-3

Summary

This Five Year Review Report (5YRR) from the Arizona Board of Psychologist Examiners (Board) covers thirty-five (35) rules in Title 4, Chapter 26, Articles 1-3. Specifically, Article 1 relates to General Provisions, Article 2 relates to Licensure, and Article 3 relates to Regulation. The Arizona Board of Psychologist Examiners regulates psychologists and behavior analysts through licensure, providing information about licensees to the public, and investigating and resolving complaints against licensees. These actions are taken to protect the health, safety, and welfare of the public.

The Board completed the prior course of action proposed in the 5YRR approved by Council on August 6, 2019.

Proposed Action

The Board does not have a proposed course of action at this time.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board states that the economic impact of the rules has not differed from original economic impact statements at adoptions of rules. The Board believes it correctly determined the economic impact on psychologists results from statute rather than the rule. The economic impact of the rules is minimal. The Board currently licenses 2,110 psychologists in active licensure status, 20 supervised temporary psychologists, and 15 telehealth registrants. An additional 242 psychologists have voluntary inactive licenses. During fiscal year 2023, 204 individuals applied for psychologist licensure, 7 applied for a supervised temporary psychologist license, and 8 applied for the telehealth registry practice authorization. Stakeholders include the Board and those individuals who wish to practice psychology in Arizona.

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 Board states that notwithstanding any costs imposed by statutes or caused by the rules of other agencies, they believe the 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. The Board believes the rules merely provide guidance and clarification regarding implementing and conforming to the statutory requirements.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Board received one written criticism of the rules in the form of a petition from Bradley Boivin, Psy.D. regarding R4-26-207 in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board states the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Board states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Board states 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 Board 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?**

The Board indicates that only seven (7) rules reviewed require a permit, license, or agency authorization, however that these rules qualify for an exception under A.R.S. § 41-1037(A)(2), as issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.

11. **Conclusion**

This Five Year Review Report from the Arizona Board of Psychologist Examiners covers thirty-five rules in Title 4, Chapter 26, Articles 1-3. As indicated above, the rules are clear, concise, and understandable, effective in achieving their objectives, and enforced as written. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

April 3, 2024

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Board of Psychologist Examiners; A.A.C. Title 4. Professions and Occupations, Chapter 26. Board of Psychologist Examiners, Articles 1 through 3; Five Year Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report of the Arizona Board of Psychologist Examiners for A.A.C. Title 4. Professions and Occupations, Chapter 26. Board of Psychologist Examiners, Articles 1 through 3 which is due on April 30, 2024.

The Arizona Board of Psychologist Examiners hereby certifies compliance with A.R.S. 41-1091. For questions about this report, please contact me at 602.542.3018 or heidi.paakkonen@psychboard.az.gov.

Regards,

Heidi Herbst Paakkonen, MPA
Executive Director

Arizona Board of
Psychologist Examiners

5 YEAR REVIEW REPORT

A.A.C. Title 4. Professions and Occupations

Chapter 26. Board of Psychologist Examiners

Articles 1. General Provisions

Article 2. Licensure

Article 3. Regulation

April 30, 2024

1. Authorization of the rule by existing statutes

The agency rules are authorized under A.R.S. § 32-2063(A)(1). The specific statutes that authorize specific rules are listed here:

Rule	Statute
R4-26-101. Definitions	A.R.S. § 32-2063(A)(9)
R4-26-102. Board Officers	A.R.S. § 32-2063(A)(8)
R4-26-103. Repealed	Not applicable
R4-26-104. Repealed	Not applicable
R4-26-105. Repealed	Not applicable
R4-26-106. Client or Patient Records	A.R.S.§§ 32-2061(2) and (15)(h); Title 12, Chapter 13, Article 7.1
R4-26-107. Change of Name, Mailing, Residential, or E-mail Address, or Telephone Number	A.R.S.§ 32-2066(B)
R4-26-108. Fees and Charges	A.R.S. § 32-2067
R4-26-109. General Provisions Regarding Telepractice	A.R.S. § 32-2061(15) and Title 36, Chapter 36
R4-26-110. Providing Psychological Service by Telepractice	A.R.S. § 32-2061(15) and Title 36, Chapter 36
R4-26-111. Providing Supervision through Telepractice	A.R.S. § 32-2071(F)(6) and (G)(5)
R4-24-112. Reserved	Not applicable
R4-24-113. Reserved	Not applicable
R4-24-114. Reserved	Not applicable
R4-24-115. Reserved	Not applicable
R4-24-116. Reserved	Not applicable
R4-24-117. Reserved	Not applicable
R4-24-118. Reserved	Not applicable

R4-24-119. Reserved	Not applicable
R4-24-120. Renumbered	Not applicable
R4-24-121. Renumbered	Not applicable
R4-24-122. Renumbered	Not applicable
R4-24-123. Renumbered	Not applicable
R4-24-124. Renumbered	Not applicable
R4-24-125. Renumbered	Not applicable
R4-24-126. Renumbered	Not applicable
R4-24-127. Renumbered	Not applicable
R4-24-128. Renumbered	Not applicable
R4-24-129. Reserved	Not applicable
R4-24-130. Reserved	Not applicable
R4-24-131. Reserved	Not applicable
R4-24-132. Reserved	Not applicable
R4-24-133. Reserved	Not applicable
R4-24-134. Reserved	Not applicable
R4-24-135. Reserved	Not applicable
R4-24-136. Reserved	Not applicable
R4-24-137. Reserved	Not applicable
R4-24-138. Reserved	Not applicable
R4-24-139. Reserved	Not applicable
R4-24-140. Reserved	Not applicable
R4-24-141. Reserved	Not applicable
R4-24-142. Reserved	Not applicable
R4-24-143. Reserved	Not applicable
R4-24-144. Reserved	Not applicable
R4-24-145. Reserved	Not applicable
R4-24-146. Reserved	Not applicable
R4-24-147. Reserved	Not applicable
R4-24-148. Reserved	Not applicable
R4-24-149. Reserved	Not applicable
R4-24-150. Renumbered	Not applicable
R4-24-151. Renumbered	Not applicable
R4-24-152. Renumbered	Not applicable

R4-24-153. Renumbered	Not applicable
R4-24-154. Renumbered	Not applicable
R4-24-155. Renumbered	Not applicable
R4-24-156. Renumbered	Not applicable
R4-24-157. Renumbered	Not applicable
R4-26-201. Application Deadline	A.R.S. § 32-2063(A)(3)
R4-26-202. Doctorate	A.R.S. § 32-2071(A) through (C)
R4-26-203. Application of Initial License	A.R.S. §§ 32-2063(A)(3), 32-2071, and 32-2072
R4-26-203.01. Application for Licensure by Credential	A.R.S. §§ 32-2063(A)(3), 32-2071, and 32- 2071.01(D)
R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure	A.R.S. § 32-2072(C)
R4-26-203.03. Reapplication for License; Applying Anew	A.R.S. § 32-2067(A)(3)
R4-26-203.04 Temporary License under A.R.S. § 32-2073(B)	A.R.S. § 32-2073(B): A.R.S. § 32-2073(B)
R4-26-204. Examinations	A.R.S. §§ 32-2063(A)(11), 32-2072, and 32-2071(2)
Appendix A. Repealed	Not applicable
R4-26-205. Renewal of License	A.R.S. §§ 32-2063(A)(11), 32-2074(B) and 41-1073
R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License	A.R.S. §§ 32-2067(A)(8), 32-2073, and 32-2074
R4-26-207. Continuing Education	A.R.S. § 32-2074
R4-26-208. Time Frames for Processing Applications	A.R.S. §§ 32-2063(A)(3) and 41-1073
Table 1. Time Frames (in days) for Processing Applications	A.R.S. §§ 32-2063(A)(3) and 41-1073
R4-26-209. General Supervision	A.R.S. § 32-2071
R4-26-210. Supervised Professional Experience	A.R.S. § 32-2071
R4-26-211. Foreign Graduates	A.R.S. § 32-2071(B)
R4-26-301. Rules of Professional Conduct	A.R.S. § 32-2063(A)(11)
R4-26-302. Informal Interviews	A.R.S. § 32-2081(K)
R4-26-303. Titles	A.R.S. Title 32, Chapter 19.1
R4-26-304. Representation before the Board by Attorney Not Admitted to State Bar of Arizona	A.R.S. § 32-2082(D)
R4-26-305. Confidentiality of Investigative Materials	A.R.S. § 32-2082(E)
R4-26-308. Rehearing or Review of Decision	A.R.S. § 41-1092.09
R4-26-309. Complaints against Judicially Appointed Psychologists	A.R.S. § 32-2081(B)
R4-26-310. Disciplinary Supervision; Practice Monitor	A.R.S. §§ 2063(A)(2) and 32-2081

2. The objective of each rule:

Rule	Objective
R4-26-101. Definitions	The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.
R4-26-102. Board Officers	The objective of the rule is to set forth the process for electing Board officers and their terms under A.R.S. § 32-2063(A)(8).
R4-26-103. Repealed	Not applicable
R4-26-104. Repealed	Not applicable
R4-26-105. Repealed	Not applicable
R4-26-106. Client or Patient Records	The objective of the rule is to clarify client or patient access to their service records under A.R.S. § 32-2061(16)(s) and (cc), to specify requirements for psychologist licensees regarding the maintenance of adequate records under A.R.S. § 32-2061(16)(h), and to affirm the Board's authority to access records required for investigative purposes pursuant to A.R.S. § 32-2082. The rule also specifies that psychologist licensees on inactive status are not exempt from these requirements.
R4-26-107. Change of Name, Mailing, Residential, or E-mail Address, or Telephone Number	The objective of the rule is to inform psychologist licensees that because the Board relies on information in its records to communicate with a licensee, maintaining that information as accurate is in the licensee's and public's interest, and is required by A.R.S. § 32-2066(B).
R4-26-108. Fees and Charges	The objective of the rule is to specify the fees the Board charges for specific application processing costs, regulatory costs, and for other services primarily associated with the cost to produce public records.
R4-26-109. General Provisions Regarding Telepractice	The objective of the rule is to specify restrictions and standards specific to the provision of psychological services or supervision by telepractice.
R4-26-110. Providing Psychological Service by Telepractice	The objective of the rule is to specify minimum requirements specific to the provision of psychological services by telepractice.
R4-26-111. Providing Supervision through Telepractice	The objective of the rule is to specify minimum standards for providing supervision over the provision of psychological services by telepractice.
R4-24-112. Reserved	Not applicable
R4-24-113. Reserved	Not applicable
R4-24-114. Reserved	Not applicable
R4-24-115. Reserved	Not applicable
R4-24-116. Reserved	Not applicable
R4-24-117. Reserved	Not applicable
R4-24-118. Reserved	Not applicable
R4-24-119. Reserved	Not applicable
R4-24-120. Renumbered	Not applicable

R4-24-121. Renumbered	Not applicable
R4-24-122. Renumbered	Not applicable
R4-24-123. Renumbered	Not applicable
R4-24-124. Renumbered	Not applicable
R4-24-125. Renumbered	Not applicable
R4-24-126. Renumbered	Not applicable
R4-24-127. Renumbered	Not applicable
R4-24-128. Renumbered	Not applicable
R4-24-129. Reserved	Not applicable
R4-24-130. Reserved	Not applicable
R4-24-131. Reserved	Not applicable
R4-24-132. Reserved	Not applicable
R4-24-133. Reserved	Not applicable
R4-24-134. Reserved	Not applicable
R4-24-135. Reserved	Not applicable
R4-24-136. Reserved	Not applicable
R4-24-137. Reserved	Not applicable
R4-24-138. Reserved	Not applicable
R4-24-139. Reserved	Not applicable
R4-24-140. Reserved	Not applicable
R4-24-141. Reserved	Not applicable
R4-24-142. Reserved	Not applicable
R4-24-143. Reserved	Not applicable
R4-24-144. Reserved	Not applicable
R4-24-145. Reserved	Not applicable
R4-24-146. Reserved	Not applicable
R4-24-147. Reserved	Not applicable
R4-24-148. Reserved	Not applicable
R4-24-149. Reserved	Not applicable
R4-24-150. Renumbered	Not applicable
R4-24-151. Renumbered	Not applicable
R4-24-152. Renumbered	Not applicable
R4-24-153. Renumbered	Not applicable
R4-24-154. Renumbered	Not applicable

R4-24-155. Renumbered	Not applicable
R4-24-156. Renumbered	Not applicable
R4-24-157. Renumbered	Not applicable
R4-26-201. Application Deadline	The objective of the rule is to specify the standards the Board follows when scheduling an application for licensure for substantive review.
R4-26-202. Doctorate	The objective of the rule is to provide specific criteria the Board shall use to determine whether an applicant's doctoral education program meets requirements for licensure pursuant to A.R.S. § 32-2071.
R4-26-203. Application for Initial License	The objective of the rule is to specify the specific required contents and components of an application file, and to identify and describe the verifying documentation required for the Board to ascertain whether an applicant qualifies for licensure pursuant to A.R.S. § 32-2071 and A.R.S. § 32-2071.01.
R4-26-203.01. Application for Licensure by Credential	The objective of the rule is to specify application requirements for obtaining a license by virtue of having been granted a certain type of professional credential.
R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure	The objective of the rule is to specify application requirements to obtain Board approval to take the national examination prior to completing the experience requirements for licensure.
R4-26-203.03. Reapplication for License; Applying Anew	The objective of the rule is to clarify the specific requirements for, and distinguish between, reapplying for a license and applying anew for a license.
R4-26-203.04 Temporary License under A.R.S. § 32-2073(B)	The objective of the rule is to specify application requirements for a temporary license for purposes of working under the supervision of a licensed psychologist while completing a postdoctoral program training experience.
R4-26-204. Examinations	The objective of the rule is to identify the examinations an applicant is required to pass, the examination deadlines, and examination-related unprofessional conduct that may lead to application denial.
Appendix A. Repealed	Not applicable
R4-26-205. Renewal of License	The objective of the rule is to specify the procedure for applying to renew a psychologist license, and the consequences of failing to apply timely or failing to complete required continuing education requirements.
R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License	The objective of the rule is to specify the requirements for requesting Board approval to reinstate an inactive license to active status. The rule also specifies how to request Board approval to cancel a license voluntarily and the consequences of doing so.
R4-26-207. Continuing Education	The objective of the rule is to specify continuing education requirements for psychologist licensees, standards for acceptable continuing education, documentation substantiating completion of continuing education activities, and compliance assessment.
R4-26-208. Time Frames for Processing Applications	The objective of the rule is to specify all of the time frames within which the Board will act on an application or other request submitted to the Board.
Table 1. Time Frames (in days) for Processing	The objective of the rule is to specify in table form all of the time frames within which the Board will act on an application or other request submitted to the Board.

Applications	
R4-26-209. General Supervision	The objective of the rule is to define minimum standards regarding the relationship between a supervisor and supervisee, and that of the training program in which they engage.
R4-26-210. Supervised Professional Experience	The objective of the rule is to specify the requirements and criteria the Board shall use to ascertain whether an applicant's supervised professional experience meets statutory requirements.
R4-26-211. Foreign Graduates	The objective of the rule is to specify the requirements and criteria the Board shall use to ascertain whether an applicant's educational program of a foreign institution is equivalent to the doctoral degree requirements established in statute.
R4-26-301. Rules of Professional Conduct	The objective of the rule is to identify and incorporate by reference the ethical principles and code of conduct with which a psychologist licensee shall comply.
R4-26-302. Informal Interviews	The objective of the rule is to specify the notice requirements and procedure followed for an informal interview.
R4-26-303. Titles	The objective of the rule is to clarify that prospective use of a title that claims the acquisition of a potential or future degree is a violation of statute.
R4-26-304. Representation before the Board by Attorney Not Admitted to State Bar of Arizona	The objective of the rule is to clarify that an attorney who is not a member of the State Bar of Arizona, but who represents an individual before the Board, must be admitted to practice *pro hac vice*.
R4-26-305. Confidentiality of Investigative Materials	The objective of the rule is to clarify the manner in which confidential records that are investigative materials are maintained.
R4-26-306. Renumbered	Not applicable
R4-26-307. Renumbered	Not applicable
R4-26-308. Rehearing or Review of Decision	The objective of the rule is to specify the due-process rights, procedures, and standards the Board shall follow when receiving a request for a rehearing or review of a Board decision from any party in a contested case or appealable agency action.
R4-26-309. Complaints against Judicially Appointed Psychologists	The objective of the rule is to clarify the manner in which the Board processes a complaint against a judicially appointed (court ordered) psychologist.
R4-26-310. Disciplinary Supervision; Practice Monitor	The objective of the rule is to clarify the relationship between a licensee who is required to practice psychology under supervision or monitoring, and the licensee who provides the supervision or monitoring.

3. **Are the rules effective in achieving their objectives?** **Yes √__** **No ____**

The Board's reviews of the rules at various points in time from 2020 to 2023 have concluded that the rules are effective in achieving their objectives. The Board effectively protects the public within its statutory authority by evaluating applicant's qualifications for licensure; investigating allegations of unprofessional conduct; adjudicating complaints; supplying information to the public; and taking appropriate remedial, corrective, and disciplinary action when necessary to protect the public consistent with its statutory mandate to do so.

4. **Are the rules consistent with other rules and statutes?** **Yes √__** **No ____**

The Board's reviews of the rules find no inconsistencies with other rules, or with the authorizing statutes.

5. **Are the rules enforced as written?** **Yes √__** **No ____**

The Board enforces the rules as written, and in a consistent and fair manner. No complaints concerning the Board's enforcement of the rules have been submitted to the Governor's Regulatory Review Council.

6. **Are the rules clear, concise, and understandable?** **Yes √__** **No ____**

The Board has received no complaints that the rules are unclear, not concise, or not understandable.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes √__** **No ____**

The Board has received one written criticism of one rule within the last five years. On May 26, 2020, pursuant to A.R.S. §41-1033 Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice Bradley Boivin, Psy.D. ("Petitioner") submitted a petition requesting the Board review A.A.C. R4-26-207 Continuing Education; specifically, subsection (C) that addresses pro-rating of continuing education requirements for the first licensure period:

> During the license period in which an individual is initially licensed, the Board shall pro-rate the number of continuing education hours, including a pro-rated number of hours addressing ethics, domestic violence, intimate partner abuse, abuse of vulnerable adults, child abuse, and bullying that the new licensee must complete during the initial license period. To calculate the number of continuing education hours that a new licensee must obtain, the Board shall divide the 40 hours of continuing education required in a license period by 24 and multiply the quotient by the number of whole months from the date of initial licensure until the end of the license period.

Petitioner asked the Board to consider revising the rule to articulate that applicants applying pursuant to A.R.S. §32-4302 or 32-2071.01(D) be able to use continuing education credits obtained within two years of their first renewal date to meet the continuing education requirements. During its June 5, 2020 meeting the Board determined that this would be considered with a future rulemaking, but in doing so advised Petitioner that previously earned continuing education credits for licensure compliance purposes in other jurisdictions would likely be deemed by the Board as acceptable anyway.

8. Economic, small business, and consumer impact comparison:

The economic impact of the rules has not differed from original economic impact statements at adoption of rules. All rules made have had minimal or no economic impact on the Board, other state agencies, private entities, small businesses, and consumers. In this comparison, minimal means less than $1,000, moderate means $1,000, to $10,000 and substantial means more than $10,000.

The Board collected $508,010 in psychologist program revenue in fiscal year 2023. This revenue primarily consisted of application and licensing fees, with a small amount of revenue collected for other services (such as fees collected for the cost associated with processing public records requests). A small percentage of revenue

was offset by the Board covering applicants' and other customers' credit card processing fees. The Board is appropriated 4.5 full-time employees (FTEs); approximately 2.75 FTEs are assigned to the regulatory responsibilities of psychologists with the remaining 1.75 assigned to the regulatory responsibilities of behavior analysts.

The Board believes it correctly determined the economic impact on psychologists results from statute rather than rule. The economic impact of the rules is minimal. The Board currently licenses 2,110 psychologists in active licensure status, 20 supervised temporary psychologists, and 15 telehealth registrants. An additional 242 psychologists have voluntary inactive licenses. During fiscal year 2023, 204 individuals applied for psychologist licensure, 7 applied for a supervised temporary psychologist license, and 8 applied for the telehealth registry practice authorization.

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?

Course of Action Indicated in 2019	Completed?	Effective Date
To simplify the rules and avoid the possibility of having the rules be inconsistent with application forms, the Board intends to remove much of the detail contained in R4-26-203(A) and in R4-26-205(C) to inform applicants of the need to submit an application form that is available on the Board's website.	Yes	July 4, 2020
In R4-26-207(F)(1), which addresses continuing education, A.R.S. § 32-2061(9) should be corrected to cite A.R.S. § 32-2061(10).	Yes	July 4, 2020

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:

Notwithstanding any costs imposed by statutes or caused by the rules of other agencies, the 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. The costs imposed on those who practice psychology result from statute rather than the rules. It is the statutes that require an individual be licensed to practice as a psychologist in Arizona and that specify education, examination, and supervised professional experience requirements for licensure; fee for licensure; biennial license renewal; and continuing education requirements are prescribed by statute. Statutes also establishes grounds for disciplinary action and provides due process procedures. It is the purview and authority of the Arizona State Legislature to determine the cost of these requirements is required to fulfill and address the State of Arizona's obligation to protect public health and safety. The rules merely provide guidance and clarification regarding implementing and conforming to the statutory requirements.

12. **Are the rules more stringent than corresponding federal laws?** **Yes ___** **No √__**

45 CFR 164 addresses the privacy of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 and applies to these rules. R4-26-106 is consistent with, and no more stringent than, this federal law.

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:

All the reviewed rules were adopted after July 29, 2010. All the licenses granted by the Board comply with A.R.S. § 41-1037(A)(2) because they are issued to qualified individuals in accordance with, and as required by, the authorizing statutes as indicated here.

Rule	Statute
R4-26-203. Application of Initial License	A.R.S. §§ 32-2063(A)(3), 32-2071, and 32-2072
R4-26-203.01. Application for Licensure by Credential	A.R.S. §§ 32-2063(A)(3), 32-2071, and 32-2071.01(D)
R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure	A.R.S. § 32-2072(C)
R4-26-203.03. Reapplication for License; Applying Anew	A.R.S. § 32-2067(A)(3)
R4-26-203.04 Temporary License under A.R.S. § 32-2073(B)	A.R.S. § 32-2073(B): A.R.S. § 32-2073(B)
R4-26-205. Renewal of License	A.R.S. §§ 32-2063(A)(11), 32-2074(B) and 41-1073
R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License	A.R.S. §§ 32-2067(A)(8), 32-2073, and 32-2074

14. Proposed course of action

At this time the Board has not identified any proposed course of action relative to A.A.C. Title 4. Professions and Occupations Chapter 26. Board of Psychologist Examiners Articles 1 through 3.

Arizona Secretary of State
Digitally signed by Arizona Secretary of State
Date: 2023.03.17 12:43:09 -07'00'

Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

Authority: A.R.S. § 32-2063(A)(9) and (12)

Supp. 22-4

Editor's Note: This Chapter contains amendments that were filed with the Secretary of State on March 3, 1995. At the time of filing, the original copy of the rulemaking package differed from the copy of the package filed at the same time. The Secretary of State uses the copy to prepare the Code supplement. The agency notified the Secretary of State that the wrong version was used. That led to the Secretary of State's discovery of the two versions filed in March 1995. The Secretary of State then used the original package to publish a corrected edition with Supp. 95-2. The Secretary of State has since been advised by the Attorney General that the original version as published with Supp. 95-1 was correct with the exception of one phrase in R4-26-207 that was inadvertently omitted. With this publication, this Chapter reflects the correct amendments, and the omitted phrase in R4-26-207 has now been added.

CHAPTER TABLE OF CONTENTS

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R4-26-01 through R4-26-10; Article 2, consisting of Sections R4-26-20 through R4-26-28; and Article 3, consisting of Sections R4-26-50 through R4-26-57, renumbered, refer to Historical Notes (Supp. 81-3).

ARTICLE 2. LICENSURE

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

ARTICLE 3. REGULATION

ARTICLE 4. BEHAVIOR ANALYSIS

Article 4, consisting of Sections R4-26-401 through R4-26-418, made by final rulemaking effective September 11, 2012 (Supp. 12-3).

ARTICLE 1. GENERAL PROVISIONS

R4-26-101. Definitions

A. The definitions in A.R.S. § 32-2061 apply to this Chapter.

B. Additionally, in this Chapter:

1. "Additional examination" means an examination administered by the Board to determine the competency of an applicant and may include questions about the applicant's knowledge and application of Arizona law, the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
2. "Administrative completeness review" means the Board's process for determining that an applicant has provided all of the information and documents required by the Board to determine whether to grant a license to the applicant.
3. "Advertising" means any media used to disseminate information regarding the qualifications of a psychologist or to solicit clients or patients for psychological services, regardless of whether the psychologist pays for the advertising. Methods of advertising include a published statement or announcement, directory listing, business card, personal resume, brochure, or any electronic communication conveying the psychologist's professional qualifications or promoting use of the psychologist's professional services.
4. "Applicant" means an individual requesting licensure, renewal, or approval from the Board.
5. "Application packet" means the forms and documents the Board requires an applicant to submit to the Board.
6. "Applied psychology," as used in A.R.S. § 32-2071(A), means the practice of psychology in the area of health service delivery. The Board shall consider education and training in applied psychology as qualification for licensure only if the education and training meet the standards specified in A.R.S. § 32-2071.
7. "Case," in the context of R4-26-106(G), means a legal cause of action instituted before an administrative tribunal or in a judicial forum that relates to a psychologist's practice of psychology.
8. "Case conference" means a meeting that includes the discussion of a particular client or patient or case that is related to the practice of psychology.
9. "Client or patient record" means "adequate records" as defined in A.R.S. § 32-2061(2), "medical records" as defined in A.R.S. § 12-2291(6), and all records pertaining to assessment, evaluation, consultation, intervention, treatment, or the provision of psychological services in any form or by any medium.
10. "Complaint Screening Committee" means the committee of the Board established under A.R.S. § 32-2081(H) to conduct an initial review of complaints.
11. "Confidential record" means:
    a. Minutes of an executive session of the Board;
    b. A record that is classified as confidential by a statute or rule applicable to the Board;
    c. All materials relating to an investigation by the Board, including a complaint, response, client or patient record, witness statement, investigative report, and any other information relating to a client's or patient's diagnosis, treatment, or personal or family life; and
    d. The following regarding an applicant or licensee:
        i. College or university transcripts;
        ii. Home address, home telephone number, and e-mail address;
        iii. Examination scores;
        iv. Date of birth v. Place of birth;
        v. Social Security number; and
        vi. Candidate identification number for the national examination required under A.R.S. § 32-2072(A).
12. "Credentialing agency" means the Association of State and Provincial Psychology Boards, the National Register of Health Service Providers in Psychology, or the American Board of Professional Psychology.
13. "Day" means a calendar day except in A.R.S. § 32-2075(A)(4), "day" means a total of eight hours in providing psychological services regardless of the number of calendar days over which the hours are accumulated.
14. "Diplomate or specialist" means a status bestowed on a person by the American Board of Professional Psychology after successful completion of the work and examinations required.
15. "Directly available," as used in A.R.S. § 32-2071(F)(2), means immediately available in person or by telephone or electronic transmission.
16. "Disaster," as used in A.R.S. § 32-2075(A)(4), means a contingency or situation for which the governor declares a state of emergency under the authority provided at A.R.S. § 35-192. The Board acknowledges any state of emergency declared by the governor or determined by the Board.
17. "Dissertation" means a document prepared as part of a graduate doctoral program that includes, at a minimum, separate sections that:
    a. Review the literature on the psychology topic being investigated and state each research question and hypothesis under investigation;
    b. Describe the method or procedure used to investigate each research question or hypothesis;
    c. Describe and summarize the findings and results of the investigation;
    d. Discuss the findings and compare them to the relevant literature presented in the literature review section; and
    e. List the references used in the various sections of the dissertation, a majority of which are either journals of the American Psychological Association, Psychological Abstracts, or classified as a psychology subject by the Library of Congress.
18. "Fellow" means a status bestowed on a person by a psychology association or society.
19. "Gross negligence" means an extreme departure from the ordinary standard of care.
20. "Internship training program" means the supervised professional experience required in A.R.S. § 32-2071(F).
21. "Last client or patient activity," as used in R4-26-106, means the last date a particular client or patient received direct clinical contact from the psychologist retaining the client's or patient's record.
22. "License period" means:
    a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee's birth month of one odd-numbered year and the last day of the licensee's birth month of the next odd-numbered year; and
    b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-num-

bered year and the last day of the licensee's birth month of the next even-numbered year.

23. "National examination" means Parts 1 and 2 of the Examination for Professional Practice in Psychology provided by the Association of State and Provincial Psychology Boards.
24. "Party" means the Board, an applicant, a licensee, or the state.
25. "Practice monitor," as used in R4-26-310, means a Board-approved licensed psychologist who monitors or oversees the remediation of the practice of another psychologist as part of a disciplinary process.
26. "Primarily psychological," in the context of A.R.S. § 32-2071(A)(6), means subject matter that covers the practice of psychology as defined in A.R.S. § 32-2061.
27. "Psychologist on staff," as used in A.R.S. § 32-2071(F)(2), means a psychologist who is designated by the staff psychologist specified in A.R.S. § 32-2071(F)(1) to fulfill the responsibilities of a supervising psychologist in the training program.
28. "Psychometric testing" means measuring cognitive and emotional processes and learning through the administration of psychological tests.
29. "Raw test data" means test scores, client or patient responses to test questions or stimuli, and notes and recordings concerning client or patient statements and behavior during a psychologist's assessment and evaluation.
30. "Regulatory jurisdiction" means a state or territory of the U.S., the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
31. "Renewal year" means:
    a. Each odd-numbered year for a licensee who holds an odd-numbered license, and
    b. Each even-numbered year for a licensee who holds an even-numbered license.
32. "Retired," as used in A.R.S. § 32-2073(G), means a psychologist has stopped practicing psychology, as defined in A.R.S. § 32-2061.
33. "Stipend" means a fee paid to a supervisee that is not based on productivity or revenue generated.
34. "Substantive review" means the Board's process for determining whether an applicant meets the requirements of A.R.S. § 32-2071 through § 32-2076 and this Chapter.
35. "Successfully completing," as used in A.R.S. § 32-2071(A)(4), means receiving a passing grade in a course from an institution of higher education.
36. "Supervision," as used in R4-26-310, means review and oversight of the professional work of a psychologist by a Board-approved licensed psychologist as part of a disciplinary process.
37. "Supervise" means to control, oversee, and review the activities of an employee, intern, trainee, or resident who provides psychological services.
38. "Supervisor," as referenced in A.R.S. § 32-2071(F)(2), means an individual who is:
    a. Licensed or registered as a psychologist at the independent level in the regulatory jurisdiction in which the supervision occurs,
    b. On staff as a supervisor with the training program for which supervision is provided, and
    c. Directly available to the supervisee in case of an emergency or ensures another supervisor is directly available to the supervisee.
39. "Year," as used in A.R.S. § 32-2075(A)(4) means a calendar year.

Historical Note

Former Rule 1; Former Section R4-26-01 repealed, new Section R4-26-01 adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Former Section R4-26-101 renumbered to R4-26-102; new Section R4-26-101 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-102. Board Officers

A. Under A.R.S. § 32-2063(A)(8), the Board shall annually elect a chairperson, vice chairperson, and secretary.

B. Officers elected under subsection (A) shall take office on January 1 following election and serve until December 31.

C. If a vacancy occurs in the office of chairperson, vice chairperson, or secretary, the Board shall elect a replacement officer at the next scheduled Board meeting.

Historical Note

Former Rule 2; Amended effective November 22, 1977 (Supp. 77-6). Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-02 adopted effective July 27, 1979 (Supp. 79-4). Amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-102 renumbered to R4-26-103; new Section R4-26-102 renumbered from R4-26-101 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-103. Repealed

Historical Note

Former Rule 3; Amended effective November 22, 1977 (Supp. 77-6). Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-03 adopted effective July 27, 1979 (Supp. 79-4). Former Section R4-26-103 renumbered to R4-26-104; new Section R4-26-103 renumbered from R4-26-102 and amended effective

March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Repealed by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-104. Repealed

Historical Note

Former Rule 4; Former Section R4-26-04 repealed effective November 22, 1977 (Supp. 77-6). New Section R4-26-04 adopted effective September 15, 1978 (Supp. 78-5). Former Section R4-26-04 repealed, new Section R4-26-04 adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Correction, paragraph (2), subparagraph (f) as amended effective June 17, 1981 (Supp. 84-1). Amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-104 renumbered to R4-26-105; new Section R4-26-104 renumbered from R4-26-103 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Repealed by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-105. Repealed

A. A person may view public records in the Board office only during business hours, which are Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding holidays.

B. All Board records are open to public inspection and copying except confidential records as defined in R4-26-101 or as otherwise provided by law.

Historical Note

Former Rule 5; Former Section R4-26-05 repealed effective November 22, 1977 (Supp. 77-6). New Section R4-26-05 adopted effective September 15, 1978 (Supp. 78-5). Former Section R4-26-05 repealed effective September 15, 1978 (Supp. 78-5). Former Section R4-26-05 repealed, new Section R4-26-05 adopted effective July 27, 1979 (Supp. 79-4). Former Section R4-26-105 renumbered to R4-26-107; new Section R4-26-105 renumbered from R4-26-104 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Repealed by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-106. Client or Patient Records

A. A psychologist shall not condition release of a client or patient record on payment for services by the client, patient, or a third party.

B. Except as provided in subsection (C), a psychologist shall, with a client's or patient's written consent, provide access to or a copy of the client's or patient's record, including raw test data and other information as provided by law to the client or patient or the client's or patient's health care decision maker unless the release violates copyright or other laws or violates one of the standards incorporated by reference at R4-26-301.

C. A psychologist may deny a request to provide access to or a copy of a client's or patient's record if the psychologist determines:

1. Access by the client or patient is reasonably likely to endanger the life or physical safety of the client or patient or another person;
2. The record makes reference to a person other than a health professional and access by the client or patient or the client's or patient's health care decision maker is reasonably likely to cause substantial harm to that other person;
3. Access by the client's or patient's health care decision maker is reasonably likely to cause substantial harm to the client or patient or another person;
4. Access by the client or patient or the client's or patient's health care decision maker will reveal information obtained under a promise of confidentiality with someone other than a health professional and access is reasonably likely to reveal the source of the information; or
5. Access by the client or patient or the client's or patient's health care decision maker may result in misuse or misrepresentation of the information and potentially harm the client or patient.

D. Without a client's or patient's consent, a psychologist shall release the client's or patient's raw test data only to the extent required by law or under court order compelling production.

E. A psychologist shall retain all client or patient records under the psychologist's control, including records of a client or patient who died, for at least six years from the date of the last client or patient activity. If a client or patient is a minor, the psychologist shall retain all client or patient records for at least three years past the client's or patient's 18th birthday or six years from the date of the last client or patient activity, whichever is longer.

F. Audio or video recordings created primarily for training or supervisory purposes are exempt from the requirement of subsection (E).

G. A psychologist who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to that investigation or case until the psychologist receives written notice that the investigation is completed, the case is closed, or the matter has been fully adjudicated.

H. The provisions of this Section apply to all psychologists including a psychologist who is on inactive status under A.R.S. § 32-2073 (G).

I. A psychologist may retain client or patient records in electronic form. The psychologist shall ensure that client or patient records in electronic form are legible, stored securely, and an electronic backup copy is maintained.

Historical Note

Former Rule 6; Repealed effective November 22, 1977 (Supp. 77-6). New Section adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final

rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-107. Change of Name, Mailing, Residential, or E-mail Address, or Telephone Number

A. The Board shall communicate with a psychologist using the contact information provided to the Board. To ensure timely communication from the Board, a psychologist shall notify the Board, in writing, within 30 days of any change of name, mailing, residential, or e-mail address (giving both the old and new addresses), or residential, business, or mobile telephone number.

B. A psychologist who reports a name change shall submit to the Board legal documentation that substantiates the name change.

C. A psychologist's failure to receive a renewal notice or other mail that the Board sends to the most recent address on file with the Board office does not excuse an untimely license renewal or the omission of any other action required by the psychologist.

Historical Note

Former Rule 7; Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-107 renumbered from R4-26-105 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-108. Fees and Charges

A. As specifically authorized by A.R.S. § 32-2067(A), the Board establishes and shall collect the following fees:

1. Application for an active license to practice psychology: $350. If the applicant applies through the Psychology Licensure Universal System of the Association of State and Provincial Psychology Boards, the Board shall ensure the ASPPB receives the applicable portion of the fee;
2. Application for a temporary license under A.R.S. § 32-2073(B): $200
3. Reapplication for an active license: $200;
4. Biennial renewal of an active license: $500;
5. Biennial renewal of an inactive license: $85;
6. Reinstatement of an active or inactive license: $200; and
7. Delinquent compliance with continuing education requirements: $200.

B. Under the specific authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect the following fee to register as an out-of-state health care provider of telehealth services: $600.

C. As specifically authorized by A.R.S. § 32-2067(A), the Board establishes the following charges for the services provided. The specified charge is not applicable if the Board's executive director determines the requestor demonstrates the data will be used for a non-commercial purpose or the data are obtained from the Board's online directory:

1. Electronic medium containing the name and address of each licensee: $.05 per name;
2. Customized electronic medium containing the name and address of each current licensee: $.25 per name;
3. Customized electronic medium containing additional, non-confidential, licensee information: $.35 per name; and
4. Copies of Board records, documents, letters, minutes, applications, files, and policy statements: $.25 per page.

D. Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsections (A) and (B) are not refundable.

Historical Note

Former Rule 8; Amended as an emergency effective June 15, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-3). Amended effective September 15, 1978 (Supp. 78-5). Repealed effective July 27, 1979 (Supp. 79-4). New Section R4-26-108 adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Former Section R4-26-108 renumbered to R4-26-201 by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). New Section adopted by final rulemaking at 7 A.A.R. 1258, effective February 20, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 27 A.A.R. 1272, effective September 1, 2021 (Supp. 21-3). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-109. General Provisions Regarding Telepractice

A. Except as otherwise provided by law, a licensee who provides psychological service or supervision by telepractice to a client or patient or supervisee located outside Arizona shall comply with not only A.R.S. § 36-3602 and this Chapter but also the laws and rules of the jurisdiction in which the client or patient or supervisee is located.

B. Before providing psychological service or supervision by telepractice, a licensee shall establish competence in use of telepractice that conforms to prevailing standards of scientific and professional knowledge.

C. A licensee who provides psychological service or supervision by telepractice shall maintain competence in use of telepractice through continuing education, consultation, or other procedures designed to address changing technology used in telepractice.

D. A licensee who provides psychological service or supervision by telepractice shall take all reasonable steps to ensure confidential communications stored electronically cannot be recovered or accessed by an unauthorized person when the licensee disposes of electronic equipment or data.

Historical Note

Former Rule 9; Repealed effective July 27, 1979 (Supp. 79-4). New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-110. Providing Psychological Service by Telepractice

A. Before providing psychological service by telepractice, a licensee who is in compliance with A.R.S. § 36-3602 and R4-26-109 shall conduct a risk analysis as clinically indicated and

document in the client or patient's record required under R4-26-106 whether use of telepractice:

1. Is consistent with the client or patient's knowledge and skill regarding use of the technology involved in providing psychological service by telepractice or with ready access to assistance with use of the technology, and
2. Is in the best interest of the client or patient.

B. A licensee shall not provide psychological service by telepractice unless both conditions of the risk analysis conducted under subsection (A) are met.

C. Before providing psychological service by telepractice, a licensee shall:

1. Obtain the written informed consent of the client or patient, using language that is clear and understandable and consistent with accepted professional and legal requirements. The licensee shall ensure the written informed consent addresses the following and a copy is placed in the client or patient's record required under R4-26-106:
   a. The manner in which the licensee will verify the identity of the client or patient before each psychological service if the telepractice does not involve video;
   b. The manner in which the licensee will ensure the client or patient's electronic communications are received only by the licensee or supervisee;
   c. Limitations and innovative nature of using technology to provide psychological service;
   d. Inherent confidentiality risk resulting from use of technology;
   e. Potential risk of technology failure that disrupts provision of psychological service and how to re-establish communication if disruption occurs;
   f. When and how the licensee will respond to routine electronic communications;
   g. The circumstances under which the licensee and client or patient will use an alternative means of communication;
   h. Who is authorized to access the electronic communication between the licensee and client or patient;
   i. The manner in which the licensee stores the electronic communication between the licensee and the client or patient; and
   j. The type of secure electronic technology the licensee will use to communicate with the client or patient;
2. Establish a written agreement with the client or patient that specifies contact information for sources of face-to-face emergency services in the client or patient's geographical area and requires the client or patient to contact a source of face-to-face emergency services when the client or patient experiences a suicidal or homicidal crisis or other emergency. If the licensee has knowledge the client or patient is experiencing a suicidal or homicidal crisis or other emergency, the licensee shall assist the client or patient to contact a source of face-to-face emergency services. The licensee shall place a copy of the written agreement required under this subsection in the client or patient's record required under R4-26-106.
3. Obtain the name and contact information for an emergency contact;
4. Obtain information about an alternative means of contacting the client or patient; and
5. Provide the client or patient with information about an alternative means of contacting the licensee.

D. A licensee who provides psychological service by telepractice shall repeat the risk analysis required under subsection (A) as clinically indicated.

E. If a licensee does not provide psychological service by telepractice to a client or patient, the provisions of this Section do not apply to electronic communications with the client or patient regarding:

1. Scheduling an appointment, billing, establishing benefits, or determining eligibility for services; and
2. Checking the welfare of the client or patient in accord with reasonable professional judgment.

Historical Note

Adopted effective November 22, 1977 (Supp. 77-6). Repealed and readopted as Section R4-26-57 effective July 27, 1979 (Supp. 79-4). New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-111. Providing Supervision through Telepractice

A. As specified under A.R.S. § 32-2071(F) and (G), a licensee who provides individual supervision shall ensure that supervision provided through telepractice is conducted using secure, confidential, real-time telecommunication technology. The licensee shall ensure at least 50 percent of individual supervision is either in person or using visual technology.

B. Before providing supervision by telepractice, a licensee who is in compliance with R4-26-109 shall conduct a risk analysis as clinically indicated and document whether providing supervision by telepractice:

1. Is appropriate for the issue presented by the supervisee's client or patient involved in the supervisory process,
2. Is consistent with the supervisee's knowledge and skill regarding use of the technology involved in providing supervision by telepractice, and
3. Is in the best interest of both the supervisee and the supervisee's client or patient involved in the supervisory process.

C. A licensee shall not provide supervision by telepractice unless all conditions of the risk analysis conducted under subsection (B) are met.

D. Before providing supervision by telepractice, a licensee shall:

1. Enter a written agreement with the supervisee, using language that is clear and understandable and consistent with accepted professional and legal requirements. The licensee shall ensure the written agreement addresses the following and a copy is provided to the supervisee:
   a. The manner in which the licensee will identify the supervisee before each supervisory session that does not involve video;
   b. Limitations and innovative nature of using technology to provide supervision;
   c. Potential risk of technology failure that disrupts provision of supervision and how to re-establish communication if disruption occurs;
   d. When and how the licensee will respond to routine electronic communications from the supervisee;
   e. The circumstances under which the licensee and supervisee will use an alternative means of communication; and

f. The type of secure electronic technology the licensee will use to communicate with the supervisee;

2. Obtain information about an alternative means of contacting the supervisee; and
3. Provide the supervisee with information about an alternative means of contacting the licensee.

Historical Note
New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-112. Reserved

R4-26-113. Reserved

R4-26-114. Reserved

R4-26-115. Reserved

R4-26-116. Reserved

R4-26-117. Reserved

R4-26-118. Reserved

R4-26-119. Reserved

R4-26-120. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-201 effective July 27, 1979 (Supp. 79-4).

R4-26-121. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-202 effective July 27, 1979 (Supp. 79-4).

R4-26-122. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-203 effective July 27, 1979 (Supp. 79-4).

R4-26-123. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-204 effective July 27, 1979 (Supp. 79-4).

R4-26-124. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-205 effective July 27, 1979 (Supp. 79-4).

R4-26-125. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-206 effective July 27, 1979 (Supp. 79-4).

R4-26-126. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-207 effective July 27, 1979 (Supp. 79-4).

R4-26-127. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-208 effective July 27, 1979 (Supp. 79-4).

R4-26-128. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-209 effective July 27, 1979 (Supp. 79-4).

R4-26-129. Reserved

R4-26-130. Reserved

R4-26-131. Reserved

R4-26-132. Reserved

R4-26-133. Reserved

R4-26-134. Reserved

R4-26-135. Reserved

R4-26-136. Reserved

R4-26-137. Reserved

R4-26-138. Reserved

R4-26-139. Reserved

R4-26-140. Reserved

R4-26-141. Reserved

R4-26-142. Reserved

R4-26-143. Reserved

R4-26-144. Reserved

R4-26-145. Reserved

R4-26-146. Reserved

R4-26-147. Reserved

R4-26-148. Reserved

R4-26-149. Reserved

R4-26-150. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-301 effective July 27, 1979 (Supp. 79-4).

R4-26-151. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-302 effective July 27, 1979 (Supp. 79-4).

R4-26-152. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-303 effective July 27, 1979 (Supp. 79-4).

R4-26-153. Renumbered

Historical Note
Former Section R4-26-120 renumbered to R4-26-304 effective July 27, 1979 (Supp. 79-4).

R4-26-154. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-305 effective July 27, 1979 (Supp. 79-4).

R4-26-155. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-306 effective July 27, 1979 (Supp. 79-4).

R4-26-156. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-307 effective July 27, 1979 (Supp. 79-4).

R4-26-157. Renumbered

Historical Note

Former Section R4-26-120 renumbered to R4-26-201 effective July 27, 1979 (Supp. 79-4).

ARTICLE 2. LICENSURE

R4-26-201. Application Deadline

A. The Board shall consider a license application at the Board's next scheduled meeting if an administratively complete application packet is received by the Board office at least 18 days before the date of the meeting.

B. The Board shall consider a license application that is received fewer than 18 days before a scheduled meeting at a subsequent meeting.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsection (A) statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-120 and amended effective July 3, 1991 (Supp. 91-3). Repealed effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). New Section R4-26-201 renumbered from R4-26-108 and amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-202. Doctorate

A. The Board shall apply the following criteria to determine whether a doctoral program provided by an institution of higher education met the standards in A.R.S. § 32-2071(A)(2) at the time an applicant began the degree program:

1. The program is identified and labeled as a psychology program if there were institutional catalogues and brochures that specified the intent of the institution of higher education to educate and train psychologists;
2. The program stands as a recognized, coherent organizational entity if there was an organized sequence of courses comprising a psychology curriculum; and
3. The program has clearly identified entry and exit criteria within its psychology curriculum if there were specific prerequisites for entrance into the program and delineated requirements for graduation.

B. The Board shall verify that an applicant completed the hours in the subject areas described in A.R.S. § 32-2071(A)(4). For this purpose, the applicant shall have the institution of higher education that the applicant attended provide directly to the Board an official transcript of all courses taken and verification of the dissertation or similar project.

1. The Board may require additional documentation from the applicant or from the institution to determine whether the applicant satisfied the requirements of A.R.S. § 32-2071(A)(4).
2. The Board shall count five quarter hours or six trimester hours as the equivalent of three semester hours, as required under A.R.S. § 32-2071(A)(4). When an academic term is other than a semester, quarter, or trimester, 15 classroom contact hours equals one semester hour.

C. To determine whether a comprehensive examination taken by an applicant as part of a doctoral program in psychology satisfies the requirements of A.R.S. § 32-2071(A)(4), the Board shall review documentation provided directly to the Board by the institution of higher education that granted the doctoral degree, that demonstrates how the applicant's comprehensive examination was constructed, lists criteria for passing, and provides the information used to determine that the applicant passed.

D. The Board shall not accept as core program hours required under A.R.S. § 32-2071(A)(4) credit:

1. For workshops, practica, undergraduate courses, life experiences, continuing education courses, or experiential or correspondence courses;
2. Transferred from institutions that are not accredited under A.R.S. § 32-2071(A)(1); or
3. For seminars, readings courses, or independent study unless the applicant proves that the course was an in-depth study devoted to a particular core program content area by submitting one or more of the following:
   a. Course description in the official catalogue of the institution of higher education,
   b. Course syllabus, or
   c. Signed statement from a dean or psychology department head affirming that the course was an in-depth study devoted to a particular core program content area.

E. The Board shall count a course or comprehensive examination only once to satisfy a requirement of A.R.S. § 32-2071(A)(4).

F. An honorary doctorate degree does not qualify an applicant for licensure as a psychologist.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Renumbered from R4-26-121 and amended effective July 3, 1991 (Supp. 91-3). Amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-203. Application for Initial License

A. An individual who wishes to be licensed as a psychologist shall submit an application packet to the Board that includes an application form approved by the Board, which is available

from the Board office and on its website, with an attestation that is signed and dated by the applicant.

B. Additionally, an applicant shall submit:
1. An original, un-retouched, photograph of the applicant that is no larger than 1.5 X 2 inches and taken no more than 60 days before the date of application;
2. The results of a self-query from the National Practitioner Data Bank;
3. A copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.1 or evidence of application for a valid fingerprint clearance card;
4. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law;
5. The Board's Mandatory Confidential Information form;
6. Name, position, and address of at least two individuals to serve as references who:
   a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and who are not members of the Arizona Board of Psychologist Examiners;
   b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of application. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
   c. Recommend the applicant for licensure;
7. The fee required under R4-26-108; and
8. Any other information authorized by statute.

C. In addition to the requirements in subsections (A) and (B), an applicant shall arrange to have the following directly submitted to the Board:
1. An official transcript from each university or college from which the applicant attended a graduate program or received a graduate degree that contains the date the degree was conferred;
2. An official document from the degree-granting institution indicating that the applicant completed a residency that satisfies the requirements of A.R.S. § 32-2071(K);
3. For an applicant applying supervised preinternship hours toward licensure, an attestation submitted by the doctoral program training director, faculty supervisor, or other official of the doctoral-granting institution who is knowledgeable of the applicant's preinternship experience verifying that the applicant's preinternship experience meets the requirements of A.R.S. § 32-2071(D).
4. An attestation from the applicant's supervisor, if available, or a psychologist knowledgeable of the applicant's internship training program, verifying that the applicant's internship training program meets the requirements in A.R.S. § 32-2071(F). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledgeable psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;
5. For an applicant applying supervised postdoctoral experience toward licensure, an attestation from the applicant's postdoctoral supervisor, if available, or a psychologist knowledgeable of the applicant's postdoctoral experience verifying that the applicant's postdoctoral experience meets the requirements in A.R.S. § 32-2071(G). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledgeable psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;
6. Verification of all other psychology licenses or certificates ever held in any regulatory jurisdiction; and
7. An official notification of the applicant's score on the national examination. An applicant who passed the national examination in accordance with the standard established at A.R.S. § 32-2072(A), shall have the examination score sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective April 25, 1980 (Supp. 80-2). Amended Introductory paragraph statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-122 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-203 repealed, new Section R4-26-203 renumbered from R4-26-204 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 26 A.A.R. 1010, effective July 4, 2020 (Supp. 20-2). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-203.01. Application for Licensure by Credential

A. An applicant for a psychologist license by credential under A.R.S. § 32-2071.01(D) shall submit an application packet to the Board that includes:
1. An application form approved by the Board, which is available from the Board office and on its website, with an attestation that is signed and dated by the applicant;
2. A copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.1 or evidence of application for a valid fingerprint clearance card;
3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the

applicant's presence in the U.S. is authorized under federal law;

4. Verification sent directly to the Board by the credentialing agency that the applicant:
   a. Holds a current Certificate of Professional Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology Boards;
   b. Holds a current National Register of Health Service Providers in Psychology (NRHSPP) credential and has practiced psychology independently at the doctoral level for at least five years; or
   c. Is a diplomate or specialist of the American Board of Professional Psychology (ABPP); and
5. Verification of all other psychology licenses or certificates ever held in any jurisdiction.

B. An applicant for a psychologist license by credential based on a National Register of Health Service Providers in Psychology credential shall have notification that the applicant obtained a passing score on the national examination sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.

C. If the Board determines an application for licensure by credential requires clarification, the Board may require an applicant submit or cause the applicant's credentialing agency to submit directly to the Board any documentation including transcripts, course descriptions, catalogues, brochures, supervised experience verifications, examination scores, application for credential, or any other information deemed necessary by the Board.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 26 A.A.R. 1010, effective July 4, 2020 (Supp. 20-2). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure

A. As provided under A.R.S. § 32-2072(C), an individual who has completed the education requirements specified in A.R.S. § 32-2071(A) but has not completed the supervised professional experience requirements specified in A.R.S. § 32-2071(D) may apply to the Board for approval to take the national examination.

B. To apply under subsection (A) for approval to take the national examination, an individual shall submit to the Board the application form and applicable documents required under R4-26-203(A) through (C) except the document required under R4-26-203(B)(3).

C. The Board shall administratively close an approved application to take the national examination when the Board receives the applicant's examination score. If necessary, an individual granted approval to take the national examination may request an extension under R4-26-204.

D. An individual whose application to take the national examination is approved may apply for an initial license under R4-26-203 after completing the supervised professional experience requirements specified in A.R.S. § 32-2071(D) as follows:

1. Within 36 months after the application to take the national examination submitted under subsection (B) was administratively closed under subsection (C), request that the Board re-open the application submitted under subsection (B); and
2. Submit the portions of the application packet required under R4-26-203 that were not submitted under subsection (B).

Historical Note

New Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-203.03. Reapplication for License; Applying Anew

A. The following may reapply for a license:
1. An individual who failed the national examination required under A.R.S. § 32-2072 and R4-26-204 no more than three times, and
2. An individual whose application submitted under R4-26-203 or R4-26-203.01 was administratively closed by the Board under R4-26-208(H) less than one year before reapplication.

B. An individual identified in subsection (A) may ask the Board to base a licensing decision, in part, on applicable forms and documents previously submitted.

C. An individual eligible under subsection (B) to reapply for licensure shall:
1. Submit a reapplication form, which is available from the Board office and on its website, to the Board;
2. If previously submitted references were submitted more than 12 months before the date of reapplication, provide the names, positions, and addresses of at least two individuals to serve as references who:
   a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and are not members of the Arizona Board of Psychologist Examiners;
   b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of reapplication. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
   c. Recommend the applicant for licensure;
3. List all professional employment since the date of the most recent application or reapplication including:
   a. Beginning and ending dates of employment,
   b. Number of hours worked per week,
   c. Name and address of employer,
   d. Position title,
   e. Nature of work, and
   f. Nature of supervision;
4. Submit the results of a self-query from the National Practitioner Data Bank;
5. Submit a copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.11 or evidence of application for a valid fingerprint clearance card; and
6. Pay the fee required under R4-26-108(A)(2).

D. The following shall apply anew for a license rather than reapplying:
1. An individual whose application submitted under R4-26-203 or R4-26-203.01 was denied by the Board,
2. An individual who was permitted by the Board to withdraw an application submitted under R4-26-203 or R4-26-203.01 before the Board acted on the application,
3. An individual whose application submitted under R4-26-203 or R4-26-203.01 was administratively closed by the Board under R4-26-208(H) more than one year before another application is submitted,
4. An individual whose license was revoked under A.R.S. § 32-2081(N)(1),
5. An individual whose license expired under A.R.S. § 32-2074,
6. An individual whose license was canceled under A.R.S. 32-2074, and
7. An individual who retired under A.R.S. § 32-2073(G).

Historical Note
New Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-203.04. Temporary License under A.R.S. § 32-2073(B)

A. To be eligible to be issued a temporary license under A.R.S. § 32-2073(B), an individual shall:
1. Have completed the educational requirements specified in A.R.S. § 32-2071(A) through (C);
2. Have completed 1,500 hours of supervised professional experience as described in A.R.S. § 32-2071(F); and
3. Be participating in a supervised postdoctoral professional experience as described in A.R.S. § 32-2071(G).

B. An applicant seeking a temporary license under A.R.S. § 32-2073(B), shall submit an application packet to the Board that includes:
1. The application form required under R4-26-203 and all information required under R4-26-203(B) and (C) except that specified in R4-26-203(C)(3), (5), and (7);
2. The written training plan required under A.R.S. § 32-2071(G)(7) from the entity at which the supervised postdoctoral professional experience is occurring that includes at least the following:
   a. Goal and content of each training experience,
   b. Expectations regarding the nature, quality, and quantity of work to be done by the supervisee during the supervised postdoctoral professional experience,
   c. Methods of evaluating the supervisee and the supervised postdoctoral professional experience,
   d. Total number of hours to be accrued during the supervised postdoctoral professional experience,
   e. Total number of face-to-face contact hours the supervisee is to have with clients or patients during the supervised postdoctoral professional experience,
   f. Total number of hours of supervision the supervisee is to receive during the supervised postdoctoral professional experience,
   g. Qualifications of all individuals who provide supervision during the supervised postdoctoral professional experience including documentation that each is qualified under the standards at A.R.S. § 32-2071(G),
   h. Acknowledgment that ethics training is included in the training experience; and
3. A written request for approval to take the national examination specified under A.R.S. § 32-2072, if applicable, using a form approved by the Board and available in the Board office and on its website.

C. An individual issued a temporary license under A.R.S. § 32-2073(B) shall practice psychology only under supervision. It is unprofessional conduct for the holder of a temporary license issued under A.R.S. § 32-2073(B) to practice psychology without supervision.

D. A temporary license issued under A.R.S. § 32-2073(B) is valid for 36 months and is not renewable. If the Board denies an active license under R4-26-203 to the holder of a temporary license issued under A.R.S. § 32-2073(B), the temporary license terminates at the time of license denial.

E. The holder of a temporary license issued under A.R.S. § 32-2073(B) shall:
1. Comply fully with all provisions of A.R.S. Title 32, Chapter 19.1, and this Chapter;
2. Not practice psychology outside the postdoctoral experience specified in the written training plan required under subsection (B)(2); and
3. Submit to the Board a proposed new training plan if the written training plan required under subsection (B)(2) is modified. The proposed new training plan shall be submitted within 10 days after the effective date of the modification.

F. The holder of a temporary license who was not previously approved to take the national examination may submit to the Board a written request for approval to take the national examination using a form approved by the Board and available in the Board office.

Historical Note
New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-204. Examinations

A. General rules.
1. Under A.R.S. § 32-2072(C), an applicant who fails the national examination three times in any regulatory jurisdiction shall, before taking the national examination again, review the applicant's areas of deficiency and implement a program of study or practical experience designed to remedy the deficiencies. This remedial program may consist of any combination of course work, self-study, internship experience, and supervision.
2. An applicant required under subsection (A)(1) to implement a program of study or practical experience may apply anew for licensure. The applicant shall submit a new application packet, as described in R4-26-203, and include information about any actions proposed under subsection (A)(1).
3. The holder of a temporary license issued under A.R.S. § 32-2073(B) who:
   a. Fails the national examination three times and complies with subsection (A)(1) may submit to the Board a written request to retake the national examination using a form that is approved by the Board and available at the Board office and on its website; or

b. Fails to take the national examination within one year after the Board's authorization to do so shall submit a written request for approval to take the national examination using a form that is approved by the Board and available at the Board office and on its website.

4. Examination deadline. The Board shall administratively close the file of an applicant authorized by the Board to take an examination specified in subsection (B) or (C) who fails to take the examination within one year from the date of the Board's authorization.

5. Extension of examination deadline. An applicant or the holder of a temporary license issued under A.R.S. § 32-2073(B) may obtain an extension of the examination deadline specified in subsection (A)(3)(b) or (A)(4). To obtain an extension of the examination deadline, the applicant or temporary licensee shall submit a written request to the Board's Executive Director on or before the examination deadline. The Board shall grant the applicant or temporary licensee one extension of up to six months to take the examination. The applicant or temporary licensee may request additional extensions for good cause, which includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period. The Board shall ensure that an extension is for no more than six months.

6. The Board shall deny or revoke a license, as applicable, if an applicant or temporary licensee commits any of the following acts with respect to a licensing examination specified under subsection (B) or (C):
   a. Violates the confidentiality of examination materials;
   b. Removes any examination materials from the examination room;
   c. Reproduces any portion of a licensing examination;
   d. Aids in the reproduction or reconstruction of any portion of a licensing examination;
   e. Pays or uses another person to take a licensing examination or to reconstruct any portion of the licensing examination;
   f. Obtains examination material, either before, during, or after an examination, for the purpose of instructing or preparing applicants for examinations;
   g. Sells, distributes, buys, receives, or has possession of any portion of a future, current, or previously administered licensing examination that is not authorized by the Board or its authorized agent for release to the public;
   h. Communicates with any other examinee during the administration of a licensing examination;
   i. Copies answers from another examinee or permits the copying of answers by another examinee;
   j. Possesses during the administration of a licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than material distributed during the examination; or
   k. Impersonates another examinee.

B. National examination. Under A.R.S. § 32-2072, the Board shall require that an applicant or temporary licensee take and pass the national examination. An applicant or temporary licensee authorized by the Board to take the national examination passes the examination by obtaining a score that equals or exceeds the passing score specified in A.R.S. § 32-2072(A). After the Board receives the examination results, the Board shall notify the applicant or temporary licensee in writing of the results.

C. Additional examination.

1. The Board shall require an applicant or temporary licensee to pass the national examination specified in subsection (B) before allowing the applicant or temporary licensee to take an additional examination.
2. Under A.R.S. § 32-2072(B), the Board may administer an additional examination to an applicant or temporary licensee to determine the adequacy of the applicant's or temporary licensee's knowledge and application of Arizona law. The additional examination may also cover the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
   a. The Board shall review and approve the additional examination before administration;
   b. The additional examination may be developed and administered by the Board, a committee of the Board, consultants to the Board, or independent contractors; and
   c. Examiners and consultants to the Board shall execute a security acknowledgment form and agree to maintain examination security.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended Introductory paragraph statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-123 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-204 renumbered to R4-26-203, new Section R4-26-204 renumbered from R4-26-205 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

Appendix A. Repealed

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsections (A) and (B) statute references, effective June 30, 1981 (Supp. 81-3). Amended effective November 1, 1985 (Supp. 85-6). Renumbered from R4-26-124 and amended effective July 3, 1991 (Supp. 91-3). Renumbered from R4-26-205, Appendix A (Supp. 95-1). Appendix A repealed by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1).

R4-26-205. Renewal of License

A. A license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.

B. The Board considers a license renewal application packet timely if submitted to the online renewal system on or before the last day of a licensee's birth month during the licensee's renewal year.

C. To renew a license, a licensee shall submit to the Board a renewal application form approved by the Board and available on its website, with an attestation that is signed and dated by the licensee.

D. Additionally, to renew a license, a licensee shall submit to the Board:
1. The license renewal fee required under R4-26-108;
2. A copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.1;
3. If the documentation previously submitted under R4-26-203(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired;
4. The following information about the continuing education completed during the previous license period:
   a. Title of the continuing education;
   b. Date completed;
   c. Sponsoring organization, publication, or educational institution;
   d. Number of hours in the continuing education; and
   e. Brief description of the continuing education; and
5. Any other information authorized by statute.

E. If a completed application is timely submitted under subsections (C) and (D), the licensee may continue to practice psychology under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice psychology until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.

F. Under A.R.S. § 32-2074 (C), the license of a licensee who fails to submit a renewal application, including the information about continuing education completed, on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing psychology.

G. A psychologist whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after the last day of the licensee's birth month during the licensee's renewal year:
1. The license renewal application required under subsection (C) and the documents required under subsections (D)(2) through (4); and
2. The license renewal and reinstatement fees required under R4-26-108.

H. A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
2. Paying the fee for reinstatement of an active or inactive license as specified in R4-26-108.

I. A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-203.

J. If the Board audits the continuing education records of a licensee and determines that some of the hours do not conform to the standards listed in R4-26-207, the Board shall disallow the non-conforming hours. If the remaining hours are less than the number required, the Board shall deem the licensee as failing to satisfy the continuing education requirements and provide notice of the disallowance to the licensee. The licensee has 90 days from the mailing date of the Board's notification of disallowance to complete the continuing education requirements for the past reporting period and shall provide the Board with an affidavit documenting completion. If the Board does not receive an affidavit within 90 days of the mailing date of notification of disallowance or the Board deems the affidavit insufficient, the Board may take disciplinary action under A.R.S. § 32-2081.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsections (A) and (B) statute references, effective June 30, 1981 (Supp. 81-3). Amended effective November 1, 1985 (Supp. 85-6). Renumbered from R4-26-124 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-205 renumbered to R4-26-204; new Section R4-26-205 renumbered from R4-26-206 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 1010, effective July 4, 2020 (Supp. 20-2). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License

A. Except as provided in subsection (C), when considering reinstatement of a psychologist from inactive to active status, the Board shall presume that the psychologist has maintained and updated the psychologist's professional knowledge and capability to practice as a psychologist if the psychologist presents to the Board documentation of completion of a prorated amount of continuing education, calculated under subsection (B).

B. A psychologist who is on inactive status for at least two years may reinstate the license to active status by presenting to the Board:
1. A copy of a valid fingerprint clearance card issued by the Department of Public Safety under A.R.S. Title 41, Chapter 12, Article 3.1;
2. If the documentation previously submitted under R4-26-203(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and

3. Documentation of completion of at least 40 hours of continuing education that meets the standards in R4-26-207. A psychologist who is on inactive status for less than two years may reinstate the license to active status by presenting to the Board documentation of completion of a prorated amount of continuing education. To calculate the prorated amount of continuing education hours required, the Board shall multiply 1.67 by the number of months from the date of inactive status until the date the application for reinstatement is received by the Board. For every six months of inactive status, the Board shall require one hour of continuing education in ethics.

C. A psychologist may request that the Board cancel the psychologist's license if the psychologist is not under investigation by any regulatory jurisdiction. Fees paid to obtain a license are not refundable when the license is canceled. If an individual whose request for license cancellation is approved by the Board subsequently decides to practice psychology, the individual shall submit a new application under R4-26-203 and meet the requirements in A.R.S. § 32-2071.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Renumbered from R4-26-125 effective July 3, 1991 (Supp. 91-3). Former Section R4-26-206 renumbered to R4-26-205; new Section R4-26-206 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2007, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-207. Continuing Education

A. A licensee shall complete at least 40 hours of continuing education during each license period. Unless specified otherwise, one clock hour of instruction, training, or making a presentation equals one hour of continuing education.

B. A licensee shall ensure the continuing education hours obtained include at least four hours in professional ethics.

C. During the license period in which an individual is initially licensed, the Board shall pro-rate the number of continuing education hours, including a pro-rated number of hours addressing ethics, that the new licensee must complete during the initial license period. To calculate the number of continuing education hours that a new licensee must obtain, the Board shall divide the 40 hours of continuing education required in a license period by 24 and multiply the quotient by the number of whole months from the date of initial licensure until the end of the license period. During the first license period, for every six months from the month of license issuance to the end of the license period, the Board shall require one hour of continuing education in ethics.

D. If the standards in subsection (F) are met, the Board shall accept the following for continuing education hours.

1. Post-doctoral study sponsored by a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1) and provides a graduate-level degree program;
2. A course, seminar, workshop, or home study for which a certificate of attendance or completion is provided;
3. A continuing education program offered by a national, international, regional, or state association, society, board, or continuing education provider;
4. Teaching a graduate-level course in applied psychology at a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1). A licensee who teaches a graduate-level course in applied psychology receives the same number of continuing education hours as number of classroom hours for those who take the graduate-level course;
5. Organizing and presenting a continuing education activity. A licensee who organizes and presents a continuing education activity receives the same number of continuing education hours as those who attend the continuing education activity;
6. Serving as a complaint consultant. During a license period, a licensee who serves as a Board complaint consultant to review Board complaints and provides written reports to the Board or provides expert testimony on behalf of the Board may receive continuing education hours equal to the actual number of hours served as a complaint consultant to a maximum of 20 hours. A licensee who is paid by the Board for services rendered shall not receive continuing education credit for the time or services for which payment was made;
7. The Board shall allow a maximum of 10 continuing education hours for each of the following during a license period:
   a. Attending a Board meeting or serving as a member of the Board. A licensee receives up to six continuing education hours in professional ethics for attending both morning and afternoon sessions of a Board meeting and three continuing education hours for attending either the morning or afternoon session or at least four hours of a Board meeting. A licensee shall complete documentation provided by the Board at the time the licensee attends a Board meeting;
   b. Having an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published. A licensee who has an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published receives 10 continuing education hours in the year of publication;
   c. Participating in a study group for professional growth and development as a psychologist. A licensee receives one hour of continuing education for each hour of participation to a maximum of 10 continuing education hours for participating in a study group. The Board shall allow continuing education hours for participating in a study group only if the licensee maintains the documentation required under subsection (G)(5);
   d. Presenting a symposium or paper at a state, regional, national, or international psychology meeting. A licensee who presents a symposium or paper

receives the same number of continuing education hours as hours of the session, as published in the agenda of the meeting, at which the symposium or paper is presented to a maximum of 10 continuing education hours;

e. Presenting a poster during a poster session at a state, regional, national, or international psychology meeting. A licensee who presents a poster receives an hour of continuing education for each hour the licensee is physically present with the poster during the poster session, as published in the agenda of the meeting, to a maximum of 10 continuing education hours; and

f. Serving as an elected officer of an international, national, regional, or state psychological association or society. A licensee who serves as an elected officer may receive continuing education hours equal to the actual number of hours served to a maximum of 10 continuing education hours.

E. The Board shall not allow continuing education credit more than once in a license period for:
1. Teaching the same graduate-level course,
2. Organizing and presenting a continuing education activity on the same topic or content area, or
3. Presenting the same symposium or paper at a state, regional, national, or international psychology meeting.

F. Standards for continuing education. To be acceptable for continuing education credit, an activity identified in subsections (D)(1) through (4) shall:
1. Focus on the practice of psychology, as defined at A.R.S. § 32-2061, for at least 75 percent of the program hours; and
2. Be taught by an instructor who is readily identifiable as competent in the subject of the continuing education by having an advanced degree, teaching experience, work history, published professional articles, or previously presented continuing education on the same subject.

G. The Board shall accept the following documents as evidence of completion of continuing education hours:
1. A certificate of attendance or completion;
2. Statement signed by the provider verifying participation in the activity;
3. Copy of transcript of course completed under subsection (D)(1);
4. Documents indicating a licensee's participation as an elected officer or appointed member as specified in subsection (D)(7)(f); or
5. An attestation signed by all participants of a study group under subsection (D)(7)(c) that includes a description of the activity, subject covered, dates, and number of hours.

H. A licensee shall maintain the documents listed in subsection (G) through the license period following the license period in which the documents were obtained.

I. The Board may audit a licensee's compliance with continuing education requirements. The Board may deny renewal or take other disciplinary action against a licensee who fails to obtain or document required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding continuing education hours.

J. A licensee who cannot meet the continuing education requirement for good cause may seek an extension of time to complete the continuing education requirement by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-205.
1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.
2. The Board shall not grant an extension longer than one year.
3. A licensee who cannot complete the continuing education requirement within the extension may apply to the Board for inactive license status under A.R.S. § 32-2073 (G).

K. No continuing education hours may be carried over to the next licensing period.

L. The Board shall not accept for continuing education hours a course, workshop, seminar, or symposium designed to increase income or office efficiency.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective January 23, 1981 (Supp. 81-1). Renumbered from R4-26-126 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-207 repealed; new Section R4-26-207 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995. Text corrected. (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 1010, effective July 4, 2020 (Supp. 20-2).

R4-26-208. Time Frames for Processing Applications

A. For the purpose of A.R.S. § 41-1073, the Board establishes the time frames listed in Table 1. An applicant or a person requesting an approval from the Board and the Board's Executive Director may agree in writing to extend the substantive review and overall time frames by no more than 25 percent of the overall time frame.

B. The administrative completeness review time frame begins when the Board receives an application packet or request for approval. During the administrative completeness review time frame, the Board shall notify the applicant or person requesting approval that the application packet or request for approval is either complete or incomplete. If the application packet or request for approval is incomplete, the Board shall specify in the notice what information is missing.

C. If an applicant or person requesting approval receives a notice of incompleteness under subsection (B), the applicant or person requesting approval shall submit the missing information to the Board within the time to complete listed in Table 1. Both the administrative completeness review and overall time frames are suspended from the date of the Board's notice under subsection (B) until the Board receives all of the missing information.

D. Upon receipt of all missing information, the Board shall send a written notice of administrative completeness to the applicant

or person requesting approval. The Board shall not send a separate notice of completeness if the Board grants or denies a license or approval within the administrative completeness time frame listed in Table 1.

E. The substantive review time frame listed in Table 1 begins on the date of the Board's notice of administrative completeness sent under subsection (D).

F. If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant or person requesting approval a comprehensive written request for additional information.

G. An applicant or person requesting approval who receives a request under subsection (F) shall submit the additional information to the Board within the time for response listed in Table 1. Both the substantive review and overall time frames are suspended from the date of the Board's request until the Board receives the additional information.

H. An applicant or person requesting approval may receive a 30-day extension of the time provided under subsection (C) or (G) by providing written notice to the Board before the time expires. If an applicant or person requesting approval fails to submit to the Board the missing or additional information within the time provided under Table 1 or the time as extended, the Board shall administratively close the applicant's or person's file.

I. At any time before the overall time frame provided in Table 1 expires, an applicant or person requesting approval may, with approval by the Board, withdraw the application or request.

J. Within the overall time frame listed in Table 1, the Board shall:

1. Grant a license or approval if the Board determines that the applicant or person requesting approval meets all criteria required by statute and this Chapter; or
2. Deny a license or approval if the Board determines that the applicant or person requesting approval does not meet all criteria required by statute and this Chapter.

K. If the Board denies a license or approval, the Board shall send the applicant or person requesting approval a written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;
3. The time for appealing the denial; and
4. The right to request an informal settlement conference.

L. If the last day of a time frame falls on a Saturday, Sunday, or an official state holiday, the time frame ends on the next business day.

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective January 23, 1981 (Supp. 81-1). Amended effective July 3, 1984 (Supp. 84-4). Amended effective February 24, 1988 (Supp. 88-1). Renumbered from R4-26-127 effective July 3, 1991 (Supp. 91-3). Former Section R4-26-208 repealed; new Section R4-26-208 amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

Table 1. Time Frames (in days) for Processing Applications

Type of Application or Request	Statutory or Rule Authority	Administrative Completeness Time Frame	Time to Respond to Notice of Deficiency	Substantive Review Time Frame	Time to Respond to Request for Additional Information	Overall Time Frame
Application for initial license	A.R.S. §§ 32-2071, 32-2071.01, 32-2072, and R4-26-203	30	240	90	365	120
Application for licensure by credential	A.R.S. §§ 32-2071.01, 32-2072; and R4-26-203.01	30	240	90	240	120
Application to Take National Examination before Completing Experience Required for Licensure	A.R.S. § 32-2072(C) and R4-26-203.02	30	240	90	240	120
Reapplication for Licensure	A.R.S. § 32-2067 and R4-26-203.03	30	240	90	240	120
Application for license renewal	A.R.S. § 32-2074; R4-26-205	60	N/A	90	N/A	150
Application for reinstatement of expired license	A.R.S. § 32-2074; R4-26-206	60	N/A	90	N/A	150
Request for extension of time to complete continuing education	A.R.S. § 32-2074; R4-26-207	60	N/A	90	N/A	150

Type of Application or Request	Statutory or Rule Authority	Administrative Completeness Time Frame	Time to Respond to Notice of Deficiency	Substantive Review Time Frame	Time to Respond to Request for Additional Information	Overall Time Frame
Application for registration as an out-of-state health care provider of telehealth services	A.R.S. § 36-3606; R4-26-108	30	240	90	365	120

Historical Note

Table 1 adopted by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 26 A.A.R. 1010, effective July 4, 2020 (Supp. 20-2). Amended by final exempt rulemaking at 27 A.A.R. 1272, effective September 1, 2021 (Supp. 21-3).

R4-26-209. General Supervision

A. Under A.R.S. § 32-2071(D), an applicant is required to obtain 3,000 hours of supervised professional experience.

B. A supervising psychologist shall not supervise a member of the psychologist's immediate family or the psychologist's employer or business partner.

C. Payment between a supervisor and supervisee.
1. A supervising psychologist may pay a monetary stipend or fee to a supervisee if the amount paid by the supervisor is not based on the supervisee's productivity or revenue generated by the supervisee;
2. A supervising psychologist who accepts a fee for providing the supervisory service in Arizona may be subject to disciplinary action by the Board; and
3. The Board shall look to the law of the jurisdiction in which the supervision occurred to determine whether to include as part of the 3,000 hours of supervised professional experience required under A.R.S. § 32-2071(D) hours for which an applicant paid the supervisor.

D. A psychologist who supervises the professional experience of an unlicensed individual is professionally responsible for all work done by the individual during the supervised experience.

E. The Board shall include in the 3,000 hours of supervised professional experience required under A.R.S. § 32-2071(D), hours obtained through a training program only if the training program provides the supervision required under A.R.S. § 32-2071(F)(2).

Historical Note

Adopted effective January 23, 1981 (Supp. 81-1). Renumbered from R4-26-128 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-209 renumbered to R4-26-208; new Section R4-26-209 adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-210. Supervised Professional Experience

A. The Board shall use the following criteria to determine whether an applicant's supervised preinternship professional experience complies with A.R.S. § 32-2071(E):
1. The supervised preinternship professional experience was part of the applicant's doctoral program from an institution of higher education that meets the standards in A.R.S. § 32-2071(A);
2. The applicant completed appropriate academic preparation before beginning the supervised preinternship professional experience. The Board shall not include any assessment or treatment conducted as part of the required academic preparation in the hours of supervised preinternship professional experience; and
3. For each supervised preinternship professional experience training site, the applicant has a written training plan with both the training site and the institution of higher education at which the applicant is pursuing a doctoral degree that includes at least the following:
   a. Training activities included and the amount of time allotted to each activity,
   b. Goals and objectives of each training activity,
   c. Methods of evaluating the supervisee and the supervised preinternship professional experiences provided,
   d. Approval of all individuals providing supervision at sites external to the training site,
   e. Total number of hours to be accrued during the supervised preinternship professional experience,
   f. Total number of hours of face-to-face contact hours with clients or patients during the supervised preinternship professional experience,
   g. Total number of hours of supervision during the supervised preinternship professional experience,
   h. Qualifications of all individuals who provide supervision during the supervised preinternship professional experience, and
   i. Acknowledgment that ethics training will be included in all activities.

B. The Board shall use the following criteria to determine whether an applicant's internship or training program qualifies as supervised professional experience under A.R.S. § 32-2071(F):
1. The written statement required under A.R.S. § 32-2071(F)(9):
   a. Was established no later than the time the applicant entered the internship or training program; and
   b. Corresponds to the internship or training program the applicant completed;
2. A supervisor was directly available to the applicant when decisions were made regarding emergency psychological services provided to a client or patient as required under A.R.S. § 32-2071(F)(2);

3. Course work used to satisfy the requirements of A.R.S. § 32-2071(A) or dissertation time is not credited toward the face-to-face, individual supervision time required by A.R.S. § 32-2071(F)(6);
4. The two hours a week of other learning activities required under A.R.S. § 32-2071(F)(6) include one or more of the following:
   a. Case conferences involving a case in which the applicant was actively involved,
   b. Seminars involving clinical issues,
   c. Co-therapy with a professional staff person including discussion,
   d. Group supervision, or
   e. Additional individual supervision;
5. The training program had the applicant work with other doctoral level psychology trainees and included in the written statement required under A.R.S. § 32-2071(F)(9) a description of the program policy specifying the opportunities and resources provided to the applicant for working or interacting with other doctoral level psychology trainees in the same or other sites; and
6. Time spent fulfilling academic degree requirements, such as course work applied to the doctoral degree, practicum, field laboratory, dissertation, or thesis credit, is not credited toward the 1,500 hours of supervised professional experience hours required by A.R.S. § 32-2071(F). This subsection does not restrict a student from participating in activities designed to fulfill other doctoral degree requirements. However, the Board shall not credit time spent participating in activities to fulfill academic degree requirements toward the hours required under A.R.S. § 32-2071(F).

C. Under A.R.S. § 32-2071(G)(5), at least 40 percent of an applicant's supervised postdoctoral experience shall involve direct client or patient contact. If an applicant's supervised postdoctoral hours applied toward licensure include less than 40 percent direct contact hours, the applicant shall work additional time to achieve the required percentage of direct contact hours. While additional direct contact hours may be obtained to meet this requirement, the Board shall count no more than 1,500 hours of total postdoctoral experience for the purpose of licensure.

D. An applicant shall ensure the written training plan required under A.R.S. § 32-2071(G)(7) is from the organization at which the supervised postdoctoral professional experience is occurring and includes the following:
1. Goal and content of each training experience;
2. Expectations regarding the nature, quality, and quantity of work to be done by the supervisee during the supervised postdoctoral professional experience;
3. Methods of evaluation the supervisee and the supervised postdoctoral professional experience;
4. Total number of hours to be accrued during the supervised postdoctoral professional experience;
5. Total number of face-to-face contact hours the supervisee is to have with clients or patients during the supervised postdoctoral professional experience;
6. Total number of hours of supervision the supervisee is to receive during the supervised postdoctoral professional experience;
7. Qualifications of all individuals who provide supervision during the supervised postdoctoral professional experience including documentation that each is qualified under the standards at A.R.S. § 32-2071(G); and
8. Acknowledgement that ethics training is included in the supervised postdoctoral professional experience.

Historical Note

Adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 3879 (December 23, 2022), effective January 29, 2023 (Supp. 22-4).

R4-26-211. Foreign Graduates

A. Under A.R.S. § 32-2071(B), an applicant for licensure whose application is based on graduation from an institution of higher education located outside the U.S. and its territories shall demonstrate that the applicant's formal education is equivalent to a doctoral degree in psychology from a regionally accredited educational institution as described in A.R.S. § 32-2071(A).

B. The Board shall find that the institution of higher education from which an applicant under subsection (A) graduated is equivalent to a regionally accredited education institution only if the institution of higher education is included in one of the following:
1. International Handbook of Universities, published for the International Association of Universities by Stockton Press, 345 Park Avenue South, 10th floor, New York, NY 10010-1708;
2. Commonwealth Universities Yearbook, published for the Association of Commonwealth Universities by John Foster House, 36 Gordon Square, London, England, WC1H OPF; or
3. Another source the Board determines provides reliable information.

C. The academic transcript of an applicant under subsection (A) who graduated from an institution included under subsection (B) shall be translated into English and evaluated by a member organization of the National Association of Credential Evaluation Services (NACES). The applicant is responsible for paying all expenses incurred to obtain a translation and review of the academic transcript. An applicant can find information about obtaining a professional credential review at www.naces.org.

D. When the credential review required under subsection (C) is completed, the NACES member organization shall submit the review report to the Board. The Board shall review the report and determine whether the applicant's education meets the standard in subsection (A).

E. Upon written request, the Board may waive the credential review required under subsection (C) for an applicant who graduated from a doctoral program that is accredited by the accreditation panel of the Canadian Psychological Association.

F. After the Board determines that the formal education of an applicant under subsection (A) is equivalent to a doctoral degree in psychology from a regionally accredited educational institution, the applicant shall provide evidence to the Board that the applicant has met all other requirements for licensure.

Historical Note

Adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

ARTICLE 3. REGULATION

R4-26-301. Rules of Professional Conduct

A. The Board incorporates by reference standards 1.01 through 10.10 of the "Ethical Principles of Psychologists and Code of Conduct" adopted by the American Psychological Association, effective June 1, 2003. The incorporated materials do not include any later amendments or editions. A copy of the standards is available from the American Psychological Association Order Department, 750 First Street, NE, Washington, DC 20002-4242, www.apa.org/ethics/code, or the Board office.

B. A licensee shall practice psychology in accordance with the standards incorporated under subsection (A).

Historical Note

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981. Amended effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-150 and amended effective July 3, 1991 (Supp. 91-3). Repealed effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-302. Informal Interviews

A. When a complaint is scheduled for informal interview, the Board shall send written notice of an informal interview to the licensee who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 20 days before an informal interview.

B. The Board shall include the following in the written notice of an informal interview:
1. The time, date, and place of the interview;
2. An explanation of the informal nature of the proceedings;
3. The licensee's right to appear at the informal interview with legal counsel licensed in Arizona or without legal counsel;
4. A statement of the allegations and issues involved;
5. The licensee's right to a formal hearing instead of the informal interview; and
6. Notice that the Board may take disciplinary action at the conclusion of the informal interview;

C. The procedure used during an informal interview may include the following:
1. Swearing in and taking testimony from the licensee, complainant, and witnesses, if any;
2. Optional opening and closing remarks by the licensee;
3. An opportunity for the complainant to address the Board, if requested;
4. Board questions to the licensee, complainant, and witnesses, if any; and
5. Deliberation and discussion by the Board.

Historical Note

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-303. Titles

A person shall not use a title that claims a potential or future degree or qualification such as "Ph.D. (Cand)," "Ph.D. (ABD)," "License Eligible," "Candidate for Licensure," or "Board Eligible." The use of a title that claims a potential or future degree or qualification is a violation of A.R.S. § 32-2061 et seq.

Historical Note

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-304. Representation before the Board by Attorney Not Admitted to State Bar of Arizona

An attorney who is not a member of the State Bar of Arizona shall not represent a party before the Board unless the attorney is admitted to practice *pro hac vice* before the Board under Rule 38(a) of the Rules of the Supreme Court of Arizona.

Historical Note

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

R4-26-305. Confidentiality of Investigative Materials

A. A psychologist shall not disclose a confidential record, as defined by R4-26-101, that relates to a Board investigation to any person or entity other than the psychologist's attorney, except:
1. A redacted summary that ensures the anonymity of the client or patient;
2. Information regarding the nature of a complaint, the processes utilized by the Board, and the outcomes of a case;
3. As required by law;
4. As required by a court order compelling production; or
5. If disclosure is protected under the United States or Arizona Constitutions.

B. A psychologist who violates this Section commits an act of unprofessional conduct.

Historical Note

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-306. Renumbered

Historical Note
Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3).

R4-26-307. Renumbered

Historical Note
Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3).

R4-26-308. Rehearing or Review of Decision

A. Except as provided in subsection (G), any party in a contested case or appealable agency action before the Board who is aggrieved by a Board order or decision may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for rehearing or review. For purposes of this subsection, service is complete on personal service or five days after the date that a Board order or decision is mailed to the party's last known address.

B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Board. A party may file a response within 15 days after service of the motion or amended motion by any other party. The Board may require written briefs regarding the issues raised in the motion and may provide for oral argument.

C. The Board may grant rehearing or review of a Board order or decision for any of the following causes materially affecting the moving party's rights:

1. An irregularity in the administrative proceedings of the agency, its hearing officer, or the prevailing party, or any order or abuse of discretion that caused the moving party to be deprived of a fair hearing;
2. Misconduct of the Board, its hearing officer, or the prevailing party;
3. An accident or surprise that could not be prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence be discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. An error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the case; or
7. The order or decision is not justified by the evidence or is contrary to law.

D. The Board may affirm or modify a Board order or decision or grant a rehearing or review to all or any of the parties, on all or part of the issues, for any of the reasons specified in subsection (C). An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only the matters specified.

E. Not later than 30 days after a Board order or decision is rendered, the Board may on its own initiative order a rehearing or review of its order or decision for any reason specified in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion.

F. When a motion for rehearing or review is based on affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board for good cause or by written agreement of all parties may extend the period for service of opposing affidavits to a total of 20 days. Reply affidavits are permitted.

G. If the Board finds that the immediate effectiveness of a Board order or decision is necessary to preserve public peace, health, or safety and that a rehearing or review of the Board order or decision is impracticable, unnecessary, or contrary to the public interest, the Board order or decision may be issued as a final order or decision without an opportunity for a rehearing or review. If a Board order or decision is issued as a final order or decision without an opportunity for rehearing or review, any application for judicial review of the order or decision shall be made within the time permitted for final orders or decisions.

H. For purposes of this Section, "contested case" is defined in A.R.S. § 41-1001 and "appealable agency action" is defined in A.R.S. § 41-1092.

I. A person who files a complaint with the Board against a licensee:

1. Is not a party to:
   a. A Board administrative action, decision, or proceeding; or
   b. A court proceeding for judicial review of a Board decision under A.R.S. §§ 12-901 through 12-914; and
2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

Historical Note
Former Section R4-26-10 renumbered and adopted as R4-26-57 effective July 27, 1979 (Supp. 79-4). Amended subsection (c)(4) effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-157 effective July 3, 1991 (Supp. 91-3). Amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-309. Complaints against Judicially Appointed Psychologists

A. A.R.S. § 32-2081(B) applies when a complaint is filed against a psychologist who conducts an evaluation, treatment, or psycho-education under a court order even if the psychologist is not specifically named in the court order.

B. If a complaint is filed against a psychologist who conducts an evaluation, treatment, or psycho-education under a court order, the Board shall return the complaint to the complainant with instructions that the court issuing the order must find there is a substantial basis to refer the complaint for consideration by the Board.

Historical Note
Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

R4-26-310. Disciplinary Supervision; Practice Monitor

A. If the Board determines, after a hearing conducted under A.R.S. Title 41, Chapter 6, Article 10, after an informal interview under A.R.S. § 32-2081(K), or through an agreement with the Board, that to protect public health and safety and ensure a licensee's ability to engage safely in the practice of psychology, it is necessary to require that the licensee practice

psychology for a specified term under another licensee who provides supervision or service as a practice monitor, the Board shall enter into an agreement with the licensee or issue an order regarding the disciplinary supervision or practice monitoring.

B. Payment between a licensee and supervisor or practice monitor.
1. A licensed psychologist who enters into an agreement with the Board or is ordered by the Board to practice psychology under the supervision of another licensee may pay the supervising licensee for the supervisory service;
2. A licensed psychologist who provides supervisory service to a licensed psychologist who has been ordered by the Board or entered into an agreement with the Board to practice psychology under supervision may accept payment for the supervisory service;
3. A licensed psychologist who enters into an agreement with the Board or is ordered by the Board to practice psychology under a practice monitor may pay the practice monitor for the service provided; and
4. A licensed psychologist who provides practice monitoring to a licensed psychologist who has been ordered by the Board or entered into an agreement with the Board to practice psychology under a practice monitor may accept payment for the service provided.

C. A licensed psychologist who supervises or serves as a practice monitor for a licensed psychologist who has entered an agreement with the Board or been ordered by the Board to practice psychology under supervision or with a practice monitor is professionally responsible only for work specified in the agreement or order.

Historical Note
Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

ARTICLE 4. BEHAVIOR ANALYSIS

R4-26-401. Definitions

A. The definitions in A.R.S. § 32-2091 apply in this Article.

B. Additionally, in this Article:
1. "Accredited" means an institution of higher education:
   a. In the U.S. is listed with the Council for Higher Education Accreditation,
   b. In Canada is a member of the Universities Canada, and
   c. Outside of the U.S. or Canada is determined by a member of the National Association of Credential Evaluation Services to have standards substantially similar to those of an institution of higher education in the U.S. or Canada.
2. "Advertising" means any media used to disseminate information regarding the qualifications of a behavior analyst in order to solicit clients for behavior analysis services, regardless of whether the behavior analyst pays for the advertising.
3. "Applicant" means an individual who applies to the Board for an initial or renewal license.
4. "BACB" means the Behavior Analyst Certification Board, Inc.®.
5. "Confidential information" means:
   a. Minutes of an executive session of the Board except as provided under A.R.S. § 38-431.03(B);
   b. A record that is classified as confidential by a statute or rule applicable to the Board;
   c. Materials relating to an investigation by the Board, including a complaint, response, client record, witness statement, investigative report, and any information relating to a client's diagnosis, treatment, or personal family life; and
   d. The following regarding an applicant or licensee:
      i. College or university transcripts if requested from the Board by a person other than the applicant or licensee;
      ii. Home address, telephone number, and e-mail address;
      iii. Test scores;
      iv. Date of birth;
      v. Place of birth; and
      vi. Social Security number.
6. "Gross negligence" means an extreme departure from the ordinary standard of care.
7. "Inactive status" means a behavior analyst maintains a license as a behavior analyst but is prohibited from practicing behavior analysis or holding oneself out as practicing behavior analysis in Arizona.
8. "License period" means:
   a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee's birth month of one odd-numbered year and the last day of the licensee's birth month of the next odd-numbered year; and
   b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-numbered year and the last day of the licensee's birth month of the next even-numbered year.
9. "Mitigating circumstances that prevent resolution" means factors the Board considers in reviewing allegations against an applicant or licensee of unprofessional conduct occurring in another regulatory jurisdiction when the allegations would not prohibit licensure in Arizona. The factors may include:
   a. Nature of the alleged conduct,
   b. Severity of the alleged conduct,
   c. Recentness of the alleged conduct,
   d. Actions taken by the applicant to remedy potential violations, and
   e. Whether the alleged conduct was an isolated incident or part of a recurring pattern.
10. "Party" means the Board, an applicant, a licensee, or the state.
11. "Psychometric testing materials" means manuals, instruments, protocols, and questions or stimuli used in testing.
12. "Raw test data" means test scores, client responses to test questions or stimuli, and a behavior analyst's notes and recordings concerning client statements and behavior during examination.
13. "Regulatory jurisdiction" means a state or territory of the United States, the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
14. "Renewal year" means:
   a. Each odd-numbered year for a licensee who holds an odd-numbered license, and
   b. Each even-numbered year for a licensee who holds an even-numbered license.

§ 32-2061. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice psychology.

2. "Adequate records" means records containing, at a minimum, sufficient information to identify the client or patient, the dates of service, the fee for service, the payments for service, the type of service given and copies of any reports that may have been made.

3. "Board" means the state board of psychologist examiners.

4. "Client" means a person or an entity that receives psychological services. A corporate entity, a governmental entity or any other organization may be a client if there is a professional contract to provide services or benefits primarily to an organization rather than to an individual. If an individual has a legal guardian, the legal guardian is the client for decision-making purposes, except that the individual receiving services is the client or patient for:

(a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.

(b) Issues that the guardian agrees to specifically reserve to the individual.

5. "Committee on behavior analysts" means the committee established by section 32-2091.15.

6. "Exploit" means actions by a psychologist who takes undue advantage of the professional association with a client or patient, a student or a supervisee for the advantage or profit of the psychologist.

7. "Health care institution" means a facility as defined in section 36-401.

8. "Letter of concern" means an advisory letter to notify a psychologist that while there is insufficient evidence to support disciplinary action the board believes the psychologist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the psychologist's license.

9. "Patient" means a person who receives psychological services. If an individual has a legal guardian, the legal guardian is the client or patient for decision-making purposes, except that the individual receiving services is the client or patient for:

(a) Issues that directly affect the physical or emotional safety of the individual, such as sexual or other exploitative relationships.

(b) Issues that the guardian agrees to specifically reserve to the individual.

10. "Practice of psychology" means the psychological assessment, diagnosis, treatment or correction of mental, emotional, behavioral or psychological abilities, illnesses or disorders or purporting or attempting to do this consistent with section 32-2076.

11. "Psychologically incompetent" means a person lacking in sufficient psychological knowledge or skills to a degree likely to endanger the health of clients or patients.

12. "Psychological service" means all actions of the psychologist in the practice of psychology.

13. "Psychologist" means a natural person holding a license to practice psychology pursuant to this chapter.

14. "Supervisee" means any person who functions under the extended authority of the psychologist to provide, or while in training to provide, psychological services.

15. "Telepractice" means providing psychological services through interactive audio, video or electronic communication that occurs between the psychologist and the patient or client, including any electronic communication for diagnostic, treatment or consultation purposes in a secure platform, and that meets the requirements of telehealth pursuant to section 36-3602. Telepractice includes supervision.

16. "Unprofessional conduct" includes the following activities whether occurring in this state or elsewhere:

(a) Obtaining a fee by fraud or misrepresentation.

(b) Betraying professional confidences.

(c) Making or using statements of a character tending to deceive or mislead.

(d) Aiding or abetting a person who is not licensed pursuant to this chapter in representing that person as a psychologist.

(e) Gross negligence in the practice of a psychologist.

(f) Sexual intimacies or sexual intercourse with a current client or patient or a supervisee or with a former client or patient within two years after the

cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g) Engaging or offering to engage as a psychologist in activities that are not congruent with the psychologist's professional education, training and experience.

(h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the psychological services provided to a client or patient.

(i) Commission of a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state laws or rules that relate to the practice of psychology or to obtaining a license to practice psychology.

(l) Practicing psychology while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of the client or patient or renders the psychological services provided ineffective.

(m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a psychology license or to pass or attempt to pass a psychology licensing examination or in assisting another person to do so.

(n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a psychologist.

(o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a psychologist that are unprofessional by current standards of practice.

(p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own when the licensee has not rendered the service or assumed supervisory responsibility for the service.

(q) Representing activities or services as being performed under the licensee's supervision if the psychologist has not assumed responsibility for them and has not exercised control, oversight and review.

(r) Failing to obtain a client's or patient's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.

(s) Failing to make client or patient records in the psychologist's possession promptly available to another psychologist who is licensed pursuant to this chapter on receipt of proper authorization to do so from the client or patient, a minor client's or patient's parent, the client's or patient's legal guardian or the client's or patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(t) Failing to take reasonable steps to inform or protect a client's or patient's intended victim and inform the proper law enforcement officials in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on another person.

(u) Failing to take reasonable steps to protect a client or patient in circumstances in which the psychologist becomes aware during the course of providing or supervising psychological services that a client or patient intends or plans to inflict serious bodily harm on self.

(v) Abandoning or neglecting a client or patient in need of immediate care without making suitable arrangements for continuation of the care.

(w) Engaging in direct or indirect personal solicitation of clients or patients through the use of coercion, duress, undue influence, compulsion or intimidation practices.

(x) Engaging in false, deceptive or misleading advertising.

(y) Exploiting a client or patient, a student or a supervisee.

(z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another psychologist who is licensed pursuant to this chapter unless this reporting violates the psychologist's confidential relationship with the client or patient pursuant to section 32-2085. Any psychologist who reports or provides information to the board in good faith is not subject to an action for civil damages. For the purposes of this subdivision, it is not an act of unprofessional conduct if a licensee addresses an ethical conflict in a manner that is consistent with the ethical standards contained in the document entitled "ethical principles of psychologists and code of conduct" as adopted by the American psychological association and in effect at the time the licensee makes the report.

(aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this chapter.

(bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this chapter.

(cc) Failing to make available to a client or patient or to the client's or patient's designated representative, on written request, a copy of the client's or patient's record, including raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

History:

Amended by L. 2021, ch. 320,s. 9, eff. 5/5/2021. Amended by L. 2017, ch. 273,s. 1, eff. 11/1/2017. Amended by L. 2014, ch. 258,s. 1, eff. 7/24/2014.

§ 32-2063. Powers and duties

A. The board shall:

1. Administer and enforce this chapter and board rules.

2. Regulate disciplinary actions, the granting, denial, revocation, renewal and suspension of licenses and the rehabilitation of licensees pursuant to this chapter and board rules.

3. Prescribe the forms, content and manner of application for licensure and renewal of licensure and set deadlines for the receipt of materials required by the board.

4. Keep a record of all licensees, board actions taken on all applicants and licensees and the receipt and disbursal of monies.

5. Adopt an official seal for attesting licenses and other official papers and documents.

6. Investigate charges of violations of this chapter and board rules and orders.

7. Subject to title 41, chapter 4, article 4, employ an executive director who serves at the pleasure of the board.

8. Annually elect from among its membership a chairman, a vice chairman and a secretary, who serve at the pleasure of the board.

9. Adopt rules pursuant to title 41, chapter 6 to carry out this chapter and to define unprofessional conduct.

10. Engage in a full exchange of information with other regulatory boards and psychological associations, national psychology organizations and the Arizona psychological association and its components.

11. By rule, adopt a code of ethics relating to the practice of psychology. The board shall base this code on the code of ethics adopted and published by the American psychological association. The board shall apply the code to all board enforcement policies and disciplinary case evaluations and development of licensing examinations.

12. Adopt rules regarding the use of telepractice.

13. Before the board takes action, receive and consider recommendations from the committee on behavior analysts on all matters relating to licensing and regulating behavior analysts, as well as regulatory changes pertaining to

the practice of behavior analysis, except in the case of a summary suspension of a license pursuant to section 32-2091.09, subsection E.

14. Beginning January 1, 2022, require each applicant for an initial or temporary license or a license renewal pursuant to this chapter to have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. If an applicant is issued a valid fingerprint clearance card, the applicant shall submit the valid fingerprint clearance card to the board with the completed application. If an applicant applies for a fingerprint clearance card and is denied, the applicant may request that the board consider the application for licensure notwithstanding the absence of a valid fingerprint clearance card. The board, in its discretion, may approve an application for licensure despite the denial of a valid fingerprint clearance card if the board determines that the applicant's criminal history information on which the denial is based does not alone disqualify the applicant from licensure.

B. Subject to title 41, chapter 4, article 4, the board may employ personnel it deems necessary to carry out this chapter. The board, in investigating violations of this chapter, may employ investigators who may be psychologists. The board or its executive director may take and hear evidence, administer oaths and affirmations and compel by subpoena the attendance of witnesses and the production of books, papers, records, documents and other information relating to the investigation or hearing.

C. Subject to section 35-149, the board may accept, expend and account for gifts, grants, devises and other contributions, monies or property from any public or private source, including the federal government. The board shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this subsection in special funds for the purpose specified, and monies in these funds are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. Compensation for all personnel shall be determined pursuant to section 38-611.

History:

Amended by L. 2021, ch. 210,s. 1, eff. 9/29/2021. Amended by L. 2017, ch. 273,s. 3, eff. 11/1/2017. Amended by L. 2014, ch. 258,s. 2, eff. 7/24/2014. L12, ch 321, sec 62.

§ 32-2066. Directory; change of address; costs; civil penalty

A. The board shall compile and publish on its web site a directory containing:

1. The names and addresses of the officers and members of the board.

2. The names and addresses of all licensees.

3. The current board rules.

4. A copy of this chapter.

5. Additional information the board deems of interest and importance to licensees.

B. A licensee shall inform the board in writing of the licensee's current residence address, office address and telephone number within thirty days of each change in this information. The board may assess the costs incurred by the board in locating a licensee and may assess a civil penalty of not more than one hundred dollars against a licensee who fails to notify the board within thirty days from the date of any change of information required to be reported under this subsection.

§ 32-2067. Fees; alternative payment methods

A. The board, by a formal vote at its annual fall meeting, may establish fees and penalties that do not exceed:

1. Four hundred dollars for an application for an active license to practice psychology.

2. Two hundred dollars for an application for a temporary license to practice psychology.

3. Two hundred fifty dollars for reapplication for an active license.

4. Five hundred dollars for issuing an initial license. The board shall prorate this fee pursuant to subsection D of this section.

5. Fifty dollars for a duplicate license.

6. Five hundred dollars for biennial renewal of an active license.

7. Eighty-five dollars for biennial renewal of an inactive license.

8. Three hundred dollars for the reinstatement of an active or inactive license.

9. Three hundred fifty dollars for any additional examination.

10. Two hundred fifty dollars for delinquent compliance with continuing education requirements.

11. Five dollars for the sale of a duplicate renewal receipt.

12. Five dollars for the sale of a copy of the board's statutes and rules.

13. Two dollars for verification of a license.

14. Ten dollars for the sale of each audiotape of board meetings.

15. Five cents per name for the sale of computerized discs that contain the name of each licensee.

16. Twenty-five cents per name for the sale of computerized discs that contain the name and address of each licensee.

17. Thirty-five cents per name for the sale of customized computerized discs that contain additional licensee information that is not required by law to remain confidential.

18. Twenty-five cents per page for copying records, documents, letters, minutes, applications, files and policy statements. This fee includes postage.

B. The board may charge additional fees for services the board deems necessary and appropriate to carry out this chapter. These fees shall not exceed the actual cost of providing the service.

C. The board shall not refund fees except as provided in section 32-2073, subsection G. On special request and for good cause the board may return the license renewal fee.

D. The board shall prorate the fee for issuing an initial license by dividing the biennial renewal fee by twenty-four and multiplying that amount by the number of months that remain until the next biennial renewal date.

E. Subject to the requirements of section 41-2544, the executive director may enter into agreements to allow licensees to pay fees by alternative methods, including credit cards, charge cards, debit cards and electronic funds transfers.

History:

Amended by L. 2014, ch. 258,s. 3, eff. 7/24/2014.

§ 32-2071. Qualifications of applicants; education; training

A. An applicant for licensure shall have a doctoral degree from an institution of higher education in clinical or counseling psychology, school or educational psychology or any other subject area in applied psychology acceptable to the board and shall have completed a doctoral program in psychology from an educational institution that has:

1. Been accredited by one of the following regional accrediting agencies at the time of the applicant's graduation:

(a) The New England association of schools and colleges.

(b) The middle states association of colleges and schools.

(c) The north central association of colleges and schools.

(d) The northwest association of schools and colleges.

(e) The southern association of colleges and schools.

(f) The western association of schools and colleges.

2. A program that is identified and labeled as a psychology program and that stands as a recognized, coherent organizational entity within the institution with clearly identified entry and exit criteria for graduate students in the program.

3. An identifiable psychology faculty in the area of health service delivery and a psychologist responsible for the program.

4. A core program that requires each student to demonstrate competence by passing suitable comprehensive examinations or by successfully completing at least three or more graduate semester hours, five or more quarter hours or six or more trimester hours or by other suitable means in the following content areas:

(a) Scientific and professional ethics and standards in psychology.

(b) Research, which may include design, methodology, statistics and psychometrics.

(c) The biological basis of behavior, which may include physiological psychology, comparative psychology, neuropsychology, sensation and perception and psychopharmacology.

(d) The cognitive-affective basis of behavior, which may include learning, thinking, motivation and emotion.

(e) The social basis of behavior, which may include social psychology, group processes, cultural diversity and organizational and systems theory.

(f) Individual differences, which may include personality theory, human development and abnormal psychology.

(g) Assessment, which includes instruction in interviewing and administering, scoring and interpreting psychological test batteries to diagnose cognitive abilities and personality functioning.

(h) Treatment modalities, which include instruction in the theory and application of a diverse range of psychological interventions to treat mental, emotional, psychological and behavioral disorders.

5. A psychology program that leads to a doctoral degree requiring at least the equivalent of three full-time academic years of graduate study, two years of which are at the institution from which the doctoral degree is granted.

6. A requirement that the student must successfully defend a dissertation, the content of which is primarily psychological, or an equivalent project acceptable to the board.

7. Official transcripts that have been prepared solely by the institution and not by the student and, except for manifest clerical errors or grade changes, have not been altered by the institution after the student's graduation.

8. Given the student credit only for coursework that is listed on its official transcripts and that is obtained only at regionally accredited educational institutions as listed in paragraph 1 of this subsection and does not give credit for continuing education experiences or courses.

B. If the institution is located outside the United States, the applicant shall demonstrate that the program meets the requirements of subsection A, paragraphs 2 through 7 and subsections C through M of this section.

C. The applicant shall complete relevant didactic courses of the program required under subsection A, paragraph 4 of this section before starting the supervised professional experiences as described pursuant to subsection F of this section.

D. Each applicant for licensure shall obtain three thousand hours of supervised professional work experiences. The applicant shall demonstrate clearly how the applicant met this requirement. The applicant shall obtain a

minimum of one thousand five hundred hours through an internship as described in subsection F of this section. The applicant shall obtain the remaining one thousand five hundred hours through any combination of the following:

1. Supervised preinternship professional experiences as described in subsection E of this section.

2. Additional internship hours as described in subsection F of this section.

3. Supervised postdoctoral experiences as described in subsection G of this section.

E. If the applicant chooses to include up to one thousand five hundred hours of supervised preinternship professional experience to satisfy a portion of the three thousand hours of supervised professional experience, the following requirements must be met:

1. The applicant's supervised preinternship professional experiences shall reflect a faculty directed, organized, sequential series of supervised experiences of increasing complexity that follows appropriate academic coursework and that prepares the applicant for an internship.

2. The applicant's supervised preinternship professional experiences shall follow appropriate academic preparation. There must be a written training plan between the student and the graduate training program. The training plan for each supervised preinternship professional experience training site must designate an allotment of time for each training activity and must ensure the quality, breadth and depth of training experience by specifying goals and objectives of the supervised preinternship professional experience, the methods of evaluation of the student and supervisory experiences. If supervision is to be completed by qualified site supervisors at external sites, their approval must be included in the plan.

3. More than one part-time supervised preinternship professional experience placement of appropriate scope and complexity over the course of the graduate training may be combined to satisfy the one thousand five hundred hours of supervised preinternship professional experiences.

4. Every twenty hours of supervised preinternship professional experience must include the following:

(a) At least fifty percent of the supervised preinternship professional experiences must be in psychological service-related activities. Psychological service-related activities may include treatment, assessment, interviews,

report writing, case presentations, seminars on applied issues providing cotherapy, group supervision and consultations.

(b) At least twenty-five percent of the supervised preinternship professional experiences must be devoted to face-to-face patient-client contact.

(c) At least one hour per week of regularly scheduled contemporaneous in-person individual supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student.

(d) At least two hours of regularly scheduled contemporaneous supervision per twenty hours of supervised preinternship professional experience that addresses the direct psychological services provided by the student. At least fifty percent of the supervision during the total supervised preinternship professional experience shall be provided through contemporaneous in-person individual supervision. Not more than fifty percent shall be through in-person group supervision. At least seventy-five percent of the supervision shall be by a psychologist who is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada and who is designated by the academic program. Not more than twenty-five percent of the supervision shall be by a licensed mental health professional who is licensed or certified by a licensing jurisdiction of the United States or Canada, a psychology intern currently under the supervision of a licensed psychologist or an individual completing a postdoctoral supervised experience currently under the supervision of a licensed psychologist.

5. The applicant must provide to the board the written training plan developed by the applicant's program and documentation of the total hours accrued by the applicant during the supervised preinternship professional experience, including the number of face-to-face patient-client contact hours and the amount of supervision and qualifications of the supervisors for the entire supervised preinternship professional experiences. Documentation must include an acknowledgement that ethics training was included throughout the supervised preinternship professional experience.

6. Supervised professional preinternship experiences must be completed within seventy-two months.

F. The applicant shall have one thousand five hundred hours of supervised professional experience, which shall be either an internship that is approved by the American psychological association committee on accreditation, an internship that is a member of the association of psychology postdoctoral and internship centers or an organized training program that is designed to

provide the trainee with a planned, programmed sequence of training experience, the focus and purpose of which are to ensure breadth and quality of training, and that meets the following requirements:

1. The training program has a clearly designated staff psychologist who is responsible for the integrity and quality of the training and who is licensed or certified to practice psychology at the independent level by any licensing jurisdiction of the United States or Canada in which the program exists.

2. The training program provides at least two psychologists on staff as supervisors, at least one of whom is licensed or certified to practice psychology at the independent level by a licensing jurisdiction of the United States or Canada in which the program exists and at least one of whom is directly available to the trainee in case of emergency.

3. Supervision is provided by the person who carries clinical responsibility for the cases being supervised. At least half of the training supervision shall be provided by one or more psychologists.

4. Training includes a range of assessment, consultation and treatment activities conducted directly with clients or patients.

5. A minimum of twenty-five percent of a trainee's supervised professional experience hours is in direct client or patient contact.

6. Training includes regular in-person, individual supervision conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of experience and with the specific intent of dealing with psychological services rendered directly by the trainee and at least two additional hours per week in other learning activities. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication.

7. The training program includes interaction with other psychology trainees.

8. Trainees have a title that designates their trainee status.

9. The applicant provides from the training organization a written statement that describes the goals and content of the training program and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.

10. The supervised professional experience is completed within twenty-four consecutive months.

G. Not more than one thousand five hundred hours of supervised professional experience shall be postdoctoral and may start on written certification by the applicant's education program that the applicant has satisfied all requirements for the doctoral degree and on written certification that the applicant has completed an appropriate supervised professional experience as required in subsection F of this section. The applicant may complete more than one thousand five hundred hours of a supervised postdoctoral experience, but not more than one thousand five hundred hours may count towards the requirements of this subsection. The one thousand five hundred hours of supervised professional experience shall meet the following requirements:

1. Supervision is conducted by a psychologist who is licensed or certified to practice psychology at the independent level in any licensing jurisdiction of the United States or Canada in which the supervision occurs or by a psychologist who is on full-time active duty in the United States armed services and who is licensed or certified by a board of psychologist examiners in a United States jurisdiction, who has been licensed or certified for at least two years and who is competent in the areas of professional practice in which the supervisee is receiving supervised professional experience.

2. The supervisor takes full legal responsibility for the welfare of the client or patient as well as the diagnosis, intervention and outcome of the intervention and takes reasonable steps to ensure that clients or patients are informed of the supervisee's training and status and that clients or patients may meet with the supervisor at the client's or patient's request.

3. The supervisor or the appropriate custodian of records is responsible for ensuring that adequate records of client or patient contacts are maintained and that the client or patient is informed that the source of access to this information in the future is the supervisor.

4. The supervisor is fully available for consultation in the event of an emergency and provides emergency consultation coverage for the supervisee.

5. Regular in-person, individual supervision is conducted on a contemporaneous basis, with a minimum of one hour of in-person, individual supervision for each twenty hours of supervised professional experience. At least forty percent of the supervisee's time shall be in direct contact with clients or patients. The supervisor shall ensure that the telepractice supervision is conducted using secure, confidential real-time visual telecommunication technology.

6. The supervised professional experience as described in this subsection is completed within thirty-six consecutive months.

7. The applicant provides from the training organization a written training plan that describes the goals and content of the training experience and documents that clear expectations existed for the breadth, depth and quality and quantity of a trainee's work at the time of the supervised professional experience.

H. In meeting the supervised preinternship professional experience as described in subsection E of this section and the supervised professional experience as described in subsections F and G of this section, an applicant shall not receive credit for more than forty hours of experience per week.

I. An applicant who does not satisfy the supervised professional experience requirements of subsection F of this section may qualify on demonstration of twenty years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

J. An applicant who does not satisfy the supervised preinternship professional experience requirements of subsection E of this section or the supervised professional experience requirements of subsection G of this section, or a combination of subsections E and G of this section, may qualify on demonstration of ten years' licensed or certified practice as a psychologist in a jurisdiction of the United States or Canada.

K. The applicant shall complete a residency at the institution that awarded the applicant's doctoral degree. The residency shall require the following:

1. The student's active participation and involvement in learning.

2. Direct regular contact with faculty and other matriculated doctoral students.

3. Eighteen semester hours or thirty quarter hours or thirty-six trimester hours completed within a twelve-month consecutive period at the institution or a minimum of three hundred hours of student-faculty contact that involves face-to-face educational meetings conducted by the institution's psychology faculty and fully documented by the institution and the student. These meetings shall include interaction between the student and faculty and the student and other students and shall relate to the program content areas specified in subsection A, paragraph 4 of this section. These meetings shall be in addition to the supervised preinternship professional experience, clerkship or externship supervision hours or dissertation hours. On request

by the board, the applicant shall obtain documentation from the institution showing how the applicant's performance was assessed and documented.

L. To determine whether an applicant satisfies the requirements of subsection A of this section relating to subject areas in applied psychology, the board may require the applicant to complete a respecialization program in a program or professional school of psychology that has either an established American psychological association accredited doctoral program in clinical or counseling psychology or school or educational psychology or an established doctoral program that meets board rules. The applicant must also:

1. Meet all of the requirements of the new respecialization area. The board shall give the applicant credit for coursework that the applicant has previously successfully completed and that meets the requirements of subsection A, paragraph 4 of this section.

2. Complete one thousand five hundred hours of supervised professional experience as prescribed in subsection F of this section.

3. Present a certificate or letter from the department head, training director or dean that verifies that the applicant completed the program and that identifies the specialty area of applied psychology the applicant completed.

M. For the purposes of subsection A, paragraph 4 of this section, "other suitable means" means that an applicant demonstrates competence by being a diplomate of the American board of professional psychology or, if an applicant fails to demonstrate completion of coursework in two content areas prescribed in subsection A, paragraph 4 of this section, the applicant has fulfilled the two deficient requirements by successfully passing a graduate course in each deficient content area as a nonmatriculated student in a doctoral level psychology program at a university that is accredited pursuant to subsection A, paragraph 1 of this section.

History:

Amended by L. 2021, ch. 210,s. 2, eff. 9/29/2021. Amended by L. 2014, ch. 258,§s.4, eff. 7/24/2014 and s. 5 eff. 6/30/2016.

§ 32-2072. Examinations; exemptions

A. An applicant for licensure must pass the examination for professional practice in psychology, which is the national examination established by the association of state and provincial psychology boards. An applicant is considered to have passed the national examination if the applicant's score equals or exceeds either:

1. Seventy per cent on the written examination.

2. A scaled score of five hundred on the computer-based examination.

B. The board may implement an additional examination for all applicants to cover areas of professional ethics and practice consistent with the applicant's education and experience, state law relating to the practice of psychology or other areas the board determines are suitable.

C. An applicant may not take an examination administered for or by the board until the applicant completes the education requirements of this article. The board may approve an applicant who has obtained a doctoral degree in psychology as required under section 32-2071 to take the national examination before completing the experience requirements of this article. Except as provided in subsection D of this section, an applicant may not take an additional board examination until the applicant passes the national examination. An applicant who fails the national examination administered for or by any jurisdiction three times is not eligible to take that examination again until the applicant meets additional requirements prescribed by the board.

D. An applicant is exempt from taking the national examination administered pursuant to this section if the applicant either:

1. Is a diplomate of the American board of professional psychology.

2. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.

§ 32-2073. Temporary licenses; inactive status; reinstatement to active status

A. If the board requires an additional examination, it may issue a temporary license to a psychologist licensed or certified under the laws of another jurisdiction, if the psychologist applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. The board may issue a temporary license to an individual who submits an application for temporary licensure, who is working under supervision for postdoctoral experience and who meets the requirements of section 32-2071, subsections A, B, C and D, as applicable. The individual's postdoctoral experience must meet the requirements of section 32-2071, subsection G. The applicant shall submit the written training plan for the supervised professional experience required in section 32-2071, subsection G, paragraph 7 as part of the application for the temporary license.

C. A temporary license issued pursuant to subsection A of this section is effective from the date that the application is approved until the last day of the month in which the applicant receives the results of the additional examination as provided in section 32-2072.

D. A temporary license issued pursuant to subsection A of this section shall not be extended, renewed, reissued or allowed to continue in effect beyond the period authorized by this section.

E. A temporary license issued pursuant to subsection B of this section is effective for thirty-six months after the date the application is approved and is subject to an initial license fee pursuant to section 32-2067, subsection A, paragraph 4. A temporary license is not subject to renewal.

F. Denial of an application for licensure terminates a temporary license.

G. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a psychologist due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A psychologist who is retired is exempt from paying the renewal fee. A psychologist may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the psychologist shall not

practice as a psychologist in this state for the duration of the voluntary inactive status and paying the required fee.

H. A psychologist who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A psychologist on inactive status due to physical or mental incapacity or disability or retirement shall use the term "inactive" to describe the person's status and shall not practice as a psychologist.

I. A psychologist on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this chapter and whether the person has maintained and updated the person's professional knowledge and capability to practice as a psychologist. The board may require the person to take or retake the licensure examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

J. Beginning January 1, 2022, an applicant for a temporary license pursuant to this section shall have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

History:

Amended by L. 2021, ch. 210,s. 4, eff. 9/29/2021. Amended by L. 2014, ch. 258,s. 6, eff. 7/24/2014.

§ 32-2074. Active license; issuance; renewal; expiration; continuing education; cancellation of active license

A. If the applicant satisfies all of the requirements for licensure pursuant to this chapter, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. Except as provided in section 32-4301, a person holding an active or an inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.

2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee within two months after the last day of the licensee's birth month in that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this chapter. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known email address of record in the board's file. Notice is complete at the time of deposit in the mail or when the email is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national psychology ethics committee or health care institution. The report shall include the name and address of the

sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice psychology in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of psychology in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

F. On request of an active licensee, the board may cancel the license if the licensee is not presently under investigation by the board and the board has not initiated any disciplinary proceeding against the licensee.

G. A person who applies for an initial renewal of a license pursuant to this section on or after January 1, 2022 shall possess or have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

History:

Amended by L. 2021, ch. 210,s. 5, eff. 9/29/2021. Amended by L. 2014, ch. 258,§s.7, eff. 7/24/2014 and s. 8 eff. 4/30/2017.

§ 32-2081. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board, on its own motion, may investigate evidence that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology. A health care institution shall, and any other person may, report to the board information that appears to show that a psychologist is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology.

B. The board shall not consider a complaint against a psychologist arising out of a judicially ordered evaluation, treatment or psychoeducation of a person charged with violating any provision of title 13, chapter 14 to present a charge of unprofessional conduct unless the court ordering the evaluation has found a substantial basis to refer the complaint for consideration by the board.

C. A claim of unprofessional conduct brought on or after July 3, 2015 against a psychologist arising out of court-ordered services shall be independently reviewed by three members of the board, including a public member. Each of the three board members who are reviewing the claim shall independently provide the board's executive director a recommendation indicating whether the member believes there is merit to open an investigation. If one or more of the board members who are reviewing the claim determine that there is merit to open an investigation as a complaint, an investigation shall be opened and shall follow the complaint process pursuant to this article.

D. The board may not consider a complaint for administrative action if the complaint is filed against a person who is a licensed psychologist and who is a member of the board or a staff member of the board or who is acting as an agent of or consultant to the board if the complaint relates to the person's performance of board duties.

E. The board shall notify the psychologist about whom information has been received as to the content of the information within one hundred twenty days after receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

F. A health care institution shall inform the board if the privileges of a psychologist to practice in that institution are denied, revoked, suspended or limited because of actions by the psychologist that appear to show that that person is psychologically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of psychology, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a psychologist under investigation resigns the psychologist's privileges or if a psychologist resigns in lieu of disciplinary action by the health care institution. Notification shall include a general statement of the reasons for the resignation.

G. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

H. The chairperson of the board shall appoint a complaint screening committee of not less than three members of the board, including a public member. The complaint screening committee is subject to open meeting requirements pursuant to title 38, chapter 3, article 3.1. Except as provided in subsection I of this section, the complaint screening committee shall review all complaints and, based on the information provided pursuant to subsection A or F of this section, may take either of the following actions:

1. Dismiss the complaint if the committee determines that there is no evidence of a violation of law or community standards of practice. Complaints dismissed by the complaint screening committee shall not be disclosed in response to a telephone inquiry or placed on the board's website.

2. Refer the complaint to the full board for further review and action.

I. If the board finds, based on the information it receives under subsection A or F of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days.

J. If the board finds that the information provided pursuant to subsection A or F of this section is not of sufficient seriousness to merit direct action against the licensee, it may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.

2. File a letter of concern.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

K. If the board believes the information provided pursuant to subsection A or F of this section is or may be true, the board may request an informal interview with the psychologist. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, the board shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, the board may take any of the following actions:

1. Dismiss if the board believes there is no evidence of a violation of law or community standards of practice.

2. File a letter of concern.

3. Issue a decree of censure.

4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the psychologist. Probation may include temporary suspension for a period of not more than twelve months, restriction of the license or restitution of fees to a client or patient resulting from violations of this chapter. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.

5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the psychologist, protect the public and ensure the psychologist's ability to safely engage in the practice of psychology.

6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

L. If the board finds that the information provided pursuant to subsection A or F of this section warrants suspension or revocation of a license, the board shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

M. The board may impose a civil penalty of at least $300 but not more than $3,000 for each violation of this chapter or a rule adopted under this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

N. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of psychology or is psychologically incompetent, it may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.

2. Censure the licensee.

3. Place the licensee on probation.

O. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

P. A letter of concern is a public document and may be used in future disciplinary actions against a psychologist. A decree of censure is an official action against the psychologist's license and may include a requirement that the licensee return fees to a client or patient.

Q. Except as provided in section 41-1092.08, subsection H or for a decision made pursuant to subsection C of this section, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

R. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of psychological services, it shall inform the appropriate criminal justice agency.

S. If the board finds that it can take rehabilitative or disciplinary action at any time during the investigative or disciplinary process, the board may enter into a consent agreement with the psychologist to limit or restrict the

psychologist's practice or to rehabilitate the psychologist in order to protect the public and ensure the psychologist's ability to safely engage in the practice of psychology. The board may also require the psychologist to successfully complete a board-approved rehabilitative, retraining or assessment program at the psychologist's expense.

T. A psychologist who conducts an independent psychological examination pursuant to section 23-1026 is not subject to a complaint of unprofessional conduct unless the complaint alleges unprofessional conduct based on an act other than a disagreement with the findings and opinions expressed by the psychologist as a result of the examination.

History:

Amended by L. 2021, ch. 210,s. 6, eff. 9/29/2021. Amended by L. 2015, ch. 168,s. 1, eff. 7/2/2015. Amended by L. 2014, ch. 258,s. 10, eff. 7/24/2014.

§ 32-2082. Right to examine and copy evidence; subpoenas; right to counsel; appeal

A. In connection with an investigation conducted pursuant to this chapter, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice psychology.

B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A of this section. The board may petition the superior court to enforce a subpoena.

C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.

D. A person appearing before the board or its authorized agents may be represented by an attorney.

E. Documents associated with an investigation are not open to the public and shall remain confidential. No documents may be released without a court order compelling their production.

F. Nothing in this section or any other provision of law making communications between a psychologist and client or patient privileged applies to an investigation conducted pursuant to this chapter. The board, its employees and its agents shall keep in confidence the names of clients or patients whose records are reviewed during an investigation.

History:

Amended by L. 2014, ch. 258,s. 11, eff. 7/24/2014.

§ 32-2071.01. Requirements for licensure; remediation; credentials

A. An applicant for licensure shall demonstrate to the board's satisfaction that the applicant:

1. Has met the education and training qualifications for licensure prescribed in section 32-2071 or subsection D of this section.

2. Has passed any examination or examinations required by section 32-2072.

3. Has a professional record that indicates that the applicant has not committed any act or engaged in any conduct that constitutes grounds for disciplinary action against a licensee pursuant to this chapter.

4. Has not had a license or a certificate to practice psychology refused, revoked, suspended or restricted by a state, territory, district or country for reasons that relate to unprofessional conduct.

5. Has not voluntarily surrendered a license in another regulatory jurisdiction in the United States or Canada while under investigation for conduct that relates to unprofessional conduct.

6. Does not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or Canada that relates to unprofessional conduct.

7. Beginning January 1, 2022, has applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

B. If the board finds that an applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, or if the board or any jurisdiction has taken disciplinary action against an applicant, the board may issue a license if the board first determines to its satisfaction that the act or conduct has been corrected, monitored or resolved. If the act or conduct has not been resolved before issuing a license, the board must determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

C. An applicant for licensure meets the requirements of section 32-2071, subsection A, paragraphs 1, 2, 3, 4, 5, 6 and 8 if the applicant earned a doctoral degree from a program that was accredited by the American psychological association, office of program consultation and accreditation, or the psychological clinical science accreditation system at the time of graduation.

D. An applicant for licensure who is licensed to practice psychology at the independent level in another licensing jurisdiction of the United States or Canada meets the requirements of subsection A, paragraph 1 of this section if the applicant meets any of the following requirements:

1. Holds a certificate of professional qualification in psychology in good standing issued by the association of state and provincial psychology boards or its successor.

2. Is currently credentialed by the national register of health service providers in psychology or its successor and submits evidence of having practiced psychology independently at the doctoral level for a minimum of five years.

3. Is a diplomate of the American board of professional psychology.

History:

Amended by L. 2021, ch. 237,s. 1, eff. 9/29/2021. Amended by L. 2021, ch. 210,s. 3, eff. 9/29/2021.

§ 36-3601. Definitions

For the purposes of this chapter:

1. "Health care decision maker" has the same meaning prescribed in section 12-2801.

2. "Health care provider":

(a) Means a person licensed pursuant to title 32, chapter 7, 8, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 25, 28, 29, 33, 34, 35, 39, 41 or 42, or chapter 4, article 6 of this title, chapter 6, article 7 of this title or chapter 17 of this title.

(b) Includes:

(i) A health care institution licensed pursuant to chapter 4 of this title.

(ii) A person who holds a training permit pursuant to title 32, chapter 13 or 17.

3. "Health care provider regulatory board or agency" means a board or agency that regulates one or more health care provider professions in this state.

4. "Telehealth" means:

(a) The interactive use of audio, video or other electronic media, including asynchronous store-and-forward technologies and remote patient monitoring technologies, for the practice of health care, assessment, diagnosis, consultation or treatment and the transfer of medical data.

(b) Includes the use of an audio-only telephone encounter between the patient or client and health care provider if an audio-visual telehealth encounter is not reasonably available due to the patient's functional status, the patient's lack of technology or telecommunications infrastructure limits, as determined by the health care provider.

(c) Does not include the use of a fax machine, instant messages, voice mail or email.

History:

Amended by L. 2021, ch. 320,§§s.13, s.14 eff. 5/5/2021. Amended by L. 2014, ch. 67,s. 1, eff. 7/24/2014.

§ 36-3602. Delivery of health care through telehealth; requirements; exceptions

A. Except as provided in subsection G of this section, before a health care provider delivers health care through telehealth, the treating health care provider shall obtain verbal or written informed consent, including by electronic means, from the patient or the patient's health care decision maker. If the informed consent is obtained verbally, the health care provider shall document the consent on the patient's medical record.

B. The patient is entitled to all existing confidentiality protections pursuant to section 12-2292.

C. All medical reports resulting from a telehealth consultation are part of a patient's medical record as defined in section 12-2291.

D. Dissemination of any images or information identifiable to a specific patient for research or educational purposes shall not occur without the patient's consent, unless authorized by state or federal law.

E. Except as provided in subsection F of this section and for schedule II drugs, a health care provider regulatory board or agency may not enforce any statute, rule or policy that would require a health care provider who is licensed by that board or agency and who is authorized to write prescriptions or dispense or administer prescription drugs and devices to provide an in-person examination of the patient before issuing a prescription except as specifically prescribed by federal law. A physical or mental health status examination may be conducted during a telehealth encounter. Schedule II drugs may be prescribed only after an in-person or audio-visual examination and only to the extent allowed by federal and state law.

F. Services provided through telehealth are subject to this state's laws and rules governing the health care provider's scope of practice and the practice guidelines adopted by the telehealth advisory committee on telehealth best practices established by section 36-3607.

G. The consent requirements of this section do not apply:

1. If the telehealth interaction does not take place in the physical presence of the patient.

2. In an emergency situation in which the patient or the patient's health care decision maker is unable to give informed consent.

3. To the transmission of diagnostic images to a health care provider serving as a consultant or the reporting of diagnostic test results by that consultant.

History:

Amended by L. 2021, ch. 320,s. 15, eff. 5/5/2021.

§ 36-3603. State jurisdiction; scope

This article applies to the practice of telehealth within this state. This article does not expand, reduce or otherwise amend the health care provider licensing requirements of title 32.

History:

Amended by L. 2021, ch. 320,s. 16, eff. 5/5/2021.

§ 36-3604. Use of telehealth for abortion prohibited; penalty; definition

A. A health care provider shall not use telehealth to provide an abortion.

B. A health care provider who knowingly violates this section commits an act of unprofessional conduct and is subject to license suspension or revocation pursuant to title 32.

C. For the purposes of this section, "abortion" has the same meaning prescribed in section 36-2151.

History:

Amended by L. 2021, ch. 320,s. 17, eff. 5/5/2021.

§ 36-3605. Health care providers; determination of telehealth medium

Consistent with the best practice guidelines adopted by the telehealth advisory committee on telehealth best practices established by section 36-3607, a health care provider shall make a good faith effort in determining both of the following:

1. Whether a health care service should be provided through telehealth instead of in person. The health care provider shall use the health care provider's clinical judgment in considering whether the nature of the services necessitates physical interventions and close observation and the circumstances of the patient, including diagnosis, symptoms, history, age, physical location and access to telehealth.

2. The communication medium of telehealth and, whenever reasonably practicable, the telehealth communication medium that allows the health care provider to most effectively assess, diagnose and treat the patient. Factors the health care provider may consider in determining the communication medium include the patient's lack of access to or inability to use technology or limits in telecommunication infrastructure necessary to support interactive telehealth encounters.

History:

Added by L. 2021, ch. 320,s. 18, eff. 5/5/2021.

§ 36-3606. Interstate telehealth services; registration; requirements; venue; exceptions

A. A health care provider who is not licensed in this state may provide telehealth services to a person located in this state if the health care provider complies with all of the following:

1. Registers with this state's applicable health care provider regulatory board or agency that licenses comparable health care providers in this state on an application prescribed by the board or agency that contains all of the following:

(a) The health care provider's name.

(b) Proof of the health care provider's professional licensure, including all United States jurisdictions in which the provider is licensed and the license numbers. Verification of licensure in another state shall be made through information obtained from the applicable regulatory board's website.

(c) The health care provider's address, email address and telephone number, including information if the provider needs to be contacted urgently.

(d) Evidence of professional liability insurance coverage.

(e) Designation of a duly appointed statutory agent for service of process in this state.

2. Before prescribing a controlled substance to a patient in this state, registers with the controlled substances prescription monitoring program established pursuant to chapter 28 of this title.

3. Pays the registration fee as determined by the applicable health care provider regulatory board or agency.

4. Holds a current, valid and unrestricted license to practice in another state that is substantially similar to a license issued in this state to a comparable health care provider and is not subject to any past or pending disciplinary proceedings in any jurisdiction. The health care provider shall notify the applicable health care provider regulatory board or agency within five days after any restriction is placed on the health care provider's license or any disciplinary action is initiated or imposed. The health care provider regulatory board or agency registering the health care provider may use the national practitioner databank to verify the information submitted pursuant to this paragraph.

5. Acts in full compliance with all applicable laws and rules of this state, including scope of practice, laws and rules governing prescribing, dispensing and administering prescription drugs and devices, telehealth requirements and the best practice guidelines adopted by the telehealth advisory committee on telehealth best practices established by section 36-3607.

6. Complies with all existing requirements of this state and any other state in which the health care provider is licensed regarding maintaining professional liability insurance, including coverage for telehealth services provided in this state.

7. Consents to this state's jurisdiction for any disciplinary action or legal proceeding related to the health care provider's acts or omissions under this article.

8. Follows this state's standards of care for that particular licensed health profession.

9. Annually updates the health care provider's registration for accuracy and submits to the applicable health care provider regulatory board or agency a report with the number of patients the provider served in this state and the total number and type of encounters in this state for the preceding year.

B. A health care provider who is registered pursuant to this section may not:

1. Open an office in this state, except as part of a multistate provider group that includes at least one health care provider who is licensed in this state through the applicable health care provider regulatory board or agency.

2. Provide in-person health care services to persons located in this state without first obtaining a license through the applicable health care provider regulatory board or agency.

C. A health care provider who fails to comply with the applicable laws and rules of this state is subject to investigation and both nondisciplinary and disciplinary action by the applicable health care provider regulatory board or agency in this state. For the purposes of disciplinary action by the applicable health care provider regulatory board or agency in this state, all statutory authority regarding investigating, rehabilitating and educating health care providers may be used. If a health care provider fails to comply with the applicable laws and rules of this state, the applicable health care provider regulatory board or agency in this state may revoke or prohibit the health care provider's privileges in this state, report the action to the national practitioner database and refer the matter to the licensing authority in the state or states where the health care provider possesses a professional

license. In any matter or proceeding arising from such a referral, the applicable health care provider regulatory board or agency in this state may share any related disciplinary and investigative information in its possession with another state licensing board.

D. The venue for any civil or criminal action arising from a violation of this section is the patient's county of residence in this state.

E. A health care provider who is not licensed to provide health care services in this state but who holds an active license to provide health care services in another jurisdiction and who provides telehealth services to a person located in this state is not subject to the registration requirements of this section if either of the following applies:

1. The services are provided under one of the following circumstances:

(a) In response to an emergency medication condition.

(b) In consultation with a health care provider who is licensed in this state and who has the ultimate authority over the patient's diagnosis and treatment.

(c) To provide after-care specifically related to a medical procedure that was delivered in person in another state.

(d) To a person who is a resident of another state and the telehealth provider is the primary care provider or behavioral health provider located in the person's state of residence.

2. The health care provider provides fewer than ten telehealth encounters in a calendar year.

History:

Added by L. 2021, ch. 320,s. 18, eff. 5/5/2021.

§ 36-3607. Telehealth advisory committee on telehealth best practices; membership; reports

A. The telehealth advisory committee on telehealth best practices is established consisting of the following members who are appointed by the governor:

1. One physician who is licensed pursuant to title 32, chapter 13.

2. One physician who is licensed pursuant to title 32, chapter 17 and who is practicing primary care in this state.

3. Two advanced practice registered nurses who are licensed pursuant to title 32, chapter 15.

4. One physician who is licensed pursuant to title 32, chapter 13 or 17 and who specializes in pain management.

5. One psychiatrist who is licensed pursuant to title 32, chapter 13 or 17.

6. One psychologist who is licensed pursuant to title 32, chapter 19.1.

7. Two behavioral health professionals who are licensed pursuant to title 32, chapter 33, one of whom is employed by an outpatient treatment center.

8. One physician who is licensed pursuant to title 32, chapter 14.

9. One health care professional whose primary area of focus is treating persons with developmental disabilities.

10. One health care professional whose primary area of focus is industrial injuries.

11. One speech-language pathologist who is licensed pursuant to chapter 17 of this title.

12. One occupational therapist who is licensed pursuant to title 32, chapter 34.

13. One hospital administrator.

14. One physician assistant who is licensed pursuant to title 32, chapter 25.

15. One representative of the Arizona commission for the deaf and the hard of hearing.

16. Two representatives of health care insurers who are licensed health care providers.

17. One optometrist who is licensed pursuant to title 32, chapter 16.

18. One representative of a vertically integrated telemedicine technology manufacturer of hardware and compatible software.

19. One behavior analyst who is licensed pursuant to title 32, chapter 19.1.

20. One representative from each of the following:

(a) The Arizona health care cost containment system.

(b) The department of health services.

(c) The department of economic security.

(d) The department of insurance and financial institutions.

(e) The industrial commission of Arizona.

B. The advisory committee:

1. Shall review national and other standards for telehealth best practices and relevant peer-reviewed literature.

2. May conduct public meetings at which testimony may be taken regarding the efficacy of various communications media and the types of services and populations for which telehealth is appropriate.

3. Shall adopt telehealth best practice guidelines and recommendations regarding the health care services that may be appropriately provided through an audio-only telehealth format and make updates, when applicable. Before making its recommendations, the advisory committee shall analyze medical literature and national practice guidelines, consider the comparative effectiveness and safety and the benefit to the patient of performing a service through an audio-only telehealth format instead of in person or through an audio-visual telehealth format, and the appropriate frequency and duration of audio-only telehealth encounters.

4. May authorize subcommittees to address select issues or services and report to the advisory committee as directed.

5. On or before December 1, 2021, shall submit a report to the governor, the president of the senate and the speaker of the house of representatives with the advisory committee's recommendations regarding the specific health

care services that are appropriate to provide through an audio-only telehealth format as a substitute for an in-person or audio-visual telehealth encounter.

6. On or before June 30, 2022, shall submit a report to the governor, the president of the senate and the speaker of the house of representatives with the advisory committee's recommendations regarding telehealth best practice guidelines for health care providers.

C. The Arizona health care cost containment system shall staff the advisory committee and provide meeting space.

History:

Amended by L. 2022, ch. 44,s. 21, eff. 9/23/2022. Added by L. 2021, ch. 320,s. 18, eff. 5/5/2021.

§ 36-3608. [Repealed effective 1/1/2026] Health care provider regulatory boards and agencies; out-of-state health care providers; reports

Beginning October 1, 2021 and on or before the first of each month thereafter, each health care provider regulatory board or agency shall submit to the telehealth advisory committee on telehealth best practices established by section 36-3607 a report identifying the number and type of out-of-state health care providers who have applied for registration pursuant to section 36-3606 and the number and type of out-of-state health care providers whose registration pursuant to section 36-3606 has been approved.

History:

Repealed by L. 2021, ch. 320,s. 19, eff. 1/1/2026. Added by L. 2021, ch. 320,s. 18, eff. 5/5/2021.

§ 12-2291. Definitions

In this article, unless the context otherwise requires:

1. "Clinical laboratory" has the same meaning prescribed in section 36-451.

2. "Contractor" means an agency or service that duplicates medical records on behalf of health care providers.

3. "Department" means the department of health services.

4. "Health care decision maker" means an individual who is authorized to make health care treatment decisions for the patient, including a parent of a minor or an individual who is authorized pursuant to section 8-514.05, title 14, chapter 5, article 2 or 3 or section 36-3221, 36-3231 or 36-3281.

5. "Health care provider" means:

(a) A person who is licensed pursuant to title 32 and who maintains medical records.

(b) A health care institution as defined in section 36-401.

(c) An ambulance service as defined in section 36-2201.

(d) A health care services organization licensed pursuant to title 20, chapter 4, article 9.

6. "Medical records" means all communications related to a patient's physical or mental health or condition that are recorded in any form or medium and that are maintained for purposes of patient diagnosis or treatment, including medical records that are prepared by a health care provider or by other providers. Medical records do not include materials that are prepared in connection with utilization review, peer review or quality assurance activities, including records that a health care provider prepares pursuant to section 36-441, 36-445, 36-2402 or 36-2917. Medical records do not include recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity, but include communications that are recorded in any form or medium between emergency medical personnel and medical personnel concerning the diagnosis or treatment of a person.

7. "Payment records" means all communications related to payment for a patient's health care that contain individually identifiable information.

8. "Source data" means information that is summarized, interpreted or reported in the medical record, including x-rays and other diagnostic images.

§ 12-2292. Confidentiality of medical records and payment records

A. Unless otherwise provided by law, all medical records and payment records, and the information contained in medical records and payment records, are privileged and confidential. A health care provider may only disclose that part or all of a patient's medical records and payment records as authorized by state or federal law or written authorization signed by the patient or the patient's health care decision maker.

B. This article does not limit the effect of any other federal or state law governing the confidentiality of medical records and payment records.

§ 12-2293. Release of medical records and payment records to patients and health care decision makers; definition

A. Except as provided in subsections B and C of this section, on the written request of a patient or the patient's health care decision maker for access to or copies of the patient's medical records and payment records, the health care provider in possession of the record shall provide access to or copies of the records to the patient or the patient's health care decision maker.

B. A health care provider may deny a request for access to or copies of medical records or payment records if a health professional determines that either:

1. Access by the patient is reasonably likely to endanger the life or physical safety of the patient or another person.

2. The records make reference to a person other than a health professional and access by the patient or the patient's health care decision maker is reasonably likely to cause substantial harm to that other person.

3. Access by the patient's health care decision maker is reasonably likely to cause substantial harm to the patient or another person.

4. Access by the patient or the patient's health care decision maker would reveal information obtained under a promise of confidentiality with someone other than a health professional and access would be reasonably likely to reveal the source of the information.

C. A health care provider may deny a request for access to or copies of medical records or payment records if the health care provider determines that either:

1. The information was created or obtained in the course of clinical research and the patient or the patient's health care decision maker agreed to the denial of access when consenting to participate in the research and was informed that the right of access will be reinstated on completion of the research.

2. A health care provider is a correctional institution or is acting under the direction of a correctional institution and access by a patient who is an inmate in the correctional institution would jeopardize the health, safety, security, custody or rehabilitation of the patient or other inmates or the safety of any officer, employee or other person at the correctional institution or of a person who is responsible for transporting the inmate.

D. If the health care provider denies a request for access to or copies of the medical records or payment records, the health care provider must note this determination in the patient's records and provide to the patient or the patient's health care decision maker a written explanation of the reason for the denial of access. The health care provider must release the medical records or payment records information for which there is not a basis to deny access under subsection B of this section.

E. For the purposes of this section, "health professional" has the same meaning prescribed in section 32-3201.

§ 12-2294. Release of medical records and payment records to third parties

A. A health care provider shall disclose medical records or payment records, or the information contained in medical records or payment records, without the patient's written authorization as otherwise required by law or when ordered by a court or tribunal of competent jurisdiction.

B. A health care provider may disclose medical records or payment records, or the information contained in medical records or payment records, pursuant to written authorization signed by the patient or the patient's health care decision maker.

C. A health care provider may disclose medical records or payment records or the information contained in medical records or payment records and a clinical laboratory may disclose clinical laboratory results without the written authorization of the patient or the patient's health care decision maker as otherwise 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 as follows:

1. To health care providers who are currently providing health care to the patient for the purpose of diagnosis or treatment of the patient.

2. To health care providers who have previously provided treatment to the patient, to the extent that the records pertain to the provided treatment.

3. To ambulance attendants as defined in section 36-2201 for the purpose of providing care to or transferring the patient whose records are requested.

4. To a private agency that accredits health care providers and with whom the health care provider has an agreement requiring the agency to protect the confidentiality of patient information.

5. To a health profession regulatory board as defined in section 32-3201.

6. To health care providers for the purpose of conducting utilization review, peer review and quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

7. To a person or entity that provides services to the patient's health care providers or clinical laboratories and with whom the health care provider or clinical laboratory has an agreement requiring the person or entity to protect the confidentiality of patient information and as required by the health insurance portability and accountability act privacy standards, 45 Code of Federal Regulations part 164, subpart E.

8. To the legal representative of a health care provider in possession of the medical records or payment records for the purpose of securing legal advice.

9. To the patient's third party payor or the payor's contractor.

10. To the industrial commission of Arizona or parties to an industrial commission claim pursuant to title 23, chapter 6.

D. A health care provider may disclose a deceased patient's medical records or payment records or the information contained in medical records or payment records to the patient's health care decision maker at the time of the patient's death. A health care provider also may disclose a deceased patient's medical records or payment records or the information contained in medical records or payment records to the personal representative or administrator of the estate of a deceased patient, or if a personal representative or administrator has not been appointed, to the following persons in the following order of priority, unless the deceased patient during the deceased patient's lifetime or a person in a higher order of priority has notified the health care provider in writing that the deceased patient opposed the release of the medical records or payment records:

1. The deceased patient's spouse, unless the patient and the patient's spouse were legally separated at the time of the patient's death.

2. The acting trustee of a trust created by the deceased patient either alone or with the deceased patient's spouse if the trust was a revocable inter vivos trust during the deceased patient's lifetime and the deceased patient was a beneficiary of the trust during the deceased patient's lifetime.

3. An adult child of the deceased patient.

4. A parent of the deceased patient.

5. An adult brother or sister of the deceased patient.

6. A guardian or conservator of the deceased patient at the time of the patient's death.

E. A person who receives medical records or payment records pursuant to this section shall not disclose those records without the written authorization of the patient or the patient's health care decision maker, unless otherwise authorized by law.

F. If a health care provider releases a patient's medical records or payment records to a contractor for the purpose of duplicating or disclosing the records on behalf of the health care provider, the contractor shall not

disclose any part or all of a patient's medical records or payment records in its custody except as provided in this article. After duplicating or disclosing a patient's medical records or payment records on behalf of a health care provider, a contractor must return the records to the health care provider who released the medical records or payment records to the contractor.

§ 12-2294.01. Release of medical records or payment records to third parties pursuant to subpoena

A. A subpoena seeking medical records or payment records shall be served on the health care provider and any party to the proceedings at least ten days before the production date on the subpoena.

B. A subpoena that seeks medical records or payments records must meet one of the following requirements:

1. The subpoena is accompanied by a written authorization signed by the patient or the patient's health care decision maker.

2. The subpoena is accompanied by a court or tribunal order that requires the release of the records to the party seeking the records or that meets the requirements for a qualified protective order under the health insurance portability and accountability act privacy standards (42 Code of Federal Regulations section 164.512(e)).

3. The subpoena is a grand jury subpoena issued in a criminal investigation.

4. The subpoena is issued by a health profession regulatory board as defined in section 32-3201.

5. The health care provider is required by another law to release the records to the party seeking the records.

C. If a subpoena does not meet one of the requirements of subsection B of this section, a health care provider shall not produce the medical records or payment records to the party seeking the records, but may either file the records under seal pursuant to subsection D of this section, object to production under subsection E of this section or file a motion to quash or modify the subpoena under rule 45 of the Arizona rules of civil procedure.

D. It is sufficient compliance with a subpoena issued in a court or tribunal proceeding if a health care provider delivers the medical records or payment records under seal as follows:

1. The health care provider may deliver by certified mail or in person a copy of all the records described in the subpoena by the production date to the clerk of the court or tribunal or if there is no clerk then to the court or tribunal, together with the affidavit described in paragraph 4 of this subsection.

2. The health care provider shall separately enclose and seal a copy of the records in an inner envelope or wrapper, with the title and number of the

action, name of the health care provider and date of the subpoena clearly inscribed on the copy of the records. The health care provider shall enclose the sealed envelope or wrapper in an outer envelope or wrapper that is sealed and directed to the clerk of the court or tribunal or if there is no clerk then to the court or tribunal.

3. The copy of the records shall remain sealed and shall be opened only on order of the court or tribunal conducting the proceeding.

4. The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following:

(a) That the affiant is the duly authorized custodian of the records and has authority to certify the records.

(b) That the copy is a true complete copy of the records described in the subpoena.

(c) If applicable, that the health care provider is subject to the confidentiality requirements in 42 United States Code sections 290dd-3 and 290ee-3 and applicable regulations and that those confidentiality requirements may apply to the requested records. The affidavit shall request that the court make a determination, if required under applicable federal law and regulations, as to the confidentiality of the records submitted.

(d) If applicable, that the health care provider has none of the records described or only part of the records described in the subpoena.

5. The copy of the records is admissible in evidence as provided under rule 902(11), Arizona rules of evidence. The affidavit is admissible as evidence of the matters stated in the affidavit and the matters stated are presumed true. If more than one person has knowledge of the facts, more than one affidavit may be made. The presumption established by this paragraph is a presumption affecting the burden of producing evidence.

E. If a subpoena does not meet one of the requirements of subsection B of this section or if grounds for objection exist under rule 45 of the Arizona rules of civil procedure, a health care provider may file with the court or tribunal an objection to the inspection or copying of any or all of the records as follows:

1. On filing an objection, the health care provider shall send a copy of the objection to the patient at the patient's last known address, to the patient's attorney if known and to the party seeking the records, unless after reasonable inquiry the health care provider cannot determine the last known address of the patient.

2. On filing the objection, the health care provider has no further obligation to assert a state or federal privilege pertaining to the records or to appear or respond to a motion to compel production of records, and may produce the records if ordered by a court or tribunal. If an objection is filed, the patient or the patient's attorney is responsible for asserting or waiving any state or federal privilege that pertains to the records.

3. If an objection is filed, the party seeking production may request an order compelling production of the records. If the court or tribunal issues an order compelling production, a copy of the order shall be provided to the health care provider. On receipt of the order, the health care provider shall produce the records.

4. If applicable, an objection shall state that the health care provider is subject to the confidentiality requirements in 42 United States Code sections 290dd-3 and 290ee-3, shall state that the records may be subject to those confidentiality requirements and shall request that the court make a determination, if required under applicable federal law and regulations, on whether the submitted records are subject to discovery.

F. If a party seeking medical records or payment records wishes to examine the original records maintained by a health care provider, the health care provider may permit the party to examine the original records if the subpoena meets one of the requirements of subsection B of this section. The party seeking the records also may petition a court or tribunal for an order directing the health care provider to allow the party to examine the original records or to file the original records under seal with the court or tribunal under subsection D of this section.

§ 12-2295. Charges

A. Except as otherwise provided by law, a health care provider or contractor may charge a person who requests reproductions of medical records or payment records a reasonable fee for the reproduction of the records pursuant to this section. Except as necessary for continuity of care, a health care provider or contractor may require the payment of any fees in advance.

B. A health care provider or contractor shall not charge for the pertinent information contained in medical records provided to:

1. Another health care provider for the purpose of providing continuing care to the patient to whom the medical record pertains.

2. The patient to whom the medical record pertains for the demonstrated purpose of obtaining health care.

3. The health care decision maker of the patient to whom the medical record pertains for the demonstrated purpose of obtaining health care for the patient.

4. The Arizona medical board, the Arizona board of osteopathic examiners in medicine and surgery or an officer of the department of health services or the local health department requesting records pursuant to section 36-662.

5. The patient or the patient's legal representative for the purpose of appealing a denial of benefits under the social security act. Any additional request for medical records and a request for medical records that were previously provided free of charge in the same calendar year are subject to a reasonable fee pursuant to subsection A of this section, except that a fee may not be charged if no medical records are located in response to the request. A legal representative must provide an appointment of representative form SSA-1696 before obtaining a patient's medical records free of charge.

History:

Amended by L. 2019, ch. 171,s. 1, eff. 8/27/2019.

§ 12-2296. Immunity

A health care provider, contractor or clinical laboratory that acts in good faith under this article is not liable for damages in any civil action for the disclosure of medical records, payment records or clinical laboratory results or information contained in medical records, payment records or clinical laboratory results that is made pursuant to this article or as otherwise provided by law. The health care provider, contractor or clinical laboratory is presumed to have acted in good faith. The presumption may be rebutted by clear and convincing evidence.

§ 12-2297. Retention of records

A. Unless otherwise required by statute or by federal law, a health care provider shall retain the original or copies of a patient's medical records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received medical or health care services from that provider.

2. If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received medical or health care services from that provider, whichever date occurs later.

3. Source data may be maintained separately from the medical record and must be retained for six years from the date of collection of the source data.

B. When a health care provider retires or sells the provider's practice the provider shall take reasonable measures to ensure that the provider's records are retained pursuant to this section.

C. A person who is licensed pursuant to title 32 as an employee of a health care provider is not responsible for storing or retaining medical records but shall compile and record the records in the customary manner.

D. A nursing care institution as defined in section 36-401 shall retain patient records for six years after the date of the patient's discharge. For a minor, the nursing care institution shall retain the records for three years after the patient reaches eighteen years of age or for six years after the date of the patient's discharge, whichever date occurs last.

G-8.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 2, Article 10

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: **July 11, 2024**

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 2, Article 10

Summary

This Five Year Review Report (5YRR) from the Arizona Department of Environmental Quality (Department) covers twenty-two (22) rules and five (5) tables in Title 18, Chapter 2, Article 10 related to Motor Vehicles; Inspections and Maintenance. The purpose of the Department is to consolidate and focus responsibility for environmental management and administration of water quality, air quality, solid waste and hazardous waste regulation with the goal of increasing effectiveness, efficiency and public acceptance of environmental regulation as allowed under ARS § 49-104. These rules provide the standards for vehicle inspections, emissions, and other requirements for the state Vehicle Emissions Inspection Plan.

The Department received both a 365 day extension in 2018 and a reschedule in 2019, therefore, this is the first 5YRR since 2013.

The Department completed its prior course of action proposed in 2013 except for the amendments proposed in R18-2-1006.

Proposed Action

The Department has initiated a rulemaking to amend Article 10 and update the rules to reflect current industry standards and practices, eliminate ambiguity, respond to stakeholder comments, and to correct minor typographical and technical errors. The Department anticipates submitting the rulemaking in December of 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 states that it described the probable economic impacts of Article 10 in qualitative and quantitative terms in the economic impact statement (EIS) prepared for the agency's 2019 rulemaking. The Arizona Department of Environmental Quality (ADEQ) believes that the qualitative assessment made in the 2019 EIS regarding the State's economy, small businesses, and consumers remains accurate and no fees or costs associated with the Article have changed. In fact, ADEQ states, emission testing fees have remained the same since 2016. ADEQ believes that the rules' impacts on the state's economy, small business and consumers has not changed since the effective data and the only changes would be to adjust any dollar values for costs and benefits to adjust for inflation. Stakeholders include the Department and individuals and entities with vehicles that are required to undergo emissions testing within the State.

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 indicates that Article 10 is part of the foundation for the State's Vehicle Emission Inspection Program (VEIP) which Arizona is required to implement under the federal Clean Air Act. As such, the costs of Article 10 on the regulated community largely consist of the fees set and collected by the State for emission testing as authorized by A.R.S. § § 49-542, 49-543, and 49-544. Over the last thirty years ADEQ has worked with its independent vehicle inspection contractor to lower its vehicle inspection fees to either meet or fall below the market rates for equivalent services. The fees are set by the department based on the emission inspection test performed and the area where the test is performed (Area A or Area B), all but one of the inspection fees associated with Article 10 and the VEIP are set below $20.00.

The Department believes the benefits derived from Article 10 greatly outweigh the costs as the fees collected are used to fund the VEIP which is one of the State's largest and most beneficial programs in decreasing pollution from the transportation sector (e.g. ozone, particulate matter, air toxics, etc.). The VEIP ensures that vehicle pollution is reduced to safer levels which in turn reduces health risks associated with such pollution in the regulated area.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department received the following written criticism of the rules in the past five years:

- vehicles manufactured after 2010 should not be inspected and vehicle owners should instead be prohibited from modifying their exhaust system to produce more noise.

- every repair shop in the state should be able to conduct emissions inspections to lessen the burden of driving to a State inspection station.

- rules should be more concise and less burdensome to read

- the license issued to fleet agents should be renewed every five years instead of every two.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are clear, concise, and understandable with the following exceptions:

- R18-2-1001. Definitions should be updated
- R18-2-1002. understandability the term "substantive revision" is ambiguous, and should either be defined or removed entirely and the web address in section (B) no longer exists
- R18-2-1003. grammar error in section (B)(8) should be corrected
- R18-2-1005. Section (B)(2) should clarify that the rule applies to fleet vehicles being tested at state stations.
- R18-2-1006. Citations should be updated and technical and grammatical corrections should be made
- R18-2-1007. Section (F) should be updated to include a reference to Title 28, Chapter 15, Article 2.
- R18-2-1008. Citations should be updated
- R18-2-1009. Sections should be merged and "reconditioned OEM catalytic converters" should be removed
- R18-2-1010. terms "Diagnostic Trouble Codes" and "Malfunction Indicator Lamp" should be amended to use the acronyms
- R18-2-1011. technical and grammatical corrections should be made
- R18-2-1012. grammatical corrections should be made
- R18-2-1016. rule should be updated to include an electronic testing option.
- R18-2-1017. the rule should be updated to replace the words that have acronyms listed in R18-2-1001.
- R18-2-1026. Direct references to Table 5 should be included
- R18-2-1029. rule should expand upon the federal requirements for original equipment manufacturers (OEM) emission control devices under 40 CFR Part 51 Subpart S.
- Table 5. definition of "MOL" should be added

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 with the following exceptions:

- R18-2-1001. Definitions: This rule should be updated to be more consistent with federal rules, A.R.S. § 3-3401, A.R.S. § 28-101 and the other rules under Article 10

- R18-2-1006. Emission Test Procedures: This rule should be updated to be consistent with A.R.S. § 49-542(F)(2)(b), however this inconsistency is due to a statutory error that will be corrected by the Legislature

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are generally effective in achieving their objectives with the following exception:

- R18-2-1029. Vehicle Emission Control Devices: the rule should be updated to clarify the federal requirements for original equipment manufacturer (OEM) emission control devices and the relevant vehicle tampering requirements under 40 CFR Part 51, Subpart S.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states the rules are generally enforced as written with the following exceptions:

- R18-2-1006. Emission Test Procedures (Heavy-duty Vehicle Testing): the Department is unable to enforce a small section of this rule as it relates to heavy-duty alternative fuel vehicles with a Gross Vehicle Weight Rating (GVWR) of greater than 8,500lbs, with a model year (MY) of 1975 or newer. Due to a statutory error, the Vehicle Inspection and Maintenance State Implementation Plan (SIP) process was halted and the Department cannot submit the SIP to EPA until the statutory error is corrected.

- R18-2-1006. Emission Test Procedures (Annual vs. Biennial): R18-2-1006(B)(3)(a) is not currently enforced. The rule lists the test frequency for non-diesel, OBD, vehicles in Area B as "annual," however, the Department has allowed Area B residents with this type of vehicle to undergo biennial testing like the residents in Area A.

- R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties: The Department is following the statute and not the rule until the incompatibility between the oversized vehicle and the testing equipment at the testing facility.

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 that 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?**

The Department indicates that the rules qualify for an exception under A.R.S. § 41-1037(A)(2), the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute, and (A)(3), the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements, and therefore a general permit is not used.

11. **Conclusion**

This Five Year Review Report from the Arizona Department of Environmental Quality covers twenty-two rules and five tables in Title 18, Chapter 2, Article 10 related to Motor Vehicles; Inspections and Maintenance. As indicated above, the rules are generally clear, concise, and understandable, effective in achieving its objectives, and enforced as written.

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
Cabinet Executive Officer
Executive Deputy Director

April 30, 2024

SENT VIA EMAIL ONLY

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., #302
Phoenix, AZ 85007
grrc@azdoa.gov

Re: Submittal of Five-Year Review Report for A.A.C. Title 18, Chapter 2, Article 10

Dear Chair Klein:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's Five-Year Review Report for A.A.C. Title 18, Chapter 2, Article 10 Motor Vehicles: Inspection and Maintenance.

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory. Please contact Samantha Schaffer, in Air Quality at 602-771-2351 or Schaffer.samantha@azdeq.gov if you have any questions.

Sincerely,

Karen Peters
Cabinet Executive Officer
Executive Deputy Director

Enclosures (1)

Arizona Department of Environmental Quality

Five-Year Review Report

Title 18. Environmental Quality

Chapter 2. Department of Environmental Quality- Air Pollution Control

Article 10. Motor Vehicles; Inspection and Maintenance

April 30, 2024

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (10) & (B)(4); 49-447; 49-541; 49-542

Specific Statutory Authority: A.R.S. §§ 49-542 (J - L) and (N).

2. The objective of each rule:

Rule	Objective
R18-2-1001. Definitions	The rule provides the definitions for terminology, abbreviations, acronyms, and symbols used exclusively throughout Article 10 to aid in the implementation of the State's federally mandated Vehicle Emissions Inspection Program (VEIP) in Area A (Phoenix metropolitan area) and Area B (Tucson metropolitan area). This rule was updated by final rulemaking on March 8, 2019 (2019 Rulemaking).
R18-2-1002. Applicable Implementation Plan	This rule requires all amendments to Article 10 to be submitted to the United States Environmental Protection Agency (EPA) prior to taking effect.
R18-2-1003. Vehicles to be inspected by the Mandatory Vehicle Emissions Inspection Program	This rule describes the vehicles that are required to undergo emissions testing within the State. The rule also lists the vehicles that are exempt from the emission inspection requirements under the article.
R18-2-1004. Repealed	
R18-2-1005. Time of Inspection	This rule provides the schedule for the inspection of various vehicle classes in Area A and Area B. It provides details pertaining to the administration of Arizona's VEIP to be utilized by the Arizona Department of Transportation (ADOT) Motor Vehicle Division's (MVD), independent testing contractors, fleet inspections stations, motor vehicle dealers, and others. Administration of this section for over two million vehicles annually is accomplished through extensive coordination between ADEQ, MVD, and the State's independent testing contractor. This section is critical to the effective administration of the State's VEIP.
R18-2-1006. Emission Test Procedures	This rule provides a comprehensive description of the mandatory vehicle emission inspection tests, procedures, and other requirements within the State's VEIP. This rule encompasses a critical piece of the State's inspection program as it allows the State to effectively meet the federal requirements to reduce transportation related emissions of ozone and carbon monoxide (CO).

R18-2-1007. Evidence of Meeting State Inspection Requirements	This rule provides a consistent and reliable system for determining which vehicles have met the State's VEIP requirements.
R18-2-1008. Procedure of Issuing Certificates of Waivers	This rule describes the procedures and conditions for obtaining a certificate of waiver after a vehicle has failed its first and second vehicle emissions inspection. The waiver allows the owner of the vehicle to register the vehicle for a limited period of time until the vehicle is repaired, replaced, etc.
R18-2-1009. Tampering Repair Requirements	This rule lists the requirements under A.R.S. § 49-542(G) and (H) for repairing malfunctioning emission equipment prior to passing an emissions test or receiving a waiver.
R18-2-1010. Low Emissions Tune-Up, Emissions and Evaporative System Repair	This rule describes the requirements under A.R.S. § 49-542(K) and (L) for low emissions tune-ups, repair costs, and the additional requirements that must be met in order to issue a waiver.
R18-2-1011. Vehicle Inspection Report	This rule specifies the details required in the document given to motorists after their vehicle is tested at every State testing station. This rule ensures that the State's vehicle inspection reports are consistent from year to year, from contract to contract, and from contractor to contractor.
R18-2-1012. Inspection and Reinspection; Procedures and Fee	This rule lists the procedural requirements for vehicle inspections at State testing stations in Areas A and B, as well as fee requirements. As required under A.R.S. §§ 49-545 and 49-543 the vehicle inspection fees are set in the State's contract with the contractor to allow program-related changes to be implemented through contract modification.
R18-2-1013. Repealed	
R18-2-1014. Repealed	
R18-2-1015. Repealed.	
R18-2-1016. Licensing of Inspectors	This rule is required under A.R.S. § 49-542.02 and describes the State's uniform system for training, testing, and licensing vehicle emission inspectors at fleet stations, certain motor vehicle dealers.
R18-2-1017. Inspection of Government Vehicles	This rule is associated with A.R.S. § 49-557 and lists the requirements for inspecting government vehicles (i.e. those owned motor vehicles that are not subject to registration fees). The sticker system established under this rule was designed to ensure that all government- operated vehicles comply with the same standards as the general public.
R18-2-1018. Certificate of Inspection	This rule builds off of the requirements listed under A.R.S. § 49-546 which describes the criteria that fleet inspectors must follow when issuing Certificates of Inspection. This rule is necessary for the implementation of Arizona's fleet VEIP.
R18-2-1019. Fleet Station Procedures and Permits	This rule describes the procedural process that fleet emission testing station applicants and permittees must follow to obtain and maintain an emission inspection station permit.

R18-2-1020. Department Issuance of Alternative Fuel Certificates	This rule provides the procedures for certifying and inspecting vehicles converted to run on alternative fuels pursuant to A.R.S. § 28-2416(C)(2)(b).
R18-2-1021. Reserved	
R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties	This rule provides a simple and efficient administrative solution for vehicles that cannot be tested according to A.A.C. R18-2-1006, due to the vehicle's original construction or design.
R18-2-1023. Certificate of Exemption for Out-of-State Vehicles	This rule provides an exception to the mandatory vehicle inspection requirement when a vehicle is not physically present in the State 90 days prior to the registration renewal date. This exception allows residents that meet the outlined requirements to obtain a Certificate of Exemption. The Certificate of Exemption temporarily excuses the vehicle from the required emissions inspection and allows the owner to renew the vehicle's registration.
R18-2-1024. Expired	
R18-2-1025. Inspection of Contractor's Equipment and Personnel	This rule requires State personnel to regularly observe and evaluate the contractor's inspection equipment, procedures, and personnel related to or conducting emissions tests. It provides a list of the critical items to be inspected and provides inspection intervals.
R18-2-1026. Inspection of Fleet Stations	This rule requires State personnel to regularly observe and evaluate fleet stations' inspection equipment, procedures, personnel, and records related to or conducting emissions tests. It provides a list of the critical items to be inspected and the allotted maximum inspection intervals.
R18-2-1027. Repealed	
R18-2-1028. Repealed	
R18-2-1029. Vehicle Emission Control Devices	This rule requires the emissions equipment on all vehicles registered within the State to be present and operational. This rule is associated with A.R.S. § 49-447.
R18-2-1030. Visible Emissions; Mobile Sources	This rule defines "excessive" for the purpose of A.R.S. § 28-955(C) and prohibits excess vehicle emissions. In addition, it provides the official cut points for non-J1667 diesel emission tests conducted according to R18-2-1006(H) and (I). Pursuant to A.R.S. § 28-955, visible emissions are a monitored factor that can be the basis for failing a vehicle emissions test, depending upon the time and degree of emission opacity.
R18-2-1031. Repealed	
Table 1. Dynamometer Loading Table- Annual Tests	Table 1 provides the required dynamometer loadings for various size vehicles for the annual loading tests used in Areas A and B pursuant to R18-2-1006(E)(1), (F)(1), and (F)(2). The dynamometer load used for each vehicle size makes the load tests correlate more closely to the federal test procedure required for each new vehicle type.

Table 2. Emissions Standards-Annual Tests	Table 2 provides pass/fail standards for tailpipe emissions measured during annual tests in Areas A and B.
Table 3. Emissions Standards-Transient Loaded Emissions Tests	Table 3 provides pass/fail standards for Arizona's IM 147 test. This table developed with the assistance of State contractors and EPA, provides an appropriate number of passes and fails, while minimizing false passes and fails.
Table 4. Transient Driving Cycle	Table 4 provides the driving trace used for a full IM147 test.
Table 5. Tolerances	Table 5 provides analyzer accuracy criteria for State and fleet station analyzers.
Table 6. Repealed	

3. Are the rules effective in achieving their objectives? **Yes** X **No** __

The rules in Article 10 are effective in achieving their objectives, however, it can be made more effective in achieving its objective as identified below with the changes to R18-2-1029.

Rule	Explanation
R18-2-1029. Vehicle Emission Control Devices	This rule was created to further clarify A.R.S. §§ 28-955 and 49-447. However, the rule could be more effective in achieving its objective if it clarified the federal requirements for original equipment manufacturer (OEM) emission control devices and the relevant vehicle tampering requirements under 40 CFR Part 51, Subpart S.

4. Are the rules consistent with other rules and statutes? **Yes** X **No** __

Except as indicated below, the rules are consistent with other rules and statutes.

Rule	Explanation
R18-2-1001. Definitions	This rule is not consistent with the federal rules, A.R.S. § 3-3401, A.R.S. § 28-101 and the other rules under Article 10 for example: ● ADEQ's definitions for "dealer", "gasoline" and "vehicle owner" are inconsistent with Weights and Measures Services Division's and the Motor Vehicle Division's definitions. ● Section (43) "New Aftermarket Catalytic Converter" and (46) "Reconditioned OEM Catalytic Converter" no longer exist in the federal rules. ● Terms used throughout the article such as "Federal Motor Vehicle Emission Standards," "Biennial," "Vehicle Inspection Report," and "Malfunction indicator Light" are not defined.
R18-2-1006. Emission Test Procedures	This rule is inconsistent with A.R.S. § 49-542(F)(2)(b) (conditionally effective version), however, this is due to an error within the statutory text, not within the rule. The textual

	error occurred when House Bill (HB) 2329, Laws 2021, Ch. 27, § 2, amended A.R.S. § 49-542(F)(2)(b) to allow for more flexibility. However, this amendment inadvertently changed the test method required by 40 Code of Federal Regulations (CFR) § 51.357. ADEQ is currently working with the Legislature to correct the error and once it is corrected, the rule will once again be consistent with the statute.

5. Are the rules enforced as written? **Yes** X **No**

Except as indicated below, the rules are enforced as written.

Rule	Explanation
R18-2-1006. Emission Test Procedures (Heavy-duty Vehicle Testing)	While the majority of this rule is enforced as it is currently written, there is a section of the rule that affects a small subset of vehicles, approximately 300 vehicles, that ADEQ is unable to enforce at this time. Under R18-2-1006(B)(2)(c) and (B)(3)(a) heavy-duty alternative fuel vehicles with a Gross Vehicle Weight Rating (GVWR) of greater than 8,500lbs, with a model year (MY) of 1975 or newer are required to undergo a steady state loaded test or a loaded idle test depending on whether the vehicle is located in Area A or Area B. To conduct these tests a special piece of equipment called a heavy-duty dynamometer is needed. However, in 2014, due to the large cost of maintaining this equipment the contract between the State and its emissions testing contractor was modified to remove the use of heavy-duty dynamometers and any associated requirements. This was done with the intent of expanding Article 10 to allow On-Board Diagnostic (OBD) testing of these vehicles. As of 2010 the U.S. EPA requires all new vehicles to be manufactured with OBD systems. These systems allow more reliable and accurate data to be gathered via an OBD. ADEQ amended the relevant statutes and rules in 2018 to expand OBD testing in Arizona to include any vehicle that is OBD certified by the EPA. The statutory changes authorizing the rulemaking were included in ADEQ's Vehicle Inspection and Maintenance State Implementation Plan (SIP) revision. However, during the SIP's public hearing a significant error was discovered within A.R.S. 49-542(f)(2)(b) which completely halted the SIP process. ADEQ cannot submit the SIP to EPA until the statutory error is corrected. ADEQ attempted to correct the error during the 2022 second legislative session, but the legislature declined to move forward with the correction. The statutory correction has been included in ADEQ's 2024 omnibus bill HB 2628, and if the bill is approved the SIP can be submitted to EPA. In the interim, ADEQ developed a solution that consists of the affected vehicles receiving a modified vehicle inspection and a Directors Certificate (*See* A.R.S. § § 49-541(4) and 49-542 (A) and (C) and A.A.C. R18-2-1022). This solution ensures that the small number of vehicles affected are still being tested for compliance and can renew their registration.
R18-2-1006. Emission Test Procedures (Annual vs. Biennial)	As previously stated, while the majority of this rule is enforced as it is currently written, the test frequency under A.A.C. R18-2-1006(B)(3)(a) is not currently enforced. The rule lists the test frequency for non-diesel, OBD, vehicles in Area B as "annual," however, ADEQ has allowed Area B residents with this type of vehicle to undergo biennial testing like the residents in Area A.

	Annual testing is the default test frequency for the basic I/M performance standard under 40 CFR § 51.352. However, there is an exception to the default testing frequency under 40 CFR § 51.355(a) that allows the use of an alternative testing schedule with EPA approval. ADEQ submitted an alternative test schedule that allowed for biennial testing in Area A as part of its *Final State Implementation Plan Revision - Arizona Basic and Enhanced Vehicle Inspection/Maintenance Program (hereafter 1994 I/M SIP) for the ozone and carbon monoxide nonattainment areas of Arizona.* The SIP obtained EPA's approval on November 14, 1994 because it "significantly strengthened the I/M program and required a biennial, transient loaded (IM240) emissions test for gasoline powered vehicles model year 1981 and newer with a gross vehicle weight up to 8,500 pounds."[1] The approval for the alternative schedule does not apply to Area B because the IM240 test has only been approved by EPA for use in Area A. Therefore, annual testing is still the default test frequency in Area B. ADEQ is currently working to resolve this issue, without creating an unfair burden on the residents of Area B.
R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties	This rule is enforced as it is currently written, with one exception. As mentioned in the previous explanation in this section, the State has a small population of heavy-duty vehicles that cannot be tested and ADEQ is utilizing A.A.C. R18-2-1022 as a temporary work around. As it is written, A.A.C. R18-2-1022 only allows the issuance of a Director's Certificate or waivers to a "vehicle that cannot be inspected as required . . . *because of technical difficulties inherent in the manufacturer's design or construction of the vehicle*" (See A.A.C. R18-2-1022). Arguably, there are no technical difficulties inherent in the manufacturer's design or construction of the oversized vehicles at issue. Instead, there is an incompatibility between the oversized vehicle and the testing equipment at the testing facility. However, A.R.S. §§ 49-541(4) and 49-542 allow the Director of ADEQ to adopt emission tests and provide directors certificates. Therefore, ADEQ is following the statute and not the rule at this time, as it is currently in the best interest of the public to do so until the SIP is approved by EPA.

6. <u>Are the rules clear, concise, and understandable?</u> **Yes <u>X</u>** **No __**

The rules are clear, concise, and understandable. Minor clarifications can be made as described in the table below to further improve the clarity, conciseness, and understandability of the rules.

Rule	Explanation
R18-2-1001. Definitions	Several definitions in this section should be updated to ensure clarity and understandability. For example, "VIR" is listed in the list of abbreviations and symbols at the beginning of the rule, but the term itself is not defined. Terms like "biennial" that are used throughout the article should also be defined to ensure understandability.
R18-2-1002. Applicable Implementation Plan	To ensure clarity and understandability the term "substantive revision" is ambiguous, and should either be defined or removed entirely. Additionally, the web address in section (B) no longer exists and therefore should be replaced with a more permanent reference or removed.

[1] Excerpt from the June 2006 I/M SIP background document.

R18-2-1003. Vehicles to be inspected by the Mandatory Vehicle Emissions Inspection Program	The grammar error in section (B)(8) should be corrected for clarity.
R18-2-1005. Time of Inspection	Section (B)(2) of this rule should be updated to clarify that the rule applies to fleet vehicles being tested at state stations. The rule should also distinguish the type of institution referenced in (B)(5) and correct the citation in (C).
R18-2-1006. Emission Test Procedures	Although this rule was extensively updated in 2019, it still requires a few minor updates to the existing citations and tables, as well as, a few technical and grammatical corrections to ensure understandability. For example, in (C)(4)(e)(vi) (OBD Test) the rule mentions "Department exempted OBD software configuration," a term that is now obsolete and (C)(5)(a)(vii) (Transient Loaded and Evaporative System Pressure Test) includes a web address that no longer exists.
R18-2-1007. Evidence of Meeting State Inspection Requirements	For understandability, section (F) of this rule should be updated to include a reference to Title 28, Chapter 15, Article 2.
R18-2-1008. Procedure of Issuing Certificates of Waivers	For clarity this rule should be updated to correct the citation errors in (A)(2) and (C). Section (C) should also be split into smaller sections to ensure understandability.
R18-2-1009. Tampering Repair Requirements	This rule requires updating to promote clarity, conciseness, and understandability. The references to "reconditioned OEM catalytic converters" in section (A) should be removed entirely as only new catalytic converters are allowed to be used as replacements under federal law. For conciseness sections (C) and (D) can be merged.
R18-2-1010. Low Emissions Tune-Up, Emissions and Evaporative System Repair	For conciseness the terms "Diagnostic Trouble Codes" and "Malfunction Indicator Lamp" in sections (B)(1) and (C)(4) should be amended to use the acronyms listed in R18-2-1001 to ensure consistency throughout the article.
R18-2-1011. Vehicle Inspection Report	Minor technical revisions are necessary to ensure clarity, conciseness, and the understandability of the rules. For example, section (A) (12) should be amended to use the acronyms listed in R18-2-1001 to ensure consistency and "license plate number" in (A)(1) and (C)(1) should be removed as it was replaced by the Vehicle Identification Number in the Vehicle Inspection Report.
R18-2-1012. Inspection and Reinspection; Procedures and Fee	The grammatical error in this rule's title should be addressed for clarity.
R18-2-1016. Licensing of Inspectors	For clarity and understandability this rule should be updated to include an electronic testing option.
R18-2-1017. Inspection of Government Vehicles	For conciseness the rule should be updated to replace the words that have acronyms listed in R18-2-1001. Additionally, for understandability the term "Fleet vehicle inspection report/ monthly summary" should be replaced with "myDEQ web portal" to reflect the current practice.

R18-2-1026. Inspection of Fleet Stations	Direct references to Table 5 should be included throughout the rule to ensure clarity.
R18-2-1029. Vehicle Emission Control Devices	For clarity and understandability, this rule should expand upon the federal requirements for original equipment manufacturers (OEM) emission control devices under 40 CFR Part 51 Subpart S.
Table 5. Tolerances	Understandability would be improved by adding the definition of "MOL" as used in the context of this table to A.A.C. R18-2-1001.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes** X **No** __

The following comments were received by ADEQ in response to a survey sent out regarding Article 10. The comments the Department received have been consolidated and or cut down for brevity. To see the original comments please refer to Attachment A of this report.

Rule	Explanation
Article 10 (In General)	Comment: Two stakeholders provided feedback suggesting that ADEQ should not inspect vehicles manufactured after 2010 and instead prohibit vehicle owners from modifying their exhaust system to produce more noise. ADEQ Response: ADEQ recognizes that vehicles manufactured after 2010 are overall more environmentally friendly, as the U.S. EPA required all vehicles (light, medium, and heavy-duty) manufactured after 2010 to include onboard diagnostics (OBD). However, OBD systems do not prevent a vehicle from malfunctioning or being tampered with, which can result in excess emissions and noise. Arizona ensures by way of the State's vehicle emission testing program that tampered with or malfunctioning vehicles are identified and repaired or taken off the road to ensure that the vehicle does not negatively impact the state's air quality.
Article 10 (In General)	Comment: One stakeholder suggested that every repair shop in the state should be able to conduct emissions inspections to lessen the burden of driving to a State inspection station. ADEQ Response: ADEQ does not have the legal authority or the resources necessary to implement a program that would allow individual repair shops to conduct emission testing.
Article 10 (In General)	Comment: Two stakeholders provided feedback stating that while the rules are clear and understandable, they could be more concise and less of a burden to read through. ADEQ Response: ADEQ agrees and recognizes that the rules could be more concise and easier to read, which is why the Department has actively worked to further condense and clarify the rules with every new Article 10 rulemaking.

A.A.C. R18-2-1016 (B)(3) Licensing of Inspectors	Comment: A stakeholder provided feedback suggesting that the license issued to fleet agents should be renewed every five years instead of every two. ADEQ Response: ADEQ will take this comment under further consideration.

8. Economic, small business, and consumer impact comparison:

ADEQ described the probable economic impacts of Article 10 in qualitative and quantitative terms in the economic impact statement (EIS) prepared for the agency's 2019 Rulemaking. *See Attachment A.* ADEQ believes that the qualitative assessment made in the 2019 EIS regarding the State's economy, small businesses, and consumers remains accurate and no fees or costs associated with the Article have changed. In fact, ADEQ emission testing fees have remained the same since 2016. ADEQ believes that the rules' impacts on the state's economy, small business and consumers has not changed since the effective date and the only changes would be to adjust any dollar values for costs and benefits to adjust for inflation.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No X

ADEQ has not received a business competitiveness analysis of the rules.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

The following table describes the proposed course of actions indicated in ADEQ's previous five-year report as well as a summary as to whether the action proposed was completed or an explanation describing why it was not completed as promised.

Rule	Explanation
R18-2-1001. Definitions	*Proposed Course of Action (2013):* Amend this section to incorporate modernized definitions of several terms, including a definition for "MOL" as it appears in Table 5 of this Article. The planned amendments for this section, as included in the 2008 5-year review submittal, have not yet been completed due to the assignment of competing rulemaking priorities to the Air Quality Division and the imposition of the rulemaking moratorium. ADEQ is currently in the process of drafting Article 10 regulatory changes and anticipates a proposed rulemaking by September 2014. Completed: This promise was partially completed in ADEQ's 2019 Article 10 rulemaking. See 25 A.A.C. 10 (Mar. 8, 2019). Where the rulemaking added and updated definitions for all-terrain vehicles, collectible vehicles, alternative fuel vehicles, reconstructed vehicles, and specially constructed vehicles in order to reduce confusion and delineate between the different vehicle types that are exempt from emissions testing. The rulemaking also removed unnecessary definitions from the Article and added additional clarifying definitions for user-friendliness. The rulemaking adopted many of the definitions ADOT uses for alternative fuel vehicles such as zero emissions vehicles and battery electric vehicle.

	Explanation: The promise of adding "MOL" which is listed in Table 5 to the definitions will be completed with ADEQ's current rulemaking.
R18-2-1003. Vehicles to be inspected by the Mandatory Vehicle Emissions Inspection Program	*Proposed Course of Action (2013):* The section requires updating to comply with the HB2357 amendments to A.R.S. § 49-542 (Laws 2005, Chapter 76), which add exemptions from emissions testing for collectible vehicles and motorcycles. Collectible vehicles are exempt in both Area A and B, while motorcycles are exempt only in Area B. Propose amendments to this section in September 2014 to update vehicle emissions testing exemption standards to consider technological advances in the automotive industry, changes to A.R.S § 49-542, adopted in HB 2357 (Laws 2005, Chapter 76) and to add an explicit exemption for military personnel on active duty outside the state. Completed: This rule was updated in 2019 to comply with the amendments to A.R.S. § 49-542 by HB2357 (Laws 2005, Chapter 76) which added exemptions from emission testing for collectible vehicles and motorcycles. See 25 A.A.C. 10 (Mar. 8, 2019). The rule was also updated to exempt the vehicles of out-of-state military personnel and cranes from emissions testing following the signing of HB 2226 in 2014 (Laws 2014, Chapter 89).
R18-2-1004. Repealed	
R18-2-1005. Time of Inspection	*Proposed Course of Action (2013):* This section requires updating in order to be consistent with SB1531 (Laws 2007, Chapter 171), effective September 19, 2007, which provided an extension of the sunset date for the vehicle emissions program and included minor technical corrections to A.R.S. § 49-542. Propose amendments to this section to include minor technical corrections by December, 2013. Completed: This section was updated in the 2019 Rulemaking to increase consistency with SB1531 (Laws 2007, Chapter 171) effective September 19, 2007. The revision provided an extension of the sunset date for the vehicle emissions program and included minor technical corrections.
R18-2-1006. Emission Test Procedures	*Proposed Course of Action (2013):* Propose amendments to this section in September 2014, to promote clarity, conciseness, and understandability throughout; include references to Table 7 and web link information sources; specify 'state' station testing as opposed to 'fleet' station testing; and, update testing methods for technological improvement. Except for implementation of the liquid leaker provisions, the planned amendments for this section, as included in the 2008 5-year review submittal, have not yet been completed due to the assignment of competing rulemaking priorities to the Air Quality Division and the imposition of the rulemaking moratorium. Completed: This rule was updated in 2019 to comply with the HB2357 amendments to A.R.S. § 49-542 (Laws 2005, Chapter 76) and SB1552's amendments to A.R.S. § 49-542 (Laws 2007, Chapter 292), which exempted motorcycles and collectable vehicles from emission testing. The updates promoted clarity, conciseness, and understandability throughout the Article. Explanation: The liquid leak provisions referenced in the previous reports were not added because the requirement to perform the liquid fuel leak test was removed from statute in 2014 by HB2226 (Laws 2014, Chapter 89) after the liquid fuel leak test

	proved to be too dangerous and costly to perform. Article 10 was updated in 2019 to reflect the changes made to the statute. Additionally, ADEQ did not incorporate references to Table 7, as that table does not exist in the Article. At the time of the last review there was some discussion related to possibly adding an additional table that would provide a quick reference to the specific vehicle models and weight classes used throughout the article. However, that idea was found to be impossible to implement as new vehicle models are introduced every year, and such a table would require significant revisions on an annual basis. ADEQ also did not add the suggested weblinks or draw a distinction between "State" and "Fleet" station testing. ADEQ did not add the suggested weblinks because weblinks tend to break, move, or be deleted. ADEQ instead opted to cite to the source directly. Additionally, ADEQ did not draw a distinction between "State" and "Fleet" station testing because R18-2-1006 applies to both state testing stations and fleet testing stations.
R18-2-1007. Evidence of Meeting State Inspection Requirements	*Proposed Course of Action (2013):* Propose to amend this section in September 2014 to strike language in (C)(2) allowing a waiver exception for auto dealers. Completed: The 2019 rulemaking removed the waiver exception for auto dealers in (C)(2).
R18-2-1010. Low Emissions Tune-Up, Emissions and Evaporative System Repair	*Proposed Course of Action (2013):* Propose amendments to this section in September 2014 to incorporate repair procedures and costs for vehicles failing the emissions inspection due to a liquid fuel leak; and revise the subsections mentioned above (i.e. (D)(2) and (E)) to promote clarity and understandability. Completed: The requirement to perform the fuel liquid fuel leak test was removed from statute in 2014 by HB2226 after the liquid fuel leak test proved to be too dangerous and costly to perform. Article 10 was updated in 2019 to reflect the changes made to the statute and to promote clarity and understandability. Therefore, it is no longer necessary to take action on the proposed promise to add fuel leak language to sections (D)(2) and (E).
R18-2-1011. Vehicle Inspection Report	*Proposed Course of Action (2013):* Propose amendments in September 2014 to include the OBD test as an additional requirement of the vehicle inspection report; clarify subsection (C), regarding the certificate of compliance "tear-out" section. Completed: R18-2-1011(A)(12) and (B)(1) already require the vehicle inspection report (VIR) to include the results of OBD tests and all associated diagnostic trouble codes (DTCs). Subsection (C) regarding the certificate of compliance "tear-out" section was completely revised in 2019.
R18-2-1012. Inspection and Reinspection; Procedures and Fee	*Proposed Course of Action (2013):* Propose amendments in September 2014 to bring this section into accordance with A.R.S. § 49-543(F), and require the deposit of inspection fees in the department's emission inspection fund. Additional amendments are required to include acceptable methods of payment to include credit and debit cards. Completed: This section was completely revised in the 2019 rulemaking and is now in compliance with A.R.S. 49-543(F). The 2019 rulemaking also removed specific methods of payment to allow for more flexibility when making payments.

R18-2-1013. Repealed	
R18-2-1014. Repealed	
R18-2-1015. Repealed.	
R18-2-1016. Licensing of Inspectors	*Proposed Course of Action (2013):* Propose amendments in September 2014 to include additional inspector licensure requirements. Completed: The 2019 Rulemaking added additional licensing requirements and clarified that inspectors are required to pass a written and practical inspector certification licensing examination.
R18-2-1017. Inspection of Government Vehicles	*Proposed Course of Action (2013):* Propose amendments in September 2014 to correct grammatical error in (B)(1). Completed: The grammatical error in (B)(1) was corrected in the 2019 Rulemaking.
R18-2-1018. Certificate of Inspection	*Proposed Course of Action (2013):* Propose amendments in September 2014 to strike the language regarding the availability of waivers for fleet vehicles. Completed: The 2019 Rulemaking removed the language regarding the availability of waivers for fleets.
R18-2-1019. Fleet Station Procedures and Permits	*Proposed Course of Action (2013):* Propose amendments in September 2014 to remove language allowing the issuance of waivers to fleet vehicles and to clarify requirements regarding fleet vehicle emission test procedure and reporting specifications. Completed: The 2019 Rulemaking removed the language allowing the issuance of waivers to fleets, clarified the requirements regarding fleet vehicle reporting, and refers the reader to A.A.C. R18-2-1006 for the testing requirements and procedure.
R18-2-1020. Department Issuance of Alternative Fuel Certificates	*Proposed Course of Action (2013):* Propose amendments in September 2014 to include language allowing ADEQ the discretion to revoke 3rd party alternate fuel certification licenses. Completed: The 2019 Rulemaking removed the language allowing 3rd party alternative fuel certification licensing.
R18-2-1021. Reserved	
R18-2-1023. Certificate of Exemption for Out-of-State Vehicles	*Proposed Course of Action (2013):* Propose amendments in September 2014 to specify that certificates of exemption shall be issued for one registration cycle only except for military personnel on active duty outside of Arizona, who will be eligible for a two-year emissions testing exemption. Include clarifying language to specify the requirement of a verifiable emissions inspection compliance document issued by an outside government entity. Completed: The exception for military personnel was updated in the 2019 Rulemaking following the signing of HB 2226 (Laws 2014, Chapter 89). It allows active duty military personnel outside of Arizona to obtain certificates of exemptions for

	registration cycles. The rulemaking also clarified the requirements for verifiable emissions inspection compliance documents issued by outside government entities.
R18-2-1024. Expired	
R18-2-1025. Inspection of Contractor's Equipment and Personnel	*Proposed Course of Action (2013):* Propose amendments in September 2014 to add an incorporation by reference to 40 CFR § 51.363, as a new section (A); update to clarify the current subsections (A)-(G), which will also have to be renumbered. The planned amendments for this section, as included in the 2008 5-year review submittal, have not yet been completed due to the assignment of competing rulemaking priorities to the Air Quality Division and the imposition of the rulemaking moratorium. Completed: The applicable provisions under 40 CFR § 51.363 were adopted into R18-2-1026 therefore there is no need to cite to the federal rule. The entire rule was updated and renumbered for clarity and consistency in the agency's 2019 Rulemaking.
R18-2-1026. Inspection of Fleet Stations	*Proposed Course of Action (2013):* Propose amendments in September 2014 to replace the tolerance data in subsection (J) with a reference to Table 5; incorporate by reference 40 CFR § 51.363; and revise additional subsection language throughout for clarity and consistency. The planned amendments for this section, as included in the 2008 5-year review submittal, have not yet been completed due to the assignment of competing rulemaking priorities to the Air Quality Division and the imposition of the rulemaking moratorium. Completed: Section (J) was deleted in the 2019 Rulemaking, so the references to Table 5 were not included. In addition, the applicable provisions under 40 CFR § 51.363 were adopted into R18-2-1026 therefore there is no need to cite to the federal rule. The rule was completely amended in the 2019 Rulemaking for clarity and consistency.
R18-2-1027. Repealed	
R18-2-1028. Repealed	
R18-2-1029. Vehicle Emission Control Devices	*Proposed Course of Action (2013):* Propose amendments in September 2014 to include the language "federally required OEM," to specify the state-wide vehicular requirement for federally compliant equipment. Completed: This rule will be amended in the current rulemaking.
R18-2-1030. Visible Emissions; Mobile Sources	*Proposed Course of Action (2013):* Propose amendments to this section in September 2014 to incorporate the specific requirements of the SAE J1667 test. Completed: The 2019 Rulemaking listed the SAE J1667 requirements under R18-2-1006 (C)(10) (Emission Test Procedures).
R18-2-1031. Repealed	
Table 6. Repealed	

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:

Article 10 is part of the foundation for the State's Vehicle Emission Inspection Program (VEIP) which Arizona is required to implement under the federal Clean Air Act. As such, the costs of Article 10 on the regulated community largely consist of the fees set and collected by the State for emission testing as authorized by A.R.S. § § 49-542, 49-543, and 49-544. Over the last thirty years ADEQ has worked with its independent vehicle inspection contractor to lower its vehicle inspection fees to either meet or fall below the market rates for equivalent services. The fees are set by the department based on the emission inspection test performed and the area where the test is performed (Area A or Area B), all but one of the inspection fees associated with Article 10 and the VEIP are set below $20.00.

The benefits derived from Article 10 greatly outweigh the costs as the fees collected are used to fund the VEIP which is one of the State's largest and most beneficial programs in decreasing pollution from the transportation sector (e.g. ozone, particulate matter, air toxics, etc.). The EPA and other organizations have found that children, the elderly, and immunocompromised individuals living, working, or attending school near major roads have increased incidences and severity of health problems associated with exposure to transportation pollution. The risks stemming from exposure include cardiovascular disease, impaired lung development, pre-term, and low-birthweight infants, childhood leukemia, and death. The VEIP ensures that vehicle pollution is reduced to safer levels which in turn reduces the health risks associated with such pollution in the regulated area. Therefore, benefits of the VEIP largely outweigh the costs associated with Article 10.

12. Are the rules more stringent than corresponding federal laws? Yes __ No X

With respect to Article 10. Motor Vehicles; Inspection and Maintenance, the rules are not more stringent than corresponding federal laws, specifically: CAA § § 110, 116, 175A, 182, 187 and 302, as well as, 40 CFR Part 51 (subparts and appendices).

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 fleet permits used under Article 10 are not classified as general use permits under A.R.S. § 41-1037, but an alternative type of permit specifically issued under the authority enumerated at A.R.S. § 49-546 and the corresponding ADEQ regulations at R18-2-1017, R18-2-1018, and R18-2-1019. A general permit is not feasible under the State's emission inspection program and would not meet the applicable statutory requirements under A.R.S. § 49-546. *See* A.R.S. § 41-1037(A)(2) and (3).

14. Proposed course of action:

At present, ADEQ obtained approval by the Governor's Office on May 16, 2023 to amend Article 10 and has initiated the rulemaking process. The current rulemaking will update the rules to reflect current industry standards and practices, eliminate ambiguity, respond to stakeholder comments, and to correct minor typographical and technical errors. The current rulemaking does not have authorization to address all the issues listed in this review, therefore, it may include, but will not be limited to the actions listed in the table below. ADEQ anticipates submitting the current rulemaking to GRRC in December of 2024. The issues that cannot be addressed in the current rulemaking will be addressed in a future rulemaking.

Rule	Objective
R18-2-1001. Definitions	To ensure clarity and consistency the Department should add definitions for terms used throughout the article that are not already defined such as: "Biennial," "Federal Motor Vehicle Emissions Standards," "Vehicle Inspection Report," "Malfunction indicator light," etc. The Department should further ensure the terms defined within the rule are consistent with the federal rules, A.R.S. § 3-3401, A.R.S. § 28-101, as well as the other rules within Article 10. For example, ADEQ's definitions for "dealer", "gasoline" and "vehicle owner" are inconsistent with Arizona's Weights and Measures Services Division's and the Arizona Motor Vehicle Division's definitions. Sections (43) "New Aftermarket Catalytic Converter" and (46) "Reconditioned OEM Catalytic Converter" are inconsistent with the federal rules as the terms no longer exist. Finally, several definitions in this section should be updated to ensure clarity and understandability. For example, the current definition for the term "OBD" is overly vague and should explain that OBD for the purposes of this article refers to EPA's OBD certification or the computer system inside of a vehicle that tracks and regulates a vehicle's performance.
R18-2-1003. Vehicles to be inspected by the Mandatory Vehicle Emissions Inspection Program	Correct the grammar error in section (B)(8) for clarity.
R18-2-1005. Time of Inspection	Section (B)(2) of this rule should be updated to clarify that the rule applies to fleet vehicles being tested at state stations. The rule should also distinguish the type of institution referenced in (B)(5) and correct the citation in (C).
R18-2-1006. Emission Test Procedures	This rule requires a few minor updates to the existing citations and tables, as well as, a few technical and grammatical corrections to ensure understandability. For example, the rule mentions "Department exempted OBD software configuration" under (C)(4)(e)(vi) (OBD Test) however this term is no longer in use. Additionally, (C)(5)(a)(vii) (Transient Loaded and Evaporative System Pressure Test) includes a web address that no longer exists.

R18-2-1007. Evidence of Meeting State Inspection Requirements	Section (F) should be updated to include a reference to Title 28, Chapter 15, Article 2.
R18-2-1008. Procedure of Issuing Certificates of Waivers	This rule should be updated to correct the citation errors in (A)(2) and (C). Section (C) should also be split into smaller sections to ensure understandability.
R18-2-1009. Tampering Repair Requirements	The references to "reconditioned OEM catalytic converters" in section (A) should be removed entirely as only new catalytic converters are allowed to be used as replacements under federal law. For conciseness sections (C) and (D) can be merged.
R18-2-1010. Low Emissions Tune-Up, Emissions and Evaporative System Repair	The terms "Diagnostic Trouble Codes" and "Malfunction Indicator Lamp" in sections (B)(1) and (C)(4) should be amended to use the acronyms listed in R18-2-1001 to ensure consistency throughout the article.
R18-2-1011. Vehicle Inspection Report	Section (A) (12) should be amended to use the acronyms listed in R18-2-1001 to ensure consistency and "license plate number" in (A)(1) and (C)(1) should be removed as it was replaced by the Vehicle Identification Number in the Vehicle Inspection Report.
R18-2-1012. Inspection and Reinspection; Procedures and Fee	The grammatical error in this rule's title should be addressed for clarity.
R18-2-1016. Licensing of Inspectors	This rule should be updated to include an electronic testing option.
R18-2-1017. Inspection of Government Vehicles	The rule should be updated to replace the words that have acronyms listed in R18-2-1001. Additionally, the term "Fleet vehicle inspection report/ monthly summary" should be replaced with "myDEQ web portal" to reflect the current practice.
R18-2-1020. Department Issuance of Alternative Fuel Certificates	The citation should be amended to A.R.S. 28-2416(B)(1)(b).
R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties	"ADEQ" should be added to those authorized to issue directors certificates.
R18-2-1023. Certificate of Exemption for Out-of-State Vehicles	The term "emission compliance expiration date" should be changed to "registration expiration date" in order to reflect the current practice.
R18-2-1026. Inspection of Fleet Stations	The rule should add references to "Table 5" when discussing tolerances.
R18-2-1029. Vehicle Emission Control Devices	Look into expanding this rule in order to further clarify the federal requirements for original equipment manufacturers (OEM) emission control devices and the relevant vehicle tampering requirements under 40 CFR Part 51, Subpart S.

Table 5. Tolerances	Define "MOL" as used in the context of this table.

Attachment A- 2018 Rulemaking Economic Impact Statement

Part I – Summary of the Rulemaking

1. An identification of the rulemaking.

This rulemaking is designed to modernize a number of provisions in Title 18, Chapter 2, Article 10 of the Arizona Administrative Code. These changes will have a minimal economic impact on the different Arizona entities and citizens, but ADEQ believes that the overall impact will be slightly positive. This rulemaking creates no additional burdens on Arizona agencies, businesses, or citizens.

The provisions likely to have an economic impact in this rulemaking include:

1. Vehicle exemptions;
2. Exemptions for military personnel on active duty;
3. Fleet agent and fleet inspector licenses increased from 1 year to 2 years;
4. Transferable certificates of inspection (COIs) for dealer fleets;
5. Elimination of the liquid fuel leak test;
6. OBD testing expansion;
7. Reduced ADEQ auditing;
8. MyDEQ launch for Fleet Emissions Testing Permits (MyDEQ Fleet); and
9. MyDEQ launch for Out of State Exemptions (MyDEQ OOS).

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules:

1. Arizona businesses, primarily used motor vehicle dealers.
2. Arizona citizens, specifically owners of diesel powered vehicles and individuals seeking out of state exemptions (military members, individuals who live in Arizona part-time, college students.)
3. Emissions inspectors and fleet agents.
4. The Department of Environmental Quality.
5. Other state agencies, jurisdiction, and quasi-governmental entities.
6. The contractor running the emissions testing stations, currently Gordon-Darby.

3. Cost/benefit analysis:

a. Part I - Cost/Benefit Stakeholder Matrix

Minimal	Moderate	Substantial	Significant
$1,000 or less per year	$1,000 to $10,000 per year	$10,001 or more per year	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
Arizona Department of Environmental Quality	Clarity of the new rule Reduced Auditing MyDEQ Fleet MyDEQ OOS Fleet license timeframe extension OBD Expansion Transferable COIs	None None None None None None Moderate	Significant Substantial Significant Substantial Moderate Significant None

Other state agencies, jurisdictions, and quasi-governmental entities.	Clarity of the new rule Reduced Auditing MyDEQ Fleet Fleet license timeframe extension OBD Expansion	None None None None None	Significant Moderate Moderate Moderate Substantial
B. Privately Owned Businesses			
Used car dealerships	Reduced Auditing MyDEQ Fleet Fleet license timeframe extension OBD Expansion Clarity of new rule	None None None None None	Significant Moderate Moderate Moderate Moderate
Emission Testing Contractor	Clarity of the new rule OBD Expansion Reduced Auditing Elimination of liquid fuel leak test	None Substantial None None	Significant Substantial Substantial Minimal
C. Private Individuals			
Emissions Inspectors and Fleet Agents	Fleet license timeframe extension MyDEQ Fleet OBD Expansion	None None None	Minimal Minimal Minimal
Arizona Citizens Generally	OBD Expansion Transferable COIS Clarity of the new rule	None None None	Significant Minimal Minimal
Arizona Citizens – Diesel Vehicle Owners	OBD Expansion	None	Minimal
Arizona Citizens – People needing out of state exemptions.	MyDEQ OOS	None	Minimal
Active Duty Military	MyDEQ OOS	None	Minimal

Part II - Individual Stakeholder Summaries/Calculations

A. Used Car Dealerships

One of the ways this rulemaking will have a positive impact on Arizona businesses is by assigning certificates of inspection (COI's) to a vehicle instead of a location. The rules that restrict COI transferability are outdated, as they were written at a time where car dealerships did not have multiple locations. Modern car dealerships have evolved, and routinely sell cars at different locations than the lot that they were originally parked on when the dealership took title. This rule making recognizes that reality, as requiring cars to be emissions tested multiple times when they have already passed a test and aren't being driven costs time, money, and effort with no increase in environmental benefit.

The persons who will be directly affected by and will benefit from this rulemaking are used car dealerships in Arizona, as well as individuals who buy cars from used car dealerships. An individual COI costs $11.50, so although the economic benefits will be small, used car dealerships should expect to save money. They will also save money by reducing the amount of hours of labor they spend emissions testing cars. This rule could also benefit used car dealerships that throw events like tent sales and other off-site sales events as it will remove logistical barriers that prohibit those events from happening.

Used car purchasers will benefit from this rule change because their transaction will be more expedient, as the car won't have to undergo a duplicative emissions test before delivery at second dealership location or at the off-site sales events mentioned above.

This rule change will also reduce inspections on businesses that have fleet emissions testing permits. Reduced inspection are possible because ADEQ has launched a new, online portal called myDEQ for managing fleet emissions inspection permits. MyDEQ allows for immediate reporting of fleet emissions inspection results, which means less time ADEQ inspectors need to spend in the field. By reducing inspections and leveraging technology, the businesses that take advantage of ADEQ's fleet emissions testing permit should see cost savings.

Fleet permittees will also benefit from being allowed to conduct OBD testing. Although the cost per COI is the same, maintenance costs on OBD testing equipment is far less than the cost of maintaining a gas analyzer to perform emissions testing.

B. Arizona Citizens - Diesel Vehicle Owners

OBD testing is a more stringent, cheaper, and higher quality version of emissions testing for vehicles that are certified with the OBDII system. Testing diesel vehicles using this already installed technology will make emissions testing cheaper and quicker for all of the diesel vehicles that can take advantage of it. Additionally, an OBD test allows for two years of registration while opacity testing only allows registration for one. In Area A, this will save diesel vehicle owners $34 every two years. In Area B, it will save diesel vehicle owners $12.25 every two years.

C. Arizona Citizens, Generally

Arizona citizens should benefit from cleaner air as a result of this rulemaking. The current method of testing for diesel vehicles, opacity testing, does not test for oxide of nitrogen (NOx), which is one of the air pollutants identified as an ozone precursor. By implementing OBD testing for diesel vehicles, ADEQ hopes to reduce NOx pollution and help prevent the formation of ozone and to level the playing field for all vehicle types that emit NOx.

D. Other state agencies, jurisdictions, and quasi-governmental entities.

Many state agencies take advantage of the ADEQ fleet program to maintain current emissions testing on their vehicles. The benefits provided to private businesses in Arizona will extend to governments will the rollout of MyDEQ fleet. Additionally, in Arizona, government entities must attach a sticker to a vehicle to prove that it passed emissions. MyDEQ allows government entities to have these stickers shipped to them instead of having to come down to ADEQ to pick them up.

E. Active Duty Military

This rulemaking will enable active duty military members to receive free emissions exemptions no matter where they are in the world. This means that when they return home on leave, they will be able to come home to properly registered vehicles that they can use for the duration of their stay.

F. Emissions Testing Contractor

The changes to this article will have a direct effect on the emissions testing contractor. The contractor will incur a cost to implement OBD testing for diesels at all of Arizona's test stations. This cost will be limited to man hours for modifying software, as well as the time it will take to train employees in to execute new procedures. There will be minor equipment costs as well, as heavy duty diesel vehicles use a different plug for OBD testing than gasoline vehicles or light duty vehicles.

It's likely that these initial costs will be offset in the long term with cost savings because OBD testing is a simpler and more effective form of emissions testing. The current method of diesel testing, opacity testing, requires more expensive equipment and takes much longer to perform. The piece of equipment necessary to perform opacity testing, an opacity meter, is notoriously difficult to maintain. The filter heads require consistent maintenance and cleaning, and the probes "gum up" after extended use. These issues will be eliminated with OBD testing.

G. ADEQ

Overall, this rulemaking will lower program costs for the Department. This rulemaking reduces the amount of physical inspections that the Department is required to conduct. Physical inspections are costly, and in a world that is moving to more computer oriented emissions testing, they are easily replaced with more remote forms of observation. MyDEQ is a quicker, more efficient way to monitor fleet compliance than performing quarterly physical inspections. The reductions in cost associated with inspections only are expressed in an infographic attached to this economic impact.

In addition to the cost savings for cost reductions, ADEQ will also see cost savings associated with reviewing emission testing data that is submitted by fleets. Each month, every fleet submits a monthly summary of all the emissions testing data they've collected throughout the month. ADEQ staff reviews this data as part of our Clean Air Act obligations. Currently, each of these monthly summaries are being mailed to the Department. This means that ADEQ customer service staff has to process the mail, and compliance officers review the summaries by hand. This method has been in use since the fleet program began. MyDEQ allows compliance officers to generate excel spreadsheets and review the emissions testing results on the computer, instead of going through the laborious hand review process. Additionally, ADEQ is developing macros for these spreadsheets which will automatically alert compliance officers to emissions testing results that are outside of normal ranges.

MyDEQ also streamlines the licensing process itself. Currently, each emissions inspector license is handmade for each inspector every single year. This process involves updating a word document, embossing the license itself, and then hand delivering it to the emissions inspector. MyDEQ eliminates this process, and instead computer generates licenses and emails them to the inspector.

The one aspect of this rule change that may increase costs for the Department is making COIs transferable. This provision was specifically asked for by stakeholders, and although it will moderately increase costs for the Department, it should significantly decrease costs for businesses that take advantage of the fleet emissions testing permit.

MyDEQ will also save the Department time when processing out-of-state emissions testing exemptions. The out-of-state exemption process is similar to the fleet processes described above. Currently, customers must mail their vehicle and testing information. ADEQ customer service staff hand processes all of this mail, and if a customer has forgotten anything, they're forced to mail the additional documentation. This takes a significant amount of time, as ADEQ processes nearly 60,000 of these exemptions every year. The myDEQ rollout will streamline this process significantly, as well as create an automated electronic filing system that allows ADEQ to adhere to state document retention policies with absolutely zero labor.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency or other agencies directly affected by the implementation and enforcement of the rulemaking.

ADEQ estimates that overall there will be no cost increases to the agency as a result of this rulemaking. By leveraging new technology such as myDEQ, ADEQ should see cost savings by reducing inspections.

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

ADEQ estimates that there will be no cost increases to other political subdivisions of the state as a result of this rulemaking. Political subdivisions that take advantage of the fleet emissions testing permit should see some costs savings with this rulemaking because of myDEQ.

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

Used car dealerships can expect to spend less money on COIs, as well as reduced hours of labor on emissions testing as a result of this rulemaking. ADEQ estimates that this rulemaking will result in moderate cost savings for Arizona businesses.

A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.

ADEQ estimates that this rulemaking will have no impact on private and public employment in businesses, agencies, and political subdivisions of this state.

A statement of the probable impact of the rulemaking on small businesses.

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

Under A.R.S. § 41-1001(21) "Small business" means a concern, including its affiliates, which is [1]independently owned and operated, which is [2] not dominant in its field and which [3] employs fewer than one hundred full-time employees or which had gross annual receipts of less than four millions dollars in its last fiscal year.

There are small used car dealerships that will benefit from this rulemaking. They will benefit by having to spend less time and money performing duplicative emissions testing on vehicles.

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

There will be no additional costs required for compliance with this rulemaking. Businesses that are eligible for a fleet emissions testing station permit will continue to be eligible, and will continue to be subject to the same regulations and inspections as before.

(c) A description of the methods that the agency may use to reduce the impact on small businesses.

Not applicable.

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

The cost savings to business is likely too small to have a measurable impact on used car prices on Arizona. The benefit that consumers can expect as a result of this rule change is that the logistics of doing car sales events like tent sales will be much easier after the rulemaking. Arizonans who choose to take advantage of sales events of that nature can expect more events, as the amount of time spent on the logistics for throwing them will be reduced.

A statement of the probable effect on state revenues.

A.R.S. § 49-542 (D) mandates that every motor vehicle sold in the state must pass an emissions test before being delivered to a retail purchaser. To ensure motor vehicle dealerships meet this requirement quickly and efficiently, ADEQ runs the fleet emissions testing program under a statutory grant of authority at A.R.S. § 49-546. This results in a cost savings for Arizona businesses, as a COI issued by a fleet station costs only $11.50 compared to a cost of $17 or more at a centralized state station. Additionally, fleets save time and money by not having to drive their merchandise to a centralized station every time they acquire a new car.

By reducing the duplicative testing requirement through this rulemaking, ADEQ expects a di minimis impact on agency revenues. ADEQ estimates that less than 5,000 cars a year, out of the 100,000 tested by our fleet stations, will be affected by this rule change. That means an approximate decrease of $57,500 for the administration of the agencies fleet emissions testing permit program.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking.

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" mean empirical, replicable, and testable data as evidenced in supporting documentation, statistics, reports, studies, or research.

ADEQ has relied on its own COI fee data to make projections on costs. ADEQ has also reached out to stakeholders at the various meetings held for this change. It is difficult to project with a high degree of accuracy, because the business of selling used cars is extremely cyclical in nature. Therefore, ADEQ believes that its COI fee data is the best dataset available for any economic impact projections for this rulemaking.

Historical Note
Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-910 renumbered without change as Section R18-2-910 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

R18-2-911. Reserved

R18-2-912. Reserved

R18-2-913. Repealed

Historical Note
Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-913 renumbered without change as Section R18-2-913 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

R18-2-914. Reserved

R18-2-915. Reserved

R18-2-916. Reserved

R18-2-917. Reserved

R18-2-918. Reserved

R18-2-919. Reserved

R18-2-920. Reserved

R18-2-921. Reserved

R18-2-922. Repealed

Historical Note
Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-922 renumbered without change as Section R18-2-922 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

ARTICLE 10. MOTOR VEHICLES; INSPECTIONS AND MAINTENANCE

R18-2-1001. Definitions

The following definitions apply to this Article:

1. Abbreviations and symbols are defined as follows:
   a. "A/F" means air/fuel,
   b. "CO" means carbon monoxide.
   c. "CO2" means carbon dioxide.
   d. "EGR" means exhaust gas recirculation.
   e. "GVWR" means gross vehicle weight rating.
   f. "HC" means hydrocarbon.
   g. "HP" means horsepower.
   h. "LNG" means liquefied natural gas.
   i. "LPG" means liquid petroleum gas.
   j. "MIL" means malfunction indicator lamp.
   k. "MPH" means miles per hour.
   l. "MVD" means the Motor Vehicle Division of the Arizona Department of Transportation.
   m. "NDIR" means nondispersive infrared.
   n. "NOx" means the sum of nitrogen oxide and nitrogen dioxide.
   o. "%" means percent.
   p. "OEM" means original equipment manufacturer.
   q. "OBD" means on-board diagnostics.
   r. "PCV" means positive crankcase ventilation.
   s. "PPM" means parts per million by volume.
   t. "RPM" means revolutions per minute.
   u. "VIN" means vehicle identification number.
2. "All-terrain vehicle" (ATV) means a vehicle that is defined as an "all-terrain vehicle" in A.R.S. § 28-101.
3. "Alternative fuel vehicle" means a vehicle powered by an alternative fuel as defined in A.R.S. § 1-215(4).
4. "Annual test" means a test for which an annual frequency is specified in the applicable table in R18-2-1006(B).
5. "Apportioned vehicle" means a vehicle that is subject to the proportional registration provisions of A.R.S. § 28-2233.
6. "Area A" has the meaning in A.R.S. § 49-541.
7. "Area B" has the meaning in A.R.S. § 49-541.
8. "Biennial test" means a test for which a biennial frequency is specified in the applicable table in R18-2-1006(B).
9. "Calibration gas" means a reference gas or gas mixture with assigned concentrations that is used to check the accuracy of emissions analyzers.
10. "Certificate of compliance" means a uniquely numbered document issued as part of the vehicle inspection report by a state station at the time of a vehicle inspection indicating that the vehicle has met the emissions standards.
11. "Certificate of exemption" means a uniquely numbered document issued by the Director providing an exemption from the testing requirements of this Article for a vehicle that is outside of the state on the emissions compliance expiration date.
12. "Certificate of inspection" means a uniquely numbered document issued by the Director indicating that a vehicle has been inspected under A.R.S. § 49-546 and has passed inspection.
13. "Certificate of waiver" means a uniquely numbered document issued by the Department indicating that the requirement of passing reinspection has been waived for a vehicle under A.R.S. § 49-542.
14. "CFR" means the Code of Federal Regulations, with standard reference in this Chapter by Title and Part, so that "40 CFR 280" means Title 40 of the Code of Federal Regulations, Part 280.
15. "Collectible vehicle" has the meaning in A.R.S. § 49-542(Z).
16. "Constant 4-wheel drive vehicle" means any 4-wheel drive vehicle that cannot be converted to 2-wheel drive except by disconnecting one of the vehicle's drive shafts, or any vehicle equipped with non-disengageable traction control which cannot be safely tested on conventional 2-wheel drive dynamometers.
17. "Constant volume sampler" means a system that dilutes engine exhaust to be sampled with ambient air so that the total combined flow rate of exhaust and dilution air mix is nearly constant for all engine operating conditions.
18. "Contractor" means a person, business, firm, partnership, or corporation with whom the Director has a contract that provides for the operation of one or more official emissions inspection stations.
19. "Dealer" means a person or organization licensed by the Arizona Department of Transportation as a new motor vehicle dealer or used motor vehicle dealer.
20. "Department" means the Department of Environmental Quality.
21. "Diagnostic Trouble Code" (DTC) means an alphanumeric code which is set in a vehicle's on-board diagnostic system when the OBD system detects an emissions control device or system failure.

22. "Diesel" or "Diesel Fuel" has the same meaning as in A.R.S. § 3-3401.
23. "Director" means the Director of the Department of Environmental Quality.
24. "Director's certificate" means a uniquely numbered document issued by the Director in certain circumstances for the vehicle to show evidence of meeting the minimum standards for registration.
25. "Electrically-powered vehicle" means a vehicle that uses electricity as the means of propulsion and does not require the combustion of fossil fuel within the confines of the vehicle to generate electricity.
26. "Emissions compliance expiration date" means:
    a. Each registration expiration date for a vehicle subject to an annual test; and
    b. The registration expiration date in the second year after the initial biennial test required under this Article or R18-2-1005(B) for a vehicle subject to a biennial test.
27. "Emissions inspection station permit" means a certificate issued by the Director authorizing the holder to perform vehicle emissions inspections under this Article.
28. "Exhaust emissions" means products of combustion emitted into the atmosphere from any opening in the exhaust system downstream of the exhaust ports of a motor vehicle engine.
29. "Exhaust pipe" means the pipe that attaches to the muffler and exits the vehicle.
30. "Fleet emissions inspection station" or "fleet station" means any vehicle emissions inspection facility operated under a permit issued pursuant to A.R.S. § 49-546.
31. "Fleet vehicle" means any vehicle owned, leased, or operated by an individual or entity granted a vehicle emissions testing license under A.R.S. § 49-546.
32. "Fuel" means any material that is burned within the confines of a vehicle to propel the vehicle.
33. "Fuel Cell Electric Vehicle" or "FCEV" means a zero-emission vehicle that runs on compressed hydrogen fed into a fuel cell stack that produces electricity to power the vehicle.
34. "Golf cart" means a motor vehicle that is defined as a "golf cart" in A.R.S. § 28-101.
35. "Government vehicle" means a registered motor vehicle exempt from the payment of a registration fee, or a federally owned or leased vehicle.
36. "Gross vehicle weight rating" (GVWR) means the maximum vehicle weight that a vehicle is designed for as established by the manufacturer.
37. "Idle test" means an exhaust emissions test conducted with the engine of the vehicle running at the manufacturer's idle speed ± 100 RPM but without pressure exerted on the accelerator.
38. "Inspection" means the mandatory vehicle emissions inspection including the tampering inspection.
39. "Mass emissions measurement" means measurement of a vehicle's exhaust in mass units such as grams.
40. "Maximum required repair cost" means the applicable maximum required repair cost under R18-2-1010(F) or (G) for a vehicle that has failed inspection.
41. "Model year" means the date of manufacture of the original vehicle within the annual production period of the vehicle as designated by the manufacturer or, if a reconstructed vehicle, the first year of titling.
42. "Motorcycle" means a vehicle that is defined as a "motorcycle" as in A.R.S. § 28-101.
43. "New aftermarket catalytic converter" means a new catalytic converter manufactured as an OEM part that meets the standards under 40 CFR 86.
44. "On-board diagnostics" or "OBD" means an on-board diagnostic system required by Section 202(m) of the Clean Air Act. For the purposes of the Article, OBD certification refers to United States Environmental Protection Agency OBD certification.
45. "Opacity" means the degree of absorption of transmitted light.
46. "Reconditioned OEM catalytic converter" means a catalytic converter remanufactured, as a non-OEM part, with new catalytic material housed in the original catalyst casing.
47. "Recognized repair facility" means a business with an Arizona Department of Revenue transaction privilege tax license pursuant to Title 15, Chapter 5 of the Arizona Revised Statutes whose primary purpose is vehicle repair, and who has at least one employee with a nationally recognized certification for emissions-related diagnosis and repair.
48. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.
49. "Specially constructed vehicle" means any vehicle not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles.
50. "State inspector" means an employee of the Department designated to perform quality assurance or waiver functions under this Article.
51. "State station" means a facility, other than a fleet emissions inspection station, established for the purpose of conducting inspections under A.R.S. § 49-542.
52. "Tampering" means removing, defeating, or altering an emissions control device that was installed on a vehicle at the time the vehicle was manufactured.
53. "Two-stroke vehicle" means a vehicle equipped with an engine that requires one revolution of the crankshaft for each power stroke.
54. "Vehicle" or "Motor Vehicle" means any automobile, truck, truck tractor, motor bus, or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, roadrollers, or road machinery temporarily operated upon the highway.
55. "Vehicle emissions inspector" means an individual who is licensed by the Director to perform vehicle emissions inspections under this Article.
56. "Waiver inspector" means an employee of the contractor or the Department who is authorized to issue waivers under R18-2-1008.

57. "Zero Emissions Vehicle" means a battery electric vehicle that runs on electricity stored in the batteries and has only an electric motor rather than an internal combustion engine, or a fuel cell electric vehicle that produces no emissions from the on-board source of power.

Historical Note

Former Section R9-3-1001 repealed, new Section R9-3-1001 adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1001 repealed, former Section R9-3-1002 renumbered and amended as Section R9-3-1001 effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1001 renumbered as Section R18-2-1001 and amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1002. Applicable Implementation Plan

A. Substantive revisions to the rules in this Article that are included in the Arizona State Clean Air Act Implementation Plan cannot become effective until approved by the Administrator of the United States Environmental Protection Agency. Amendments adopted by the Department but not yet approved as of the date of the latest amendments are therefore identified in this Article as not applying until the Administrator approves them.

B. The Administrator's approvals of revisions to an applicable implementation plan are published as final rules in the Federal Register, which is available online at http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR. The Department publishes a list of Article 10 provisions approved since the last revisions to the Article at: http://azdeq.gov/VECS/Rulemaking.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle Emissions Inspection Program

A. The following vehicles shall be inspected according to this Article:
1. A vehicle to be registered within Area A or Area B. For the purposes of this Article, registration within Area A or Area B shall be determined by the vehicle owner's permanent and actual residence. The permanent address in the MVD database shall be presumed to be the owner's permanent and actual residence. A post office box address listed on a title or registration document under A.R.S. § 28-2051(C) is not evidence of the owner's permanent and actual residence;
2. Each vehicle delivered to a retail purchaser by a dealer licensed to sell used motor vehicles under A.R.S. Title 28 and whose place of business is located in Area A or Area B;
3. Each vehicle registered outside Area A and Area B but used to commute to the driver's principal place of employment located within Area A or Area B;
4. Each vehicle owned by a person who is subject to A.R.S. §§ 15-1444(C) or 15-1627(G); and
5. An Area A or Area B vehicle owned or operated by the United States, this state, or a political subdivision of this state without regard to whether those vehicles are required to be registered in this state.

B. The following vehicles are exempt from the inspection requirements of this Article:
1. A vehicle manufactured in or before the 1966 model year;
2. A vehicle leased to a person residing outside Area A and Area B by a leasing company whose place of business is in Area A or Area B, except as provided in subsection (A)(3);
3. A vehicle sold between motor vehicle dealers;
4. A zero-emissions vehicle;
5. An apportioned vehicle;
6. A golf cart;
7. A vehicle with an engine displacement of less than 90 cubic centimeters;
8. A vehicle registered at the time of change of name of ownership if an emissions test is current and valid, except when the change results from the sale by a dealership whose place of business is located in Area A or Area B;
9. A vehicle for which a current certificate of exemption or Director's certificate is issued;
10. A new vehicle before the sixth registration year after initial purchase or lease; except that:
    a. A reconstructed vehicle or specially constructed vehicle is not exempt.
    b. A vehicle converted to operate on an alternative fuel, as defined in A.R.S. § 1-215, is not exempt.
    c. A vehicle failing an emissions inspection the owner chooses to have under A.R.S. § 49-543 is not exempt for the current registration year.
11. A vehicle designed to operate exclusively on hydrogen, as defined in A.R.S. § 1-215;
12. A collectible vehicle;
13. A motorcycle;
14. An all-terrain vehicle (ATV);
15. These exemptions apply after the Administrator approves this subsection, (B)(15), into the applicable implementation plan:
    a. Cranes and oversized vehicles that require permits pursuant to A.R.S. §§ 28-1100, 28-1103, and 28-1144;
    b. A vehicle not in use and owned by a resident of this state while on active military duty outside of this state.

C. Government vehicles operated in Area A or Area B and not exempted by this Article shall be emissions inspected according to R18-2-1017.

Historical Note

Former Section R9-3-1003 repealed, new Section R9-3-1003 adopted effective January 13, 1976; Amended as an emergency effective January 19, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1003 as amended effective January 3, 1979 and amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) effective

January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1003 renumbered as Section R18-2-1003 and amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2722, effective June 28, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1004. Repealed

Historical Note

Former Section R9-3-1004 repealed, new Section R9-3-1004 adopted effective January 13, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Former Section R9-3-1004 renumbered as Section R18-2-1004 and amended effective August 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4).

R18-2-1005. Time of Inspection

A. All Area A and Area B vehicles subject to an annual test shall be inspected at the following times:
1. For a non-fleet vehicle, within 90 days before each registration expiration date.
2. For a fleet vehicle inspected at a licensed fleet station, at least once within each 12 month period following any initial registration.
3. For a government vehicle:
   a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity and then annually on or before the anniversary date of the previous inspection;
   b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and then annually on or before the anniversary date of the previous inspection; and
   c. A government vehicle is subject to testing on the anniversary of its date of acquisition.
4. For a vehicle registered outside Area A and Area B and used to commute to the driver's principal place of work located in Area A or Area B, upon vehicle registration and annually thereafter.
5. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(D) or 15-1627(G), within 30 calendar days following the date of initial registration at the institution located in Area A or Area B and annually thereafter.

B. All Area A and Area B vehicles subject to a biennial test shall be inspected at the following times:
1. For a non-fleet vehicle, within 90 days before the vehicle's emissions compliance expiration date.
2. For a fleet vehicle inspected at a fleet station, at least once within each successive 24 month period following initial registration.
3. For a government vehicle:
   a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity, and biennially thereafter, on or before the anniversary date of the previous inspection; or
   b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and biennially thereafter, on or before the anniversary date of the previous inspection.
4. For a vehicle registered outside Area A or Area B but used to commute to the driver's principal place of employment located in Area A or Area B, upon vehicle registration and biennially thereafter.
5. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(D) or 15-1627(G), within 30 days following the date of initial registration at the institution located in Area A or Area B and biennially thereafter.

C. All vehicles sold by a dealer licensed to sell used motor vehicles under A.R.S. Title 28, whose place of business is located in Area A or Area B, shall pass the applicable emissions test prescribed by R18-2-1006 before delivery of the vehicle to a retail purchaser.

D. An Area B vehicle being registered in Area A is subject to the appropriate annual or biennial test from Area A before registration even if the Area A test, or test period, is different from the test required for the same vehicle in Area B.

E. Nothing in this Section shall be construed to waive a late registration fee because of failure to meet inspection requirements by the registration deadline, except that a motor vehicle that fails the initial or subsequent test shall not be subject to a penalty fee for late registration renewal if:
1. The initial test is accomplished before the emissions compliance expiration date; and
2. The registration renewal is received by MVD within 30 days of the initial test.

F. An owner of a vehicle may submit the vehicle for emissions inspection more than 90 days before the emissions compliance expiration date but the inspection does not satisfy the registration testing requirement under R18-2-1003.

Historical Note

Former Section R9-3-1005 repealed, new Section R9-3-1005 adopted effective January 31, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Amended as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-2). Former Section R9-3-1005 as amended effective February 20, 1980 and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1005 renumbered as Section R18-2-1005 and subsections (A) and (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1006. Emissions Test Procedures

A. This Section establishes the testing requirements for vehicles in the State of Arizona. Subsection (B) identifies which tests apply to a particular type and model year of vehicle. Subsection (C) establishes the procedures and criteria for, passing, failing, or being rejected from each test.

B. Test applicability.

1. Area A and Area B non-diesel. The following general requirements govern test applicability for non-diesel vehicles in both Area A and Area B:
   a. A rotary engine shall be inspected as a 4-stroke engine with four cylinders or less.
   b. For a vehicle in which an engine has been replaced:
      i. A vehicle owner shall not install a heavy-duty engine in a light-duty chassis.
      ii. A vehicle owner shall not install a light-duty engine in a heavy-duty chassis.
      iii. The replacement engine package shall include all emissions control equipment and devices that were required by the manufacturer for an engine-chassis certification. All emissions control equipment and devices shall be properly installed and in operating condition, and the resulting engine-chassis configuration shall be equivalent to a verified configuration of the same, or newer, model year as that of the vehicle chassis.
      iv. The Department shall inspect the vehicle according to the model year of the vehicle chassis.
2. Area A Non-Diesel. Non-diesel vehicles in Area A are subject to the test procedures identified in this subsection:
   a. Vehicles other than alternative fuel vehicles operated by a school district in Area A, heavy duty alternative fuel vehicles, reconstructed vehicles, and constant 4-wheel-drive vehicles that are not equipped with OBD, are subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:

Area A Non-Diesel Testing Procedures Until SIP Revision is Approved				
Model Year	**GVWR**	**Test Frequency**	**Tests Applicable**	**Test Subsection**
1996 or later	8,500 pounds or less	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 through 1995	8,500 pounds or less	Biennial	Transient loaded and evaporative system pressure Functional gas cap Tampering	C.5 C.16 C.17
1975 through 1980	8,500 pounds or less	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	Any	Annual	Loaded test Functional gas cap	C.6 C.16

      i. Test procedures that apply after the Administrator approves this subsection, (B)(2)(a)(i), into the applicable implementation plan:

Area A Non-Diesel Testing Procedures After SIP Revision is Approved					
Model Year	**GVWR**	**OBD Certified?**	**Test Frequency**	**Tests Applicable**	**Test Subsection**
1996 or Later	Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 or later	8,500 pounds or less	No	Biennial	Transient loaded and evaporative system pressure Functional gas cap Tampering	C.5 C.16 C.17
1975 through 1980	8,500 pounds or less	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	Any	No	Annual	Loaded test Functional gas cap	C.6 C.16

   b. Alternative fuel vehicles operated by a school district in Area A are subject to the following testing procedures until the Administrator approves subsection (B)(2)(b)(i) into the applicable implementation plan. After subsection (B)(2)(b)(i) has been approved into the applicable implementation plan, alternative fuel vehicles operated by a school district in Area A will be subject to subsection (B)(2)(b)(i).

Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures Until SIP Revision is Approved				
Model Year	**OBD Certified?**	**Test Frequency**	**Tests Applicable**	**Test Subsection**
1975 or later	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	No	Annual	Loaded test Functional gas cap	C.8 C.16

i. Test procedures that apply after the Administrator approves this subsection, (B)(2)(b)(i), into the applicable implementation plan.

Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures After SIP Revision is Approved				
Model Year	**OBD Certified?**	**Test Frequency**	**Tests Applicable**	**Test Subsection**
Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1975 or later	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	No	Annual	Loaded test Functional gas cap	C.6 C.16

c. Heavy duty alternative fuel vehicles in Area A that are not owned by a school district are subject to the following testing procedures.

Model Year	**GVWR**	**OBD Certified?**	**Test Frequency**	**Tests Applicable**	**Test Subsection**
Any	More than 14,500 pounds	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1975 or later	More than 14,500 pounds	No	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	More than 14,500 pounds	No	Annual	Idle test Functional gas cap	C.8 C.16

3. Area B Non-Diesel. Non-diesel vehicles in Area B are subject to the test procedures identified in this subsection:
   a. Vehicles other than reconstructed vehicles and constant 4-wheel-drive vehicles that are not equipped with OBD shall be subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:

Area B Non-Diesel Testing Procedures Until SIP Revision is Approved				
Model Year	**GVWR**	**Test Frequency**	**Tests Applicable**	**Test Subsection**
1996 or later	8,500 pounds or less	Annual	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 through 1995	8,500 pounds or less	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	8,500 pounds or less	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1975 or later	More than 8,500 pounds	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Any	Annual	Idle test Functional gas cap	C.8 C.16

i. Test procedures that apply after the Administrator approves this subsection (B)(2)(a)(i) into the applicable implementation plan:

Area B Non-Diesel Testing Procedures After SIP Revision is Approved					
Model Year	**GVWR**	**OBD Certified?**	**Test Frequency**	**Tests Applicable**	**Test Subsection**
Any	Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 or later	8,500 pounds or less	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	8,500 pounds or less	No	Annual	Loaded Test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	No	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Any	No	Annual	Idle test Functional gas cap	C.9 C.16

4. Reconstructed non-diesel vehicles. Reconstructed non-diesel vehicles in both Area A and Area B are subject to the tests specified in the following table:

Model Year	**Test Frequency**	**Tests Applicable**	**Test Subsection**
1967 or later	Annual	Loaded test Visual gas cap	C.6 C.18

5. Constant 4-wheel-drive vehicles. Constant 4-wheel-drive vehicles in both Area A and Area B that are not equipped with OBD are subject to the tests specified in the following table:

Model Year	**Test Frequency**	**Tests Applicable**	**Test Subsection**
1975 or later	Annual	Idle Test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Annual	Idle Test Functional gas cap	C.8 C.16

6. Area A Diesel. Diesel vehicles that require inspection in Area A are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

Area A Diesel Testing Procedures Until SIP Revision is Approved					
GVWR	**OBD Certified?**	**Model Year**	**Test Frequency**	**Tests Applicable**	**Test Subsection**
8,500 and less	Yes	Any	Annual	OBD Tampering	C.4 C.17
More than 8,500 pounds	No	1975 or later	Annual	Snap idle Tampering	C.10 C.17
More than 8,500 pounds	No	1967 through 1974	Annual	Snap idle	C.10
More than 4,000 and less than or equal to 8,500 pounds	No	1975 or later	Annual	Loaded opacity B Tampering	C.12 C.17
More than 4,000 and less than or equal to 8,500 pounds	No	1967 through 1974	Annual	Loaded opacity B	C.12
4,000 pounds or less	No	1975 or later	Annual	Loaded opacity C Tampering	C.13 C.17
4,000 pounds or less	No	1967 through 1974	Annual	Loaded opacity C	C.13

7. Area B Diesel. Diesel vehicles that require inspection in Area B are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

Area B Diesel Testing Procedures Until SIP Revision is Approved				
GVWR	**Model Year**	**Test Frequency**	**Tests Applicable**	**Test Subsection**
More than 26,000 pounds	1975 or later	Annual	Loaded opacity A Tampering	C.12 C.18
More than 26,000 pounds	1967 through 1974	Annual	Loaded opacity A	C.12
More than 10,500 and less than or equal to 26,000 pounds	1975 or later	Annual	Any of the following: Loaded opacity A Loaded opacity B Tampering	 C.12 C.13 C.18
More than 10,500 and less than or equal to 26,000 pounds	1967 through 1974	Annual	Any of the following: Loaded opacity A Loaded opacity B	 C.12 C.13
More than 4,000 and less than or equal to 10,500	1975 or later	Annual	Loaded opacity B Tampering	C.13 C.18
More than 4,000 and less than or equal to 10,500	1967 through 1974	Annual	Loaded opacity B	C.13
4,000 pounds or less	1975 or later	Annual	Loaded opacity C Tampering	C.14 C.18
4,000 pounds or less	1967 through 1974	Annual	Loaded opacity C	C.14

8. Test procedures that apply for diesel vehicles in both Area A and Area B after the Administrator approves this subsection (B)(8) into the applicable implementation plan:

Area A and Area B Diesel Testing Procedures After SIP Revision is Approved					
GVWR	**OBD Certified?**	**Model Year**	**Test Frequency**	**Tests Applicable**	**Test Subsection**
Any	Yes	Any	Biennial	OBD Tampering	C.4 C.17
More than 8,500 pounds	No	1975 or later	Annual	Snap idle Tampering	C.10 C.17
More than 8,500 pounds	No	1967 through 1974	Annual	Snap idle	C.10
More than 4,000 and less than or equal to 8,500 pounds	No	1975 or later	Annual	Loaded opacity B Tampering	C.12 C.17
More than 4,000 and less than or equal to 8,500 pounds	No	1967 through 1974	Annual	Loaded opacity B	C.12
4,000 pounds or less	No	1975 or later	Annual	Loaded opacity C Tampering	C.13 C.17
4,000 pounds or less	No	1967 through 1974	Annual	Loaded opacity C	C.13

9. Dealer Fleet Testing Procedures. The test procedures in the table in this Section apply until the administrator approves subsections (B)(2)(a)(i), (B)(3)(a)(i), and (B)(8) into the applicable implementation plan for used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to A.R.S. § 49-546. After those sections are approved into the applicable implementation plan, used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to A.R.S. § 49-546 will be subject to the same testing procedures as vehicles tested at state stations and the table in this Section will no longer be applicable.

Area A and Area B Dealer Fleet Testing Procedures Until SIP Revision is Approved			
Model Year	**Test Frequency**	**Tests Applicable**	**Test Subsection**

1981 or later	Annual	Two speed idle test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	Annual	Idle Test Functional gas cap Tampering	C.7 C.16 C.17
1967 through 1974	Annual	Idle Test Functional gas cap	C.8 C.16

C. Test Requirements

1. Conditions for Pass. A vehicle passes inspection if the vehicle:
   a. Is subjected to all applicable tests required by subsection (B);
   b. Is not rejected from any of the tests for any of the reasons specified in (C)(2) or (C)(3) of this subsection; and
   c. Does not fail any of the applicable tests for any of the reasons specified in this subsection.
2. Pre-Test Safety Inspection
   a. The Department shall inspect each vehicle visually before the emissions test for any of the following unsafe or untestable conditions:
      i. A fuel leak that causes wetness or pooling of fuel;
      ii. A continuous engine or transmission oil leak onto the floor;
      iii. A continuous engine coolant leak onto the floor such that the engine is overheating or may overheat within a short time;
      iv. A tire on a driving wheel with less than 2/32-inch tread, metal protuberances, unmatched tire size, obviously low tire pressure as determined by visual inspection;
      v. An exhaust pipe that does not allow for safe exhaust probe insertion;
      vi. An exhaust pipe on a diesel-powered vehicle that does not allow for safe exhaust probe insertion and attachment of opacity meter sensor units;
      vii. Improperly operating brakes;
      viii. Any vehicle modification or mechanical condition that prevents dynamometer operation;
      ix. Loud internal engine noise;
      x. An obvious exhaust leak;
      xi. Towing a trailer or carrying a heavy load;
      xii. Carrying explosives or any hazardous material not used as a fuel for the vehicle; or
      xiii. Any other condition that in the judgment of the inspector makes testing unsafe or the vehicle untestable.
   b. If the inspector determines that a vehicle is unsafe or otherwise untestable by the visual inspection the following shall apply:
      i. The vehicle shall be rejected without an emissions test;
      ii. The inspector shall notify the vehicle owner or operator of all untestable or unsafe conditions found;
      iii. A state station shall not charge a fee; and
      iv. A state station shall not test the vehicle until the cause for rejection is repaired.
3. Test Operating Conditions. When conducting the emissions test required by this Section, the vehicle emissions inspector shall ensure that all of the following requirements are satisfied:
   a. The vehicle shall be tested in the condition presented, unless rejected under R18-2-1006(C)(2);
   b. The vehicle's engine shall be operating at normal temperature and not be overheating as indicated by a gauge, warning light, or boiling radiator; and
   c. All vehicle accessories shall be turned off during testing.
4. OBD Test.
   a. Test Procedure. The OBD test shall consist of:
      i. A visual inspection of the MIL function; and
      ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and the presence of diagnostic trouble codes.
   b. Equipment Specifications. The OBD equipment shall conform to the requirements of "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001 (and no future editions or amendments), which is incorporated by reference. A copy of this incorporated material is on file with the Department, the Secretary of State, and is available online at http://azdeq.gov/VECS/Rulemaking.
   c. OBD scan tools shall have the most recent available software downloaded and installed before inspection.
   d. Test Rejection. A vehicle shall be rejected from an OBD test if any of the following conditions occurs:
      i. The number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle;
      ii. The data link connector cannot be located or is inaccessible;
      iii. The data link connector is loose and the scan tool cannot be inserted into the connector;
      iv. The data link connector has no voltage; or
      v. The eVIN and monitors are mismatched.
   e. Test Failure. A vehicle fails the OBD test if any of the following conditions occurs:
      i. The vehicle's MIL does not illuminate when the ignition is on and the engine is off;
      ii. The vehicle's MIL illuminates continuously or flashes with the engine running;
      iii. The OBD system is not communicating;
      iv. The vehicle's OBD system reports the MIL as commanded on;
      v. The vehicle's OBD system data is inappropriate for the vehicle being tested; or

vi. The vehicle's OBD system data does not match the original equipment manufacturer (OEM) or a Department exempted OBD software configuration.

5. Transient Loaded and Evaporative System Pressure Test.
   a. Transient Loaded Test Procedure.
      i. The transient loaded test shall consist of 147 seconds of mass emissions measurement using a constant volume sampler while the vehicle is driven by an inspector through a computer-monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle.
      ii. The driving cycle shall include the acceleration, deceleration, and idle operating modes described in Table 4.
      iii. The 147-second sequence may be ended earlier using a fast-pass or fast-fail algorithm.
      iv. A retest algorithm shall be used to determine if a test failure is due to insufficient vehicle preconditioning. As determined by the retest algorithm, an additional test may be performed on a failing vehicle.
      v. The highest selectable drive gear shall be used for automatic transmissions and first gear shall be used for manual transmission acceleration from idle.
      vi. Exhaust emissions concentrations in grams per mile for HC, CO, NOx and CO2 shall be recorded continuously beginning with the first second.
      vii. All testing and test equipment for the transient loaded emissions test shall conform to "IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference, except that the transient driving cycle in Table 4, the standards in Table 4, and the fast-pass, fast-fail retest algorithms described in subsection (C)(5)(a) shall be used. A copy of the incorporated material is on file with the Department, the Secretary of State, and is available online at http://azdeq.gov/VECS/Rulemaking.
      viii. In determining compliance under subsection (C)(5)(d) for a vehicle that operates on natural gas, HC emissions shall be multiplied by 0.19, when an analyzer with a flame ionization detector is used or 0.61, when an NDIR analyzer is used.
   b. Evaporative System Pressure Test Procedure. The evaporative system pressure test shall consist of the following steps in sequence:
      i. Connect the test equipment to either the fuel tank vent hose at the canister or the fuel tank filler neck;
      ii. Pressurize the system to 14 ± 0.5 inches of water without exceeding 26 inches of water system pressure; and
      iii. Close off the pressure source, seal the evaporative system, and monitor pressure decay for two minutes unless a failure is detected or a fast-pass determination is made as defined in EPA420-R-00-007, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.
   c. Test Rejection. A vehicle shall be rejected from the transient loaded and evaporative system pressure test if it has an audible or visible exhaust leak during emissions testing, or if the vehicle displays unsafe behavior on the dynamometer during testing.
   d. Transient Loaded Test Failure. A vehicle fails the transient loaded test if emissions measured during the test exceed the Table 3 standard applicable to the model year and type of the vehicle being tested as follows:
      i. The average emissions measured for the entire test exceed the "composite standard" for any pollutant; or
      ii. The average emissions measured during seconds 65 through 146 exceed the "phase-2" standard for any pollutant.
   e. Evaporative System Pressure Test Failure. A vehicle fails the evaporative system pressure test if any of the following conditions occurs:
      i. The evaporative system cannot maintain a system pressure above eight inches of water for two minutes after being pressurized to 14 ± 0.5 inches of water;
      ii. The canister is missing or damaged; or
      iii. The hose or electrical system is missing, routed incorrectly, or disconnected, according to the vehicle emissions control information label.
   f. Test Failure. A vehicle fails the transient loaded and evaporative system pressure test if it fails the test under either subsection R10-2-1006(C)(5)(d) or R10-2-1006(C)(5)(e).
6. Loaded Test.
   a. Loaded Cruise Test Procedure. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to the Table 1 of this Article.
   b. Besides the Arizona specific dynamometer test schedule, loaded tests shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section III, amended as of July 1st, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at http://azdeq.gov/VECS/Rulemaking.
   c. Loaded Test Equipment Specifications.
      i. The equipment used in Area A state stations for loaded cruise and curb idle testing shall conform to "IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.
      ii. The equipment used in Area B state stations and all Arizona fleet emission testing stations for the loaded test shall comply with 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at http://azdeq.gov/VECS/Rulemaking.
   d. In determining whether a vehicle that operates on natural gas complies with the HC emissions standards in Table 2 of this Article, the results of the test

shall be multiplied by 0.19, when an analyzer with a flame ionization detector is used or 0.61, when an NDIR analyzer is used.

e. Test Rejection. A vehicle shall be rejected from a loaded cruise and curb idle test, if the CO2 plus CO reading during the curb idle test is less than 6%.

f. Test Failure. A vehicle fails the loaded cruise and curb idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for loaded cruise mode or curb idle mode for the type and model year of the vehicle being tested.

7. Two Speed Idle Test

a. All two speed idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section II, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at http://azdeq.gov/VECS/Rulemaking.

b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.

c. Test Failure. A vehicle fails the two speed idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.

8. Idle Test

a. All idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at http://azdeq.gov/VECS/Rulemaking.

b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix B, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.

c. Test Failure. A vehicle fails the idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.

9. Exhaust Sampling Requirements for Annual Tests on Non-Diesel Vehicles.

a. All CO and HC emissions analyzers shall have water traps incorporated in the sampling lines. Sampling probes shall be capable of taking undiluted exhaust samples from a vehicle exhaust system.

b. A vehicle, other than a diesel-powered vehicle, shall be inspected with a gas analyzer capable of determining concentrations of CO and HC within the ranges and tolerances specified in Table 5.

c. A vehicle with multiple exhaust pipes shall be inspected by collecting and averaging samples by one of the following methods:

i. Collecting separate samples from each exhaust pipe and use the average concentration to determine the test result;

ii. Using manifold exhaust probes to simultaneously sample approximately equal volumes from each exhaust pipe; or

iii. Using manifold exhaust pipe adapters to collect approximately equal volume samples from each exhaust pipe.

10. Snap Idle Test.

a. Snap Idle Test Procedure.

i. The Department shall test the vehicle with a procedure that conforms to Society of Automotive Engineers Recommended Practice J1667, February 1996, incorporated by reference and on file with the Department, the Secretary of State and is available online at http://azdeq.gov/VECS/Rulemaking. This incorporation by reference contains no future editions or amendments.

ii. All testing and test equipment shall conform to the J1667 Recommended Practice.

iii. The procedure shall use the corrections for ambient test conditions in Appendix B of the J1667 Recommended Practice for all tests.

iv. To expedite testing throughput, the Department may implement rapid testing procedures.

v. The test results shall be reported as the percentage of smoke opacity.

b. Snap Idle Test Failure.

i. Except as provided in subsection (C)(10)(c), a vehicle fails the snap idle test if the opacity of emissions exceeds the level specified in the following table:

Model Year	Standard
1991 or later	40%
1990 or earlier	55%

ii. The engine model year is determined by the emission control label. If the emission control label is missing, illegible, or incorrect, the test standard shall be 40%, unless a correct, legible, emission control label replacement is attached to the vehicle within 30 days of the inspection.

c. Alternative Opacity Standard. The Director shall identify an alternative, less stringent opacity standard for an engine family if the conditions of either subsection (C)(10)(c)(i) or (C)(10)(c)(ii) are satisfied.

i. The engine family exhibits smoke opacity greater than the applicable standard in subsection (C)(10)(b)(i) when in good operating condition and adjusted to the manufacturer's specifications. If this condition is satisfied, the Director shall identify a technologically appropriate less stringent standard based on a review of data obtained from engines in good operating condition and adjusted to manufacturer's specifications.

ii. The engine family has been granted an exemption from a standard equivalent to the applicable standard in subsection (C)(10)(b)(i) based on the J1667 Recommended Practice by the executive officer of the California Air Resources Board (CARB). If this condition is satisfied, the Director shall allow the engine family to comply with any technologically

appropriate less stringent standard identified by the executive officer of CARB.

iii. A demonstration under subsection (C)(10)(c)(i) shall be based on data from at least three vehicles. Data from official inspections under this subsection (C)(10) showing that vehicles in the engine family meet the standard may be used to rebut the demonstration.

iv. The Director shall implement any new standard resulting from each exemption as soon as practicable for all subsequent tests and provide notice at all affected test stations and fleets.

11. Loaded Opacity A Test.
    a. Test Procedure.
        i. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio that produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM.
        ii. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until the loading reduces the engine RPM to 80% of the governed speed at wide-open throttle position.
        iii. If the vehicle has an automatic transmission and automatic gear kickdown, the engine shall be loaded to a speed just above the kickdown speed or 80% of the governed speed, whichever is greater.
        iv. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer.
    b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
12. Loaded Opacity B Test.
    a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of 30 HP, ± 2 HP, while operated at 50 MPH.
    b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
13. Loaded Opacity C Test.
    a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of between 6.4 - 8.4 HP while operated at 30 MPH.
    b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
14. Exhaust Sampling Requirements for Diesel Vehicles Tests other than the Snap Idle Test.
    a. For a diesel-powered vehicle equipped with multiple exhaust pipes, separate measurements shall be made on each exhaust pipe. The reading taken from the exhaust pipe that has the highest opacity reading shall be used for comparison with the standard in R18-2-1030(B).
    b. A vehicle shall be inspected with either a full-flow or sampling-type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction-type using a collimated light source and photo-electric cell, accurate to a value within ± 2% of full scale.
15. Functional Gas Cap Test.
    a. Test Procedure.
        i. The vehicle shall undergo a functional test of the gas cap to determine cap leakage.
        ii. A vehicle with a non-sealing gas cap shall be checked for the presence of a properly fitting gas cap.
    b. Exemption. A vehicle with a vented fuel system is exempt from this subsection.
    c. Exemption. A vehicle that is manufactured without a gas cap is exempt from this subsection.
    d. Test Failure.
        i. A vehicle fails the test if cap leakage exceeds 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge.
        ii. Notwithstanding subsection 18-2-1006(C)(15)(d)(i), a vehicle does not fail the test if the failing cap is immediately replaced at the state station by a gas cap that satisfies the requirements of this subsection.
16. Tampering Inspection.
    a. The inspection shall be based on the original configuration of the vehicle as manufactured. The Department shall verify the applicable emissions system requirements shall be verified by the "Vehicle Emission Control Information" label. "Original configuration" for a foreign manufactured vehicle means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States.
    b. The Department's tampering inspection shall consist of the following:
        i. A visual inspection to determine the presence and proper installation of each required catalytic converter system or OEM equivalent;
        ii. An examination to determine the presence of an operational injection system, if applicable;
        iii. A visual inspection to determine the presence of an operational positive crankcase ventilation system or closed crankcase ventilation system, if applicable; and
        iv. A visual inspection to determine the presence of an operational evaporative control system, if applicable.
17. Visual Gas Cap Test. The visual gas cap test consists of the inspector's ocular verification that a gas cap is properly fitted to the vehicle.
18. Testing Vehicles that Operate on More than One Fuel. A vehicle, other than a vehicle for which an OBD test is required, designed to operate on more than one fuel, shall be tested on the fuel in use when the vehicle is presented for inspection, except vehicles that operate on alternative fuel, as defined in A.R.S. § 1-215.
19. Testing Vehicles that Operate on Alternative Fuels.
    a. The inspector shall test vehicles that operate on an alternative fuel, as defined in A.R.S. § 1-215, other than a vehicle for which an OBD test is required, on each fuel that the vehicle is intended to operate on, using the appropriate emissions test procedure and standards for that vehicle.

b. The vehicle shall be operated for a minimum of 30 seconds after switching fuels and before testing begins. The vehicle shall be rejected for testing if it is not able to operate on each fuel that the vehicle is intended to operate on or if the vehicle operator cannot switch fuels.
c. A vehicle that operates exclusively on propane or natural gas, as defined in A.R.S. § 1-215, shall be exempt from the functional gas cap test in subsection 10-2-1006(C)(15) and the evaporative pressure system test in subsection 10-2-1006(C)(5)(b).

Historical Note

Former Section R9-3-1006 repealed, new Section R9-3-1006 adopted effective January 13, 1976 (Supp. 76-1). Amended effective November 1, 1976 (Supp. 76-5). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Former Section R9-3-1006 repealed, new Section R9-3-1006 adopted as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1006 as amended effective February 20, 1980 repealed and a new Section R9-3-1006 adopted as an emergency effective January 2, 1981 now adopted and amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1006 renumbered as Section R18-2-1006 and subsections (A), (C) and (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2722, effective June 28, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1007. Evidence of Meeting State Inspection Requirements

A. A vehicle required to be inspected under this Article shall pass inspection before registration by meeting the requirements of R18-2-1006, unless the vehicle owner obtains a certificate of waiver under R18-2-1008.
B. The MVD or its agent may use the MVD motor vehicles emissions database, if available, as evidence that a vehicle complies with the requirements of this Article.
C. If the MVD motor vehicles emissions database is not available, the MVD or its agent shall accept any of the following documents identified in subsections (C)(1) to (C)(5), when complete, unaltered, and dated no more than 90 days before registration expiration date, as evidence that a vehicle complies with the requirements of this Article unless the MVD or its agent has reason to believe it is false. Documents accompanying a late registration may be dated subsequent to the registration expiration date:
1. Certificate of compliance,
2. Certificate of waiver (except from auto dealers licensed to sell used motor vehicles under Title 28),
3. Certificate of exemption,
4. Director's certificate, or
5. The upper section of the vehicle inspection report with "PASS" in the final results block.

D. A complete certificate of inspection or government vehicle certificate of inspection dated within 12 months of registration for an annually tested vehicle and 24 months for a biennially tested vehicle shall be accepted by the MVD or its agent as evidence that a vehicle is in compliance with the requirements of this Article unless the MVD or its agent has reason to believe it is false.
E. Documents listed in subsection (C) and originating in Area B are not acceptable for meeting the inspection requirements in Area A, unless the tests required in Area A and Area B for the vehicle under R18-2-1006 are identical.
F. Government vehicles for which only weight fees are paid shall be registered without evidence of inspection.

Historical Note

Former Section R9-3-1007 repealed, new Section R9-3-1007 adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1007 repealed, new Section R9-3-1007 adopted effective January 3, 1977 (Supp. 77-1). Amended effective February 20, 1980 (Supp. 80-1). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1007 renumbered without change as Section R18-2-1007 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1008. Procedure for Issuing Certificates of Waiver

A. Unless prohibited under subsection (D), a waiver inspector shall issue a certificate of waiver after reinspection at a state station to a vehicle that failed the emissions reinspection when the vehicle owner demonstrates any of the following conditions have been satisfied:
1. The requirements of R18-2-1009 and R18-2-1010, to the extent applicable, have been satisfied;
2. The vehicle owner has spent the maximum required repair cost on the maintenance and repair procedures required by R18-2-1010; or
3. Any further repairs within the maximum required repair cost would not enable the vehicle to pass the required vehicle emissions inspection.

B. The demonstration required by subsection (A) may consist of repair receipts, emissions test results, evidence of repairs performed, under hood verification, repair cost estimates, or similar evidence.
C. A temporary certificate of waiver may be issued to a vehicle failing the tampering inspection if the vehicle owner provides to a waiver inspector a written statement from an automobile parts or repair business that an emission control device necessary to repair the tampering is not available and cannot be obtained from any usual source of supply, and if all requirements of R18-2-1008(A) have been met. All written statements are subject to verification for authenticity and accuracy by the waiver inspector. The Department may deny a temporary certificate of waiver if the state inspector has any reason to believe the written statement is false or a usual source of supply exists and the device necessary to repair the tampering is available. Certificates of waiver may be issued under this subsection for a specified period, not to exceed 90 days, that

allows sufficient time for the procurement and installation of a proper emissions control device. A receipt or bill from a vehicle repair facility or automobile parts store shall be an acceptable proof of purchase. Before the end of the specified time period, the vehicle owner shall present to the waiver inspector proof of purchase and installation of the device. The Department shall track all issued temporary certificates of waiver and if no proof of purchase and installation is received before the end of the specified time period, the Department shall forward to the MVD an order to cancel the vehicle's registration.

D. The Director shall not issue a waiver to a vehicle under any of the circumstances described in subsections (D)(1) through (4).

1. The vehicle failed the emissions test due to the catalytic converter system. A vehicle fails the emissions test due to the catalytic converter system if:
   a. The vehicle has a catalytic converter system that is missing or defeated;
   b. The vehicle is equipped with an on-board diagnostic computer (OBD) with a malfunction indicator light (MIL), "check engine" or "service engine soon" light commanded on by the computer and containing diagnostic trouble codes indicating the catalytic converter must be replaced; or
   c. A vehicle with a repair order or estimate paperwork provided the waiver technician at the time of waiver inspection shows that a diagnostic determination has been made by the mechanic that the catalytic converter must be replaced.
2. The vehicle failed the emissions test with an HC, CO, NOx, or opacity emission level greater than two times the pass-fail standard in R18-2-1006.
3. The same vehicle has previously received a certificate of waiver.
4. The waiver request is based upon repair estimates and the waiver inspector demonstrates that a recognized repair facility can repair or improve the vehicle's test readings within the repair cost limit.

E. The fee for a certificate of waiver under this Section shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state for administering and enforcing the provisions of this Article for issuance of certificates of waiver under this Section. The fee shall be payable at the time the certificate of waiver is issued.

F. If a waiver inspector denies a certificate of waiver under this Section, the vehicle owner may request review of the denial by a state inspector.

Historical Note

Former Section R9-3-1008 repealed, new Section R9-3-1008 adopted effective January 13, 1976 (Supp. 76-1). Former R9-3-1008 repealed, new Section R9-3-1008 adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1008 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) and added subsection (D) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1008 renumbered as Section R18-2-1008 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1009. Tampering Repair Requirements

A. When a vehicle fails the visual inspection for properly installed catalytic converters, the vehicle owner shall replace the converters with new or reconditioned OEM converters, or equivalent new aftermarket converters.

B. When a vehicle fails the visual inspection for the presence of an operational air injection system, the vehicle owner shall install a new, used, or reconditioned, operational air pump on the vehicle according to manufacturer specifications.

C. When a gasoline vehicle fails the visual inspection for the presence or malfunction of the positive crankcase ventilation system, the vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.

D. When a diesel-powered vehicle fails the visual inspection for the presence or malfunction of the closed crankcase ventilation system, the vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.

E. When a vehicle fails the visual inspection for the presence or malfunction of the evaporative control system, the vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Repealed effective January 3, 1977 (Supp. 77-1). New Section R9-3-1009 adopted effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1009 renumbered without change as Section R18-2-1009 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1010. Low Emissions Tune-up, Emissions and Evaporative System Repair

A. Vehicle maintenance and repairs under subsection (B) and the failure-specific maintenance and repair requirements of subsection (C) must be performed before reinspection of a vehicle that fails a tailpipe emissions or OBD test under R18-2-1006.

B. Vehicle maintenance and repairs on a non-diesel powered vehicle consists of the following procedures:

1. Emissions Failure Diagnosis. For a computer-controlled vehicle, the on-board computer shall be accessed and any stored trouble codes recorded. For a model year 1996 or newer vehicle equipped with an OBD system, a compatible scan tool shall be used to access and record diagnostic trouble codes. The following instruments or equipment are required to complete a low emissions tune-up:
   a. Tachometer, although for 1996 and later vehicles an OBD scanner can be used to monitor engine RPMs;
   b. A compatible OBD scan tool, if appropriate;
   c. Engine analyzer or oscilloscope; and
   d. A HC/CO NDIR analyzer to make final A/F adjustments, if specified by the manufacturer.
2. Adjustment. All adjustments shall be made according to the manufacturer's specifications and procedures. Final

adjustment shall be made on the vehicle engine only after the engine is at normal operating temperature.

3. Inspection of Air Cleaner, Choke, and Air Intake System. The vehicle owner shall repair or replace a dirty or plugged air cleaner, stuck choke, or restricted air intake system as required.
4. Dwell and Basic Timing Check. Dwell and basic engine timing shall be checked and the vehicle owner shall make adjustments, if necessary, according to manufacturer's specifications.
5. Inspection of PCV System. The PCV system shall be checked to ensure that it is the type recommended by the manufacturer and is correctly operating. Free flow through the PCV system passages and hoses shall be verified. The vehicle owner shall repair or replace the system as required.
6. Inspection of Vacuum Hoses. The vacuum hoses shall be inspected for leaks, obstruction, and proper routing and connection. The vehicle owner shall repair or replace as required.
7. Fuel Lines and System Components Inspection. A visual inspection for leaking fuel lines or system components shall be performed. The vehicle owner shall repair or replace any leaking lines or systems as required.
8. Idle Speed and A/F Mixture Check. The idle speed and A/F mixture shall be checked and the vehicle owner shall make adjustments according to manufacturer's specifications and procedures. If the vehicle is equipped with a fuel injection system or an alternate fuel (LPG or LNG), the manufacturer's recommended adjustment procedure shall be followed.

C. Failure-specific recommended repairs and maintenance. If the maximum required repair cost in subsection (F) or (G) is not exceeded after the diagnosis and vehicle maintenance and repairs described in subsection (B), then the following procedures apply:

1. CO failure.
   a. If a vehicle fails CO only, the vehicle shall be checked for:
      i. Proper canister purge system operation,
      ii. High float setting,
      iii. Leaky power valve, and
      iv. Faulty or worn needles, seats, jets or improper jet size.
   b. If applicable, the vehicle shall be checked for the following items:
      i. Computer,
      ii. Engine and computer sensors,
      iii. Engine solenoids,
      iv. Engine thermostats,
      v. Engine switches,
      vi. Coolant switches,
      vii. Throttle body or port fuel injection system,
      viii. Fuel injectors,
      ix. Fuel line routing and integrity,
      x. Air in fuel system including line and pump,
      xi. Fuel return system,
      xii. Injection pump,
      xiii. Fuel injection timing,
      xiv. Routing of vacuum hoses, and
      xv. Electrical connections.
   c. The items in subsections (C)(1)(a) and (b) shall be repaired or replaced as required.
2. HC, or HC and CO failure.
   a. If a vehicle fails HC, or HC and CO emissions, the vehicle shall be checked for:
      i. Faulty spark plugs and faulty, open, crossed, or disconnected plug wires;
      ii. Distributor module;
      iii. Vacuum hose routing and electrical connections;
      iv. Distributor component malfunctions including vacuum advance;
      v. Faulty points or condenser;
      vi. Distributor cap crossfire;
      vii. Catalytic converter efficiency air supply;
      viii. Vacuum leaks at intake manifold, carburetor base gasket, EGR, and vacuum-operated components.
   b. The vehicle owner shall repair or replace the items in subsection (C)(2)(a) as required.
3. NOx failure.
   a. If a vehicle fails for NOx emissions, the vehicle shall be checked for:
      i. Removed, plugged, or malfunctioning EGR valve, exhaust gas ports, lines, and passages;
      ii. EGR valve electrical and vacuum control circuitry, components, and computer control, as applicable;
      iii. Above normal engine operating temperature;
      iv. Proper air management;
      v. Lean A/F mixture;
      vi. Catalytic converter efficiency; and
      vii. Over-advanced off-idle timing.
   b. The items in subsection (C)(3)(a) shall be repaired or replaced as required.
4. OBD failure. If the vehicle fails the OBD test, the vehicle owner shall repair the items indicated on the vehicle emissions report as causing the failure. If the failure results from diagnostic trouble codes (DTCs) that caused the malfunction indicator lamp (MIL) to be illuminated, the vehicle owner shall repair or replace the components or systems causing the DTCs. After repair of a DTC failure, and before reinspection, the vehicle shall be operated under conditions recommended by the vehicle manufacturer for the OBD computer to evaluate the repaired system.

D. For Evaporative System Failures, the following procedures apply:

1. If a vehicle fails the evaporative system pressure test, the vehicle shall be checked for leaking or disconnected vapor hoses, line, gas cap, and fuel tank.
2. If a vehicle fails a visual inspection of the evaporative system, the vehicle shall be checked for a missing or damaged canister, canister electrical and vacuum control circuits and components, disconnected, damaged, misrouted or plugged hoses, and damaged or missing purge valves. The vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.

E. If a vehicle fails the functional gas cap pressure test described in R18-2-1006, the vehicle owner shall replace the gas cap with one that meets the requirements of that subsection. If a vehicle designed with a vented system fails a visual inspection for the presence of a gas cap, the vehicle owner shall install a properly fitting gas cap on the vehicle.

F. The maximum required repair cost for a vehicle in Area A, not including cost to repair the vehicle for failing an evaporative

system pressure test due to tampering, or other tampering repair cost, is:

1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: $500; and
2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
   a. Manufactured in or before the 1974 model year: $200;
   b. Manufactured in the 1975 through 1979 model years: $300; and
   c. Manufactured in or after the 1980 model year: $450.
3. Subsection (F) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.

G. The maximum required repair cost for vehicles in Area B, not including tampering repair cost, is:

1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: $300; and
2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
   a. Manufactured in or before the 1974 model year: $50;
   b. Manufactured in the 1975 through 1979 model years: $200; and
   c. Manufactured in or after the 1980 model year: $300.
3. Subsection (G) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.

H. Before reinspection of a diesel vehicle that has failed an inspection, the vehicle owner shall comply with the following maintenance and repair requirements to the extent that the total cost of meeting the requirements does not exceed the maximum required repair cost in subsection (F) or (G):

1. Inspect for dirty or plugged air cleaner, or restricted air intake system. Repair or replace as required.
2. Check fuel injection system timing according to manufacturer's specifications. Adjust as required.
3. Check for fuel injector fouling, leaking, or mismatch. Repair or replace as required.
4. Check fuel pump and A/F ratio control according to manufacturer's specifications. Adjust as required.
5. If the vehicle fails the J1667 procedure, check smoke-limiting devices, if any, including the aneroid valve and puff limiter. Repair or replace as required.

I. The vehicle owner shall use any available warranty coverage for a vehicle to obtain needed repairs before an expenditure can be counted toward the cost limits in subsection (F) and (G). If the operator of a vehicle within the age and mileage coverage of section 207(b) of the Clean Air Act presents a written denial of warranty coverage from the manufacturer or authorized dealer, warranty coverage is not considered available under this subsection.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1010 repealed, new Section R9-3-1010 adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1010 as amended effective February 20, 1980, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1010 renumbered as Section R18-2-1010 and subsection (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1011. Vehicle Inspection Report

A. The Department shall provide a vehicle inspected at a state station with a uniquely numbered vehicle inspection report of a design approved by the Director that contains, at a minimum, the following information, as applicable to the tests required for the vehicle under R18-2-1006:

1. License plate number;
2. Vehicle identification number;
3. Model year of vehicle;
4. Make of vehicle;
5. Style of vehicle;
6. Type of fuel;
7. Odometer reading;
8. Emissions standards for idle and loaded cruise modes, if applicable;
9. Emissions measurements during idle and loaded cruise modes, if applicable;
10. Opacity measurements and standards, if applicable;
11. Emissions standards and measurements for the transient loaded test, and the evaporative system pressure test, if applicable;
12. Results of OBD test including all diagnostic trouble codes that commanded the illumination of the malfunction indicator lamp;
13. Tampering inspection results;
14. Repair requirements;
15. Final test results;
16. Repairs performed;
17. Cost of emissions-related repairs;
18. Cost of tampering-related repairs;
19. Name, address, and telephone number of the business or person making repairs;
20. Signature and certification number of person certifying repairs;
21. Date of inspection;
22. Test results of the previous inspection if the inspection is a reinspection;
23. Inspection station, lane locators; and
24. Test number and time of test.

B. A vehicle failing the initial inspection shall receive the Department's approved inspection report supplement containing, at a minimum, the following:

1. Diagnostic and tampering information including acceptable replacement units, and
2. Applicable maximum repair costs.

C. The inspection report shall include a section that may be used as a certificate of compliance for vehicles passing the inspection or as a certificate of waiver, if applicable. The section shall contain all of the following information:
1. License plate number,
2. Vehicle identification number,
3. Final results,
4. Serial number of the inspection report,
5. Date of inspection,
6. Model year,
7. Make,
8. Date of initial inspection,
9. Inspection fee, and
10. Label as either a certificate of compliance or a certificate of waiver.

D. At the time of registration, the certificate of compliance or certificate of waiver may be submitted to the Arizona Department of Transportation Motor Vehicle Division as evidence of meeting the requirements of this Article.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1011 repealed, new Section R9-3-1011 adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1011 as amended effective January 3, 1979, and as amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsections (A) and (B) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1011 renumbered as Section R18-2-1011 and amended by removing subsection (E) effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1012. Inspection and Reinspections; Procedures and Fee

A. The fees vehicle owners are required to pay for emissions inspections at a state station shall be specified in the contract between the contractor and the state of Arizona according to A.R.S. § 49-543, and shall include the full cost of the vehicle emissions inspection program including administration, implementation, and enforcement. Each fee is payable by the vehicle owner directly to the contractor at the time and place of inspection as specified in the contract, and deposited into an account established by the Department for administration of fees. The contractor will be compensated by the Department for services provided on a schedule and in a manner defined in the contract.

B. A vehicle failing the initial paid inspection or any subsequent paid inspection is entitled to one reinspection at no additional charge under the following conditions:
1. The vehicle is presented for inspection within 60 calendar days of the initial or any subsequent paid inspection.
2. Emissions-related repairs or adjustments and any tampering repairs have been made.
3. The vehicle is accompanied by the vehicle inspection report from the initial or subsequent inspection.

C. A vehicle failing the reinspection shall be provided a vehicle inspection report and a vehicle inspection report supplement.

D. A state station emissions inspector shall not recommend repairs or repair facilities.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1012 repealed, new Section R9-3-1012 adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1012 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended subsections (A) and (D) effective November 9, 1982 (Supp. 82-6). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1012 renumbered as Section R18-2-1012 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1013. Repealed

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1013 repealed, new Section R9-3-1013 adopted effective January 3, 1977 (Supp. 77-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1013 adopted effective January 3, 1977, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp 86-6). Former Section R9-3-1013 renumbered as Section R18-2-1013 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1014. Repealed

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Section repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

R18-2-1015. Repealed

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective

December 20, 1999 (Supp. 99-4). Section repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

R18-2-1016. Licensing of Inspectors and Fleet Agents

A. Emissions inspectors shall be licensed as follows:

1. To obtain a license as a vehicle emissions inspector, an applicant shall pass a written test with a score greater than or equal to 80%. After passing the written test, the applicant shall pass a separate practical examination.
   a. Applications to become an emissions inspector may be obtained from the Department and an applicant must submit a completed application to the Department. The Department must deem an application administratively complete before an applicant will be allowed to sit for the written test. If the Department finds the application to be incomplete, the applicant shall be provided an opportunity to submit sufficient information to enable the Department to deem the application administratively complete.
   b. The written test shall cover the following subjects:
      i. The air pollution problem in Arizona, its causes and effects;
      ii. The purpose, function, and goals of the vehicle inspection program;
      iii. State vehicle inspection regulations and procedures;
      iv. Technical details of the test procedures and rationale for their design;
      v. Emission control device function, configuration, and inspection;
      vi. Test equipment operation, calibration, and maintenance;
      vii. Quality control procedures and their purpose;
      viii. Public relations; and
      ix. Safety and health issues related to the inspection process.
   c. After passing the written test, the inspector applicant shall pass a practical exam where the applicant shall demonstrate the ability to conduct a proper emissions inspection, including proper use of equipment and procedures, in accordance with the testing procedures in R18-2-1006(C). An inspector applicant shall pass a practical examination for each type of test the applicant intends to perform.
2. Licenses issued to vehicle emissions inspectors shall be renewed biannually, on or before the expiration date.
3. An inspector whose license is expired or suspended shall not inspect vehicles.
4. A vehicle emissions inspector shall submit an application for a renewal of the vehicle emissions inspector's license at least 90 days before the current license expiration date.
5. The Department may suspend, revoke, or refuse to renew a license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5, any provision of this Article, or fails to continue to demonstrate proficiency to the Department.
6. A vehicle emissions inspector shall notify the Department of any change in employment status no later than fourteen days after the change.
7. The Department shall assign a single, unique, nontransferable inspector's number to each vehicle emissions inspector.
8. If a licensed emissions inspector fails to demonstrate the ability to conduct a proper vehicle emissions inspection during any audit, the Department shall suspend the vehicle emissions inspector's license. The suspended emissions inspector shall pass a practical examination within 30 days after suspension or the inspector's license shall be revoked. An inspector's license may be reinstated once the inspector passes a written examination with a score of 80% or greater and demonstrates the ability to properly conduct a vehicle emissions test during a practical examination.

B. Fleet Agents shall be licensed as follows:

1. To obtain a license as a fleet agent, an applicant shall pass a written test with a score greater than or equal to 80%. A fleet agent is an individual associated with a fleet emissions testing permit who is ultimately responsible for making sure a fleet complies with the requirements of this Article. This license is separate and distinct from a fleet emissions inspector license.
   a. Applications to become a fleet agent may be obtained from the Department. An application must be administratively complete and submitted in the manner required by the Department before an applicant will be allowed to sit for the written test.
   b. The written test shall cover the following subjects:
      i. The statutes and rules governing the operation and administration of a fleet emissions inspection station.
      ii. The duties of a fleet agent.
      iii. How to operate an account on the Department's web portal.
      iv. Purchasing certificates of inspection.
2. If a licensed fleet agent fails to assure that the agent's fleet complies with this Article, the agent's license shall be suspended. The suspended agent shall pass a written test within 30 days of suspension or such license shall be revoked.
3. Licenses issued to fleet agents shall be renewed biannually, on or before the expiration date.
4. A fleet represented by an agent that has a suspended license may not inspect vehicles.
5. The Department may suspend, revoke, or refuse to renew a fleet agent's license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5, any provision of this Article, or fails to continue to demonstrate proficiency to the Department as required.
6. A fleet agent shall notify the Department of any change in employment status within seven days of the change.
7. The Department shall assign a single, unique, nontransferable agent's number to each fleet agent.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1016 as amended effective March 2, 1978, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1016 renumbered as Section R18-2-1016 and subsection (G) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective

January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1017. Inspection of Government Vehicles

A. Government vehicles operated in Area A and Area B shall be inspected as follows:
1. At a licensed fleet station operated by the government entity;
2. At a state station upon payment of the fee; or
3. At a state station upon payment of the contracted fee, either singly or in combination with other government fleet operators.

B. A government vehicle, except a federally owned vehicle that is excluded from the definition of motor vehicle under 40 CFR 85.1703, shall be inspected according to this Article and shall have a government vehicle certificate of inspection (GVCOI) affixed to the vehicle if in compliance with state emissions requirements.
1. The vehicle emissions inspector performing the inspection shall punch out the appropriate year and month on the GVCOI to designate the date of the vehicle's next annual or biennial inspection.
2. If the vehicle emissions inspection is performed at a fleet station, the emissions inspector shall record administratively complete results of the inspection into the Department's web portal on the day of the inspection. The unique number on the GVCOI sticker must be entered along with the emissions testing results for the vehicle.
3. A government vehicle, with the exception of a motorcycle or an undercover law enforcement vehicle, shall have the GVCOI affixed to the lower left side of the rear window as determined from a position facing the window, from outside the vehicle. If a vehicle does not have a rear window, the GVCOI shall be affixed to the lower left corner of the windshield as determined from the driver's position.

C. The GVCOI shall be purchased from the Department's web portal.
1. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of inspections.
2. Only the Department may sell or otherwise transfer GVCOI.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1017 renumbered as Section R18-2-1017 and subsection (E) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1018. Certificate of Inspection

A. A fleet inspector shall submit and certify administratively complete certificates of inspection (COI) to the Department through the Department's web portal. A COI is used as evidence that the vehicle it is assigned to has passed the tests required by this Article and complies with the applicable state emissions standards for that vehicle. Inspection data may be electronically transmitted to MVD under A.R.S. § 49-542(Q).

B. On the day a vehicle is inspected, a licensed vehicle emissions inspector shall enter an administratively complete record of the inspection into the Department's web portal.

C. A certificate of inspection issued to a fleet vehicle is valid for a period of 180 days unless the vehicle is reregistered with a new owner.

D. The following individuals are authorized to purchase certificates of inspection as long as the fleet they are associated with meets the requirements of this Article:
1. A fleet agent who is licensed by the Department under R18-2-1016;
2. A responsible corporate officer; or
3. A designated responsible officer.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1018 renumbered as Section R18-2-1018 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1019. Fleet Station Procedures and Permits

A. A fleet emissions testing station applicant or permittee shall create and manage an account on the Department's web portal.

B. To obtain a fleet emissions inspection station permit, an applicant shall:
1. Be a registered owner or lessee of a fleet of at least 25 nonexempt vehicles.
   a. A motor vehicle dealer's business inventory of vehicles held for resale over the previous 12 months shall be used to determine compliance with this subsection.
   b. A motor vehicle dealer with less than 12 months of operations that applies for a fleet emissions testing permit shall certify that it intends to test at least 25 vehicles per year.
2. Be located within Area A, within 50 miles of the border of Area A, or within Area B. A dealer outside these areas who certifies to the Department that customers who reside in Area A are the primary source of the dealer's business may also apply for a fleet permit.
3. Maintain a facility that has space devoted principally to maintaining or repairing the fleet's motor vehicles.
   a. The space shall be large enough to conduct maintenance or repair of at least one motor vehicle.
   b. Any fleet station shall be exclusively rented, leased, or owned by the applicant.
4. Own or lease the machinery, tools, and equipment required for the specific tests the applicant wishes to perform. Equipment and testing requirements are listed in R18-2-1006(C).
5. Employ the following personnel:

a. At least one fleet agent licensed pursuant to R18-2-1016.
b. At least one emissions inspector licensed pursuant to R18-2-1016.
c. At least one person who is able to perform necessary emissions related repairs for fleet vehicles.
d. A single person may fill two or more of these roles for a fleet.

6. Provide data to the Department as required by this Section.
7. Pass an initial inspection to determine compliance with this Section.
8. Submit to the ongoing inspections and audits prescribed in this Article.

C. A fleet emissions inspection testing permittee shall continuously comply with all requirements of this Article.

D. The equipment used at a fleet emissions inspection station is subject to the following requirements:

1. A fleet emissions testing station applicant or permittee shall own or lease the equipment referenced in R18-2-1006 that is necessary for the specific type of testing that the permittee is licensed to perform.
2. All testing equipment and instruments shall be maintained in accurate working condition as required by the manufacturer. An instrument requiring periodic calibration shall be calibrated according to instruction and recommendations of the instrument or equipment manufacturer. Calibration records shall be submitted through the web portal for review by the Department. The calibration records shall be certified by the technician performing each calibration.
   a. Fleet station analyzers shall comply with, be calibrated, and be quality control checked according to 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference in (C)(7)(b) and on file with the Department.
   b. A fleet station opacity meter used for emission inspections is required to read the equivalent opacity value of neutral density filter within +/- 5% opacity at any point in the range of meter.
3. Calibration gases used by the fleet station shall be subject to analysis and comparison to the Department's standard gases at any time.
4. Fleet testing equipment shall be subject to both scheduled and unscheduled audits by state inspectors.
5. A fleet's analyzer shall be calibrated at least monthly with calibration gases approved by the Department. A registered opacity meter shall be calibrated according to manufacturer's specifications before performing the first vehicle emissions inspection in any month.

E. For every test performed by a vehicle emissions inspector, that vehicle emissions inspector shall log into the Department's web portal the same day that the inspection takes place to report the results of the test to the Department.

F. A fleet's activities shall be governed by the following compliance and enforcement rules:

1. All requirements in this Article apply at all times after a fleet emissions testing license has been issued.
2. The Director may suspend or revoke a fleet emissions testing license according to A.R.S. § 49-546(F) and A.R.S. Title 41, Chapter 6, if the permittee, or any person employed by the permittee:
   a. Violates any provisions of A.R.S. Title 49, Chapter 3, Article 5 or any provision of this Article;
   b. Misrepresents a material fact in obtaining a permit;
   c. Fails to make, keep, and submit to the Department records for a vehicle tested; or
   d. Does not provide a state inspector access to the information required in this Article.
3. If a fleet emissions inspection permit is surrendered, suspended or revoked, all unused certificates of inspection shall be refunded.
4. Any fleet vehicle is subject to inspection by a state inspector.

G. A fleet emissions inspection station permit is non-transferable and does not expire.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1019 as amended effective February 20, 1980, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1019 renumbered as Section R18-2-1019 and amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective February 4, 1993 (Supp. 93-1). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1020. Department Issuance of Alternative Fuel Certificates

Issuing Alternative Fuel Certificates. The Department shall inspect a vehicle converted to run on alternative fuel and issue an alternative fuel certificate according to A.R.S. § 28-2416(2)(b) if the vehicle is currently powered by an alternative fuel.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1021. Reserved

R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties

A vehicle emissions station manager employed by an official emissions inspection station may issue a Director's certificate for a vehicle that cannot be inspected as required by this Article because of technical difficulties inherent in the manufacturer's design or construction of the vehicle.

Historical Note
Adopted effective January 13, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1022 renumbered without change as Section R18-2-1022 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

R18-2-1023. Certificate of Exemption for Out-of-State Vehicles

A. If a vehicle being registered in Area A or Area B requires an emission test and will not be physically available for inspection within the state during the 90-day period before the emissions compliance expiration date, the owner or owner's agent may submit an application to the Department for a certificate of exemption.

B. The owner or owner's agent shall apply for a certificate of exemption in the manner and form required by the Department.

C. The Department may issue a certificate of exemption:
1. For a vehicle that will not be located in the state during the 90-day period before the emissions compliance expiration date and is located in an area where emissions testing is not available. This exemption shall only be granted if an affidavit confirming the location of the vehicle is signed and submitted with the application.
2. For a vehicle that has passed an official emissions inspection in another state during the 90 days before emissions compliance expiration upon submission of the inspection compliance document issued by the entity conducting the inspection program.

D. The fee for a certificate of exemption shall be fixed by the Director according to A.R.S. § 49-543 and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of exemption. The payment for the certificates shall be included with the application for certificates.

Historical Note
Adopted effective January 13, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1023 as amended effective January 3, 1979 and amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1023 renumbered without change as Section R18-2-1023 (Supp. 88-3). Amended effective February 4, 1993 (Supp. 93-1). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1024. Expired

Historical Note
New Section made by final rulemaking at 8 A.A.R. 84, effective December 14, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 1128, effective April 30, 2008 (Supp. 09-2).

R18-2-1025. Inspection of Contractor's Equipment and Personnel

A. State inspectors shall conduct performance audits to determine whether a state station is correctly performing all inspection and functions related to inspections as follows:
1. Overt audits shall be completed at least two times each year for each inspection lane. Overt audits shall include:
   a. A check for the observance of appropriate document security;
   b. A check to see that required recordkeeping practices are being followed;
   c. A check for licenses, certificates, and other required display information;
   d. An observation and evaluation of each vehicle emissions inspector's ability to perform an inspection; and
   e. A check to ensure all emissions testing equipment is calibrated and operating correctly.
2. If a vehicle emissions inspector fails an audit, the vehicle emissions inspector's license may be suspended or revoked under R18-2-1016(A)(4).
3. Vehicle emissions inspection records shall be reviewed at least monthly to assess station performance and identify any problems, potential fraud, or incompetence.
4. Covert audits may be performed as necessary to confirm compliance with this Article.

B. If an equipment audit indicates that equipment is not calibrated and accurate, the equipment shall not be used to conduct emissions testing until it is replaced or repaired.

C. Equipment that is removed from testing may be returned to service upon its repair and a state inspector's verification of a passing calibration audit.

D. A state inspector shall inspect on-road emissions analyzers at least monthly.

Historical Note
Adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1025 as amended effective March 2, 1978, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1025 renumbered as Section R18-2-1025 and subsection (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1026. Inspection of Fleet Stations

A. Equipment used to perform emissions testing shall meet the requirements for the type of testing a fleet station is licensed to perform.

B. A fleet station's gas analyzer shall not be used for an official emissions inspection if:
1. The calibration gases are not read within the following tolerances:

a. Within plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO; and
b. Within plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEXANE.

2. The calibration gases are not read within the manufacturer specified tolerances;
3. There is a leak in the sampling systems or the calibration port; or
4. The sample handling system is restricted.

C. The fleet emissions testing station shall acquire and utilize calibration gases with assigned HC and CO concentrations to calibrate fleet emission analyzers.

D. A state inspector shall fail a fleet emissions analyzer if the analyzer does not meet the requirements of this Section. A fleet emission inspector shall not use the analyzer for inspection until the analyzer is cleared for return to service by a state inspector.

E. A state inspector shall conduct performance audits to determine whether a fleet emissions inspection station is correctly performing inspections and functions related to inspections as follows:

1. Overt audits at least two times each year that include:
   a. A check for the observance of appropriate document security;
   b. A check to see that required recordkeeping practices are being followed;
   c. A check for licenses, certificates, and other required display information;
   d. An observation and evaluation of each vehicle emissions inspector's ability to perform an inspection; and
   e. A check to ensure all emissions testing equipment is calibrated and operating correctly.
2. Fleet station and vehicle emissions inspector records shall be reviewed at least monthly to assess fleet performance and identify any problems, potential fraud, or incompetence.
3. If a vehicle emissions inspector fails an audit, the vehicle emissions inspector's license may be suspended or revoked according to R18-2-1016(A)(4).
4. Covert audits may be performed as necessary to confirm compliance with this Article.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 1, 1986 (Supp. 85-6). Amended subsections (A) and (J) and added subsection (K) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1026 renumbered as Section R18-2-1026 and subsections (B), (F), (G) and (H) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1027. Repealed

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1027 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1027 renumbered as Section R18-2-1027 and subsections (B), (D), (F) and (G) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1028. Repealed

Historical Note

Adopted effective January 1, 1986 (Supp. 85-6). Amended subsections (A) and (F) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1028 renumbered as Section R18-2-1028 and subsection (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1029. Vehicle Emission Control Devices

For the purposes of A.R.S. §§ 28-955 and 49-447, a registered motor vehicle shall have in operating condition all emission control devices installed by the vehicle manufacturer to comply with federal requirements for motor vehicle emissions or equivalent aftermarket replacement parts or devices.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Former Section R9-3-1029 renumbered as Section R18-2-1029 and amended effective August 1, 1988 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

R18-2-1030. Visible Emissions; Mobile Sources

A. A vehicle other than a diesel-powered vehicle or 2-stroke vehicle that emits any visible emissions for 10 consecutive seconds or more is "excessive" for the purposes of A.R.S. § 28-955(C).

B. A diesel-powered vehicle shall not emit any visible emissions in excess of:

1. Twenty percent visual opacity for 10 consecutive seconds or more at or below 2,000 feet elevation;
2. Thirty percent visual opacity for 10 consecutive seconds or more above 2,000 feet and at or below 4,000 feet elevation; and
3. Forty percent visual opacity for 10 consecutive seconds above 4,000 feet elevation.

C. A vehicle that exceeds the standards in subsection (B) fails the inspection under R18-2-1006 and is considered to have "excessive" emissions under A.R.S. § 28-955(C).

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1030 as adopted

effective January 3, 1977, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (C) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1030 renumbered as Section R18-2-1030 and subsection (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

R18-2-1031. Repealed

Historical Note

Adopted effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1031 renumbered as Section R18-2-1031 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

Table 1. Dynamometer Loading Table - Annual Tests

Gross Vehicle Weight			
Rating (Pounds)	**Engine Size**	**Speed (MPH)**	**Load (HP)**
8500 or less	4 cyl. or less	22-25	2.8-4.1
8500 or less	5 or 6 cyl.	29-32	6.4-8.4
8500 or less	8 cyl. or more	32-35	8.4-10.8
8501 or more	All	37-40	12.7-15.8

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4).

Table 2. Emissions Standards - Annual Tests

MAXIMUM ALLOWABLE

Motorcycles

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	N/A	N/A
4-Stroke	All	All	500	5.00	1,800	5.50	N/A	N/A

Reconstructed Vehicles

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
4-Stroke	1967-1980	All	700	5.25	1,200	7.50	1,200	5.60
4-Stroke	1980 & newer	All	700	5.25	1,200	7.50	700	5.25

Light-Duty Vehicles

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Light-Duty Truck 1 (0-6000 lbs GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Light-Duty Truck 2 (6001 - 8500 lbs GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Heavy-Duty Truck (8501 lbs or greater GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979 & newer	All	300	3.00	300	4.00	300	3.00

Historical Note

Renumbered from R18-2-1006 and amended effective November 14, 1994 (Supp. 94-4). See emergency amendment below (Supp. 94-4). Emergency amendment adopted effective December 23, 1994, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Emergency amendment expired, previous text placed back into effect effective June 21, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

Table 3. Emissions Standards - Transient Loaded Emissions Tests

FINAL STANDARDS (Standards are in grams per mile)

(i) Light Duty Vehicles

	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
Model Years	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1982	3.0	2.5	25.0	21.8	3.5	3.4
1983-1985	2.4	2.0	20.0	17.3	3.5	3.4
1986-1989	1.6	1.4	15.0	12.8	2.5	2.4
1990-1993	1.0	0.8	12.0	10.1	2.5	2.4
1994+	0.8	0.7	12.0	10.1	2.0	1.9

(ii) Light Duty Trucks 1 (less than 6000 pounds GVWR)

	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
Model Years	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.0	3.4	40.0	35.3	5.5	5.4
1986-1989	3.0	2.5	25.0	21.8	4.5	4.4
1990-1993	2.0	1.7	20.0	17.3	4.0	3.9
1994+	1.6	1.4	20.0	17.3	3.0	2.9

(iii) Light Duty Trucks 2 (greater than 6000 pounds GVWR)

	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
Model Years	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.4	3.7	48.0	42.5	7.0	6.9
1986-1987	4.0	3.4	40.0	35.3	5.5	5.4
1988-1989	3.0	2.5	25.0	21.8	5.5	5.4
1990-1993	3.0	2.5	25.0	21.8	5.0	4.9
1994+	2.4	2.0	25.0	21.8	4.0	3.9

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Table heading amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

Table 4. Transient Driving Cycle

Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph
0	0	30	20.7	60	26	90	51.5	120	54.9
1	0	31	21.7	61	26	91	52.2	121	55.4
2	0	32	22.4	62	25.7	92	53.2	122	55.6
3	0	33	22.5	63	26.1	93	54.1	123	56
4	0	34	22.1	64	26.5	94	54.6	124	56
5	3.3	35	21.5	65	27.3	95	54.9	125	55.8
6	6.6	36	20.9	66	30.5	96	55	126	55.2
7	9.9	37	20.4	67	33.5	97	54.9	127	54.5

Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph
8	13.2	38	19.8	68	36.2	98	54.6	128	53.6
9	16.5	39	17	69	37.3	99	54.6	129	52.5
10	19.8	40	17.1	70	39.3	100	54.8	130	51.5
11	22.2	41	15.8	71	40.5	101	55.1	131	50.8
12	24.3	42	15.8	72	42.1	102	55.5	132	48
13	25.8	43	17.7	73	43.5	103	55.7	133	44.5
14	26.4	44	19.8	74	45.1	104	56.1	134	41
15	25.7	45	21.6	75	46	105	56.3	135	37.5
16	25.1	46	22.2	76	46.8	106	56.6	136	34
17	24.7	47	24.5	77	47.5	107	56.7	137	30.5
18	25.2	48	24.7	78	47.5	108	56.7	138	27
19	25.4	49	24.8	79	47.3	109	56.3	139	23.5
20	27.2	50	24.7	80	47.2	110	56	140	20
21	26.5	51	24.6	81	47.2	111	55	141	16.5
22	24	52	24.6	82	47.4	112	53.4	142	13
23	22.7	53	25.1	83	47.9	113	51.6	143	9.5
24	19.4	54	25.6	84	48.5	114	51.8	144	6
25	17.7	55	25.7	85	49.1	115	52.1	145	2.5
26	17.2	56	25.4	86	49.5	116	52.5	146	0
27	18.1	57	24.9	87	50	117	53		
28	18.6	58	25	88	50.6	118	53.5		
29	20	59	25.4	89	51	119	54		

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4).

Table 5. Tolerances

	Range	State Station	Fleet Station
4 and 2 stroke vehicles: CO in MOL percent	0 to 2.0% 2 to 10.0%	±0.1% ±0.25%	±0.25% ±0.5%
4-stroke vehicles: HC as N-hexane in PPM	0 to 500 PPM 500 to 2000 PPM	±15 PPM ±50 PPM	±30 PPM ±100 PPM
2-stroke vehicles: HC as propane in PPM	0 to 25,000 PPM	±1250 PPM	±1250 PPM

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

Table 6. Repealed

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). See emergency amendment below (Supp. 94-4). Emergency amendment adopted effective December 23, 1994, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Emergency amendment expired, previous text placed back into effect effective June 21, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Table 6 repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

A. Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs), and all accompanying appendices, adopted as of June 30, 2017, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart B - Radon Emissions from Underground Uranium Mines.
3. Subpart C - Beryllium.
4. Subpart D - Beryllium Rocket Motor Firing.
5. Subpart E - Mercury.
6. Subpart F - Vinyl Chloride.
7. Subpart H - Radionuclides Other Than Radon from Department of Energy Facilities.
8. Subpart I - Radionuclide Emissions from Federal Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.
9. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
10. Subpart K - Radionuclide Emissions From Elemental Phosphorus Plants.
11. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
12. Subpart M - Asbestos.

§ 49-104. [Effective Until ninety-one days after adjournment] 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 not 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. Use 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 shall establish by rule a fee as a condition of licensure, including a maximum fee. 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, articles 8 and 9 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

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.

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.

History:

Amended by L. 2024, ch. 121,s. 5, eff. 4/9/2024. Amended by L. 2018, ch. 280,s. 2, eff. 8/3/2018. Repealed by L. 2018, ch. 225,s. 11, eff. August 1, 2023 unless the U.S. E.P.A. approves the department of environmental quality's clean water act section 405. Amended by L. 2018, ch. 225,s. 3, eff. 8/3/2018. Amended by L. 2018, ch. 192,s. 1, eff. 8/3/2018. Amended by L. 2017, ch. 288,s. 8, eff. 8/9/2017. Amended by L. 2017, ch. 112,s. 1, eff.

8/9/2017. Amended by L. 2016, ch. 128,s. 121, eff. 6/30/2016. Amended by L. 2015, ch. 208,s. 21, eff. 7/2/2015.

SSOT:

This section is set out more than once due to postponed, multiple, or conflicting amendments.

§ 49-447. Motor vehicle and combustion engine emission; standards

The director shall adopt rules setting forth standards controlling the release into the atmosphere of air contaminants from motor vehicles and combustion engines. Any rules adopted pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from motor vehicles or combustion engines. This authority shall apply to implement the provisions of sections 28-955 and 49-542.

§ 49-541. Definitions

In this article, unless the context otherwise requires:

1. "Area A" means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east

Township 7 north, range 2 west through range 5 east

Township 6 north, range 5 west through range 6 east

Township 5 north, range 5 west through range 7 east

Township 4 north, range 5 west through range 8 east

Township 3 north, range 5 west through range 8 east

Township 2 north, range 5 west through range 8 east

Township 1 north, range 5 west through range 7 east

Township 1 south, range 5 west through range 7 east

Township 2 south, range 5 west through range 7 east

Township 3 south, range 5 west through range 1 east

Township 4 south, range 5 west through range 1 east

(b) In Pinal county:

Township 1 north, range 8 east and range 9 east

Township 1 south, range 8 east and range 9 east

Township 2 south, range 8 east and range 9 east

Township 3 south, range 7 east through range 9 east

(c) In Yavapai county:

Township 7 north, range 1 east and range 1 west through range 2 west

Township 6 north, range 1 east and range 1 west

2. "Area B" means the area delineated in Pima county as township 11 and 12 south, range 12 through 14 east; township 13 through 15 south, range 11 through 16 east; township 16 south, range 12 through 16 east, excluding any portion of the Coronado national forest and the Saguaro national park.

3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of section 49-546 and has passed inspection.

4. "Certificate of waiver" means a uniquely numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.

5. "Conditioning mode" means either a fast idle test or a loaded test.

6. "Curb idle test" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.

7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.

8. "Fast idle test" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.

9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.

11. "Gross weight" has the same meaning prescribed in section 28-5431.

12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to section 49-545.

13. "Loaded test" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.

14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.

15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.

16. "Vehicle" means any automobile, truck, truck tractor, motor bus or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.

17. "Vehicle emissions control area" means area A or area B.

History:

Amended by L. 2014, ch. 89,s. 1, eff. 7/24/2014.

§ 49-542. [See Note] Emissions inspection program; powers and duties of director; administration; periodic inspection; minimum standards and rules; exceptions; definition

A. The director shall administer a comprehensive annual or biennial emissions inspection program that shall require the inspection of vehicles in this state pursuant to this article and applicable administrative rules. Such inspection is required for vehicles that are registered in area A and area B, for those vehicles owned by a person who is subject to section 15-1444 or 15-1627 and for those vehicles registered outside of area A or area B but used to commute to the driver's principal place of employment located within area A or area B. Inspection in other counties of this state shall commence on the director's approval of an application by a county board of supervisors for participation in such inspection program. In all counties with a population of three hundred fifty thousand or fewer persons, except for the portion of counties that contain any portion of area A, the director shall as conditions dictate provide for testing to determine the effect of vehicle-related pollution on ambient air quality in all communities with a metropolitan area population of twenty thousand persons or more. If such testing detects the violation of state ambient air quality standards by vehicle-related pollution, the director shall forward a full report of such violation to the president of the senate, the speaker of the house of representatives and the governor.

B. The state's annual or biennial emissions inspection program shall provide for vehicle inspections at official emissions inspection stations or at fleet emissions inspection stations or may provide for remote vehicle inspection. Each official inspection station in area A shall employ at least one technical assistant who is available during the station's hours of operation to provide assistance for persons who fail the emissions test. An official or fleet emissions inspection station permit shall not be sold, assigned, transferred, conveyed or removed to another location except on such terms and conditions as the director may prescribe. The director shall establish a pilot program to provide for remote vehicle inspections in area A and area B. The director shall operate the pilot program for at least three consecutive years and shall complete the pilot program before July 1, 2025. On completion of the pilot program, the director shall submit to the joint legislative budget committee and the office of the governor a report summarizing the results of the pilot program. The director shall submit the report before the department implements any full-scale remote vehicle inspection program and shall include in the report a summary of the data collected during the pilot program and a certification by the director that, based on the data collected during the pilot program, a full scale implementation of a remote vehicle inspection program will increase the efficiency and reduce the costs of the vehicle emissions inspection program.

C. Vehicles required to be inspected and registered in this state, except those provided for in section 49-546, shall be inspected, for the purpose of complying with the registration requirement pursuant to subsection D of this section, in accordance with this article not more than ninety days before each registration expiration date. A vehicle may be submitted voluntarily for inspection more than ninety days before the registration expiration date on payment of the prescribed inspection fee. That voluntary inspection may be considered as compliance with the registration requirement pursuant to subsection D of this section only on conditions prescribed by the director.

D. A vehicle shall not be registered until such vehicle has passed the emissions inspection and the tampering inspection prescribed in subsection G of this section or has been issued a certificate of waiver. A certificate of waiver shall only be issued one time to a vehicle after January 1, 1997. If any vehicle to be registered is being sold by a dealer licensed to sell motor vehicles pursuant to title 28, the cost of any inspection and any repairs necessary to pass the inspection shall be borne by the dealer. A dealer who is licensed to sell motor vehicles pursuant to title 28 and whose place of business is located in area A or area B shall not deliver any vehicle to the retail purchaser until the vehicle passes any inspection required by this article, except if the vehicle is a collectible vehicle and the retail purchaser obtains collectible vehicle or classic automobile insurance coverage as prescribed in subsection Z of this section before delivery or the vehicle is otherwise exempt under subsection J of this section.

E. On the registration of a vehicle that has complied with the minimum emissions standards pursuant to this section or is otherwise exempt under this section, the registering officer shall issue an air quality compliance sticker to the registered owner that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation or issue a modified year validating tab as prescribed by rule adopted by the department of transportation. Those persons who reside outside of area A or area B but who elect to test their vehicle or are required to test their vehicle pursuant to this section and who comply with the minimum emissions standards pursuant to this section or are otherwise exempt under this section shall remit a compliance form, as prescribed by the department of transportation, and proof of compliance issued at an official emissions inspection station to the department of transportation along with the appropriate fees. The department of transportation shall then issue the person an air quality compliance sticker that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation. The registering officer or the department of transportation shall collect an air quality compliance fee of $.25. The registering officer or the department of transportation shall deposit, pursuant to sections 35-146 and 35-147, the air

quality compliance fee in the state highway fund established by section 28-6991. The department of transportation shall deposit, pursuant to sections 35-146 and 35-147, any emissions inspection fee in the emissions inspection fund. This subsection does not apply to those vehicles registered pursuant to title 28, chapter 7, article 7 or 8, the sale of vehicles between motor vehicle dealers or vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

F. The director shall adopt minimum emissions standards pursuant to section 49-447 with which the various classes of vehicles shall be required to comply as follows:

1. For the purpose of determining compliance with minimum emissions standards in area B for motor vehicles other than diesel powered vehicles or constant four-wheel drive vehicles:

(a) A motor vehicle that is equipped with an onboard diagnostic system required by section 202(m) of the clean air act shall be required to take and pass an onboard diagnostic test or a steady state loaded test and curb idle test as approved by the director.

(b) A motor vehicle with a model year of 1981 or later, other than a vehicle covered by subdivision (a) of this paragraph, shall be required to take and pass a steady state loaded test and curb idle test.

(c) A motor vehicle, other than a vehicle covered by subdivision (a) or (b) of this paragraph, shall be required to take and pass a curb idle test.

2. For the purposes of determining compliance with minimum emissions standards and functional tests in area A for motor vehicles other than diesel powered vehicles or constant four-wheel drive vehicles:

(a) A motor vehicle that is equipped with an onboard diagnostic system required by section 202(m) of the clean air act shall be required to take and pass an onboard diagnostic test or a transient loaded test as approved by the director.

(b) A motor vehicle with a model year of 1981 or later,with a gross vehicle weight rating of less than eight thousand five hundred one pounds, other than a vehicle covered by subdivision (a) of this paragraph, shall be required to take and pass a transient loaded test. A motor vehicle with a model year of 1981 or later, with a gross vehicle weight rating of more than eight thousand five hundred one pounds, other than a vehicle covered by subdivision (a) of this paragraph, shall be required to take and pass a steady state loaded test, a curb idle test or another test approved under the federal clean air act.

(c) A motor vehicle, other than a vehicle covered by subdivision (a) or (b) of this paragraph, shall be required to take and pass a steady state loaded test and curb idle test.

(d) Motor vehicles by specific class or model year shall be required to take and pass any of the following tests:

(i) An evaporative system purge test.

(ii) An evaporative system integrity test.

3. For the purpose of determining compliance with minimum emissions standards in area A or area B for diesel powered motor vehicles:

(a) A diesel powered motor vehicle that is equipped with an onboard diagnostic system required by section 202(m) of the clean air act shall be required to take and pass an onboard diagnostic test or an opacity test as approved by the director.

(b) A diesel powered motor vehicle, other than a vehicle covered by subdivision (a) of this paragraph, shall be required to take and pass an emissions test as follows:

(i) A loaded, transient or any other form of test as provided for in rules adopted by the director for vehicles with a gross vehicle weight rating of eight thousand five hundred pounds or less.

(ii) A test that conforms with the society for automotive engineers standard J1667 for vehicles with a gross vehicle weight rating of more than eight thousand five hundred pounds.

4. A constant four-wheel drive vehicle shall be required to take and pass a curb idle test or an onboard diagnostic test.

5. Fleet operators must comply with this section, except that used vehicles, other than diesel powered vehicles, sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit under section 49-546 shall be tested as follows:

(a) A motor vehicle with a model year of 1980 or earlier shall take and pass a curb idle test.

(b) A motor vehicle with a model year of 1981 or later, other than a vehicle that is equipped with an onboard diagnostic system that is required by section 202(m) of the clean air act, shall take and pass a curb idle test and a twenty-five hundred revolutions per minute unloaded test.

6. Vehicles owned or operated by the United States, this state or a political subdivision of this state shall comply with this subsection without regard to whether those vehicles are required to be registered in this state, except that alternative fuel vehicles of a school district that is located in area A, other than vehicles equipped with an onboard diagnostic system required by section 202(m) of the clean air act, shall be required to take and pass the curb idle test and the loaded test.

7. A diesel powered motor vehicle with a gross vehicle weight of more than twenty-six thousand pounds and for which gross weight fees are paid pursuant to title 28, chapter 15, article 2 in area A shall not be allowed to operate in area A unless it was manufactured in or after the 1988 model year or is powered by an engine that is certified to meet or surpass emissions standards contained in 40 Code of Federal Regulations section 86.088-11 in effect on July 1, 1995. This paragraph does not apply to vehicles that are registered pursuant to title 28, chapter 7, article 7 or 8.

G. In addition to an emissions inspection, a vehicle is subject to a tampering inspection as prescribed by rules adopted by the director if the vehicle was manufactured after the 1974 model year.

H. Vehicles required to be inspected shall undergo a functional test of the gas cap to determine if the cap holds pressure within limits prescribed by the director. This subsection does not apply to any diesel powered vehicle.

I. Motor vehicles failing the initial or subsequent test are not subject to a penalty fee for late registration renewal if the original testing was accomplished before the expiration date and if the registration renewal is received by the motor vehicle division or the county assessor within thirty days after the original test.

J. The director may adopt rules for purposes of implementation, administration, regulation and enforcement of this article including:

1. The submission of records relating to the emissions inspection of vehicles inspected by another jurisdiction in accordance with another inspection law and the acceptance of such inspection for compliance with the provisions of this article.

2. The exemption from inspection of:

(a) Except as otherwise provided in this subdivision, a motor vehicle manufactured in or before the 1966 model year. If the United States environmental protection agency issues a vehicle emissions testing exemption for motor vehicles manufactured in or before the 1974 model

year for purposes of the state implementation or maintenance plan for air quality, a motor vehicle manufactured in or before the 1974 model year is exempt from inspection.

(b) New vehicles originally registered at the time of initial retail sale and titling in this state pursuant to section 28-2153 or 28-2154.

(c) Vehicles registered pursuant to title 28, chapter 7, article 7 or 8.

(d) New vehicles before the sixth registration year after initial purchase or lease.

(e) Vehicles that are outside of this state at the time of registration, except the director by rule may require testing of those vehicles within a reasonable period of time after those vehicles return to this state.

(f) Golf carts.

(g) Electrically powered vehicles.

(h) Vehicles with an engine displacement of less than ninety cubic centimeters.

(i) The sale of vehicles between motor vehicle dealers.

(j) Vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

(k) Collectible vehicles.

(l) Motorcycles.

(m) Cranes and oversize vehicles that require permits pursuant to section 28-1103 or 28-1144.

(n) Vehicles that are not in use and that are owned by residents of this state while on active military duty outside of this state.

3. Compiling and maintaining records of emissions test results after servicing.

4. A procedure that allows the vehicle service and repair industry to compare the calibration accuracy of its emissions testing equipment with the department's calibration standards.

5. Training requirements for automotive repair personnel using emissions measuring equipment whose calibration accuracy has been compared with the department's calibration standards.

6. Any other rule that may be required to accomplish this article.

K. The director, after consultation with automobile manufacturers and the vehicle service and repair industry, shall establish by rule a definition of "vehicle maintenance and repairs" for motor vehicles subject to inspection under this article. The definition shall specify repair procedures that, when implemented, will reduce vehicle emissions.

L. The director shall adopt rules that specify that the estimated retail cost of all recommended maintenance and repairs shall not exceed the amounts prescribed in this subsection, except that if a vehicle fails a tampering inspection there is no limit on the cost of recommended maintenance and repairs. The director shall issue a certificate of waiver for a vehicle if the director has determined that all recommended maintenance and repairs have been performed and that the vehicle has failed any reinspection that may be required by rule. If the director has determined that the vehicle is in compliance with minimum emissions standards or that all recommended maintenance and repairs for compliance with minimum emissions standards have been performed, but that tampering discovered at a tampering inspection has not been repaired, the director may issue a certificate of waiver if the owner of the vehicle provides to the director a written statement from an automobile parts or repair business that an emissions control device that is necessary to repair the tampering is not available and cannot be obtained from any usual source of supply before the vehicle's current registration expires. Rules adopted by the director for the purpose of establishing the estimated retail cost of all recommended maintenance and repairs pursuant to this subsection shall specify that:

1. In area A the cost shall not exceed:

(a) $500 for a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds.

(b) $500 for a diesel powered vehicle with tandem axles.

(c) For a vehicle other than a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds and other than a diesel powered vehicle with tandem axles:

(i) $200 for such a vehicle manufactured in or before the 1974 model year.

(ii) $300 for such a vehicle manufactured in the 1975 through 1979 model years.

(iii) $450 for such a vehicle manufactured in or after the 1980 model year.

2. In area B the cost shall not exceed:

(a) $300 for a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds.

(b) $300 for a diesel powered vehicle with tandem axles.

3. For a vehicle other than a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds and other than a diesel powered vehicle with tandem axles:

(a) $50 for such a vehicle manufactured in or before the 1974 model year.

(b) $200 for such a vehicle manufactured in the 1975 through 1979 model years.

(c) $300 for such a vehicle manufactured in or after the 1980 model year.

M. Each person whose vehicle has failed an emissions inspection shall be provided a list of those general recommended repair and maintenance procedures for vehicles that are designed to reduce vehicle emissions levels.

N. Notwithstanding any other provisions of this article, the director may adopt rules allowing exemptions from the requirement that all vehicles must meet the minimum standards for registration.

O. The director of environmental quality shall establish, in cooperation with the assistant director for the motor vehicle division of the department of transportation:

1. An adequate method for identifying bona fide residents residing outside of area A or area B to ensure that such residents are exempt from compliance with the inspection program established by this article and rules adopted under this article.

2. A written notice that shall accompany the vehicle registration application forms that are sent to vehicle owners pursuant to section 28-2151 and that shall accompany or be included as part of the vehicle emissions test results that are provided to vehicle owners at the time of the vehicle emissions test. This written notice shall describe at least the following:

(a) The restriction of the waiver program to one time per vehicle and a brief description of the implications of this limit.

(b) The availability and a brief description of the vehicle repair and retrofit program established pursuant to section 49-558.02.

(c) Notice that many vehicles carry extended warranties for vehicle emissions systems, and those warranties are described in the vehicle's owner's manual or other literature.

P. Notwithstanding any other law, if area A or area B is reclassified as an attainment area, emissions testing conducted pursuant to this article shall continue for vehicles registered inside that reclassified area, vehicles owned by a person who is subject to section 15-1444 or 15-1627 and vehicles registered outside of that reclassified area but used to commute to the driver's principal place of employment located within that reclassified area.

Q. A fleet operator who is issued a permit pursuant to section 49-546 may electronically transmit emissions inspection data to the department of transportation pursuant to rules adopted by the director of the department of transportation in consultation with the director of environmental quality.

R. The director shall prohibit a certificate of waiver pursuant to subsection L of this section for any vehicle that has failed inspection in area A or area B due to the catalytic converter system.

S. The director shall establish provisions for rapid testing of certain vehicles and to allow fleet operators, singly or in combination, to contract directly for vehicle emissions testing.

T. Each vehicle emissions inspection station in area A shall have a sign posted to be visible to persons who are having their vehicles tested. This sign shall state that enhanced testing procedures are a direct result of federal law.

U. The initial adoption of rules pursuant to this section shall be deemed emergency rules pursuant to section 41-1026.

V. The director of environmental quality and the director of the department of transportation shall implement a system to exchange information relating to the waiver program, including information relating to vehicle emissions test results and vehicle registration information.

W. Any person who sells a vehicle that has been issued a certificate of waiver pursuant to this section after January 1, 1997 and who knows that a certificate of waiver has been issued after January 1, 1997 for that vehicle

shall disclose to the buyer before completion of the sale that a certificate of waiver has been issued for that vehicle.

X. Vehicles that fail the emissions test at emission levels higher than twice the standard established for that vehicle class by the department pursuant to section 49-447 are not eligible for a certificate of waiver pursuant to this section unless the vehicle is repaired sufficiently to achieve an emissions level below twice the standard for that class of vehicle.

Y. If an insurer notifies the department of transportation of the cancellation or nonrenewal of collectible vehicle or classic automobile insurance coverage for a collectible vehicle, the department of transportation shall cancel the registration of the vehicle and the vehicle's exemption from emissions testing pursuant to this section unless evidence of coverage is presented to the department of transportation within sixty days.

Z. For the purposes of this section, "collectible vehicle" means a vehicle that complies with both of the following:

1. Either:

(a) Bears a model year date of original manufacture that is at least fifteen years old.

(b) Is of unique or rare design, of limited production and an object of curiosity.

2. Meets both of the following criteria:

(a) Is maintained primarily for use in car club activities, exhibitions, parades or other functions of public interest or for a private collection and is used only infrequently for other purposes.

(b) Has a collectible vehicle or classic automobile insurance coverage that restricts the collectible vehicle mileage or use, or both, and requires the owner to have another vehicle for personal use.

History:

Amended by L. 2024, ch. 150,s. 6, eff. on the occurrence of the condition prescribed by Laws 2023, chapter 78, section 1. Amended by L. 2023, ch. 78,s. 1, eff. 4/18/2023. Amended by L. 2021, ch. 27,s. 3, eff. if, on or before July 1, 2027 the United States environmental protection agency approves the proposed modifications to the vehicle emissions testing program protocols as part of the state implementation plan for air quality. Amended by L. 2019, ch. 141,s. 2, eff. 8/27/2019. Amended by L. 2017, ch. 29,s. 2, eff.

if, on or before July 1, 2020, the United States environmental protection agency approves the proposed modifications to the vehicle emissions testing program protocols as part of the state implementation plan for air quality. Amended by L. 2014, ch. 89,s. 3, eff. if, on or before July 1, 2020, the United States environmental protection agency approves the proposed modifications to the vehicle emissions testing program protocols as part of the state implementation plan for air quality. L11, Ch. 163, sec 2 (effective upon contingency described in L08, Ch. 64, sec 1).

SSOT:

This section is set out more than once due to postponed, multiple, or conflicting amendments.

STATE LAND DEPARTMENT
Title 12, Chapter 5, Article 23

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: July 15, 2024

SUBJECT: **STATE LAND DEPARTMENT**
Title 12, Chapter 5, Article 23

Summary

This Five-Year Review Report from the State Land Department (Department) relates to fifteen (15) rules in Title 12, Chapter 5, Article 23 regarding the Board of Appeals. Specifically, these rules outline the criteria, processes, and procedures for filing appeals with the Land Department Board of Appeals (Board).

In the prior 5YRR for these rules originally due by February 2020, and which was approved by the Council in June 2020, the Department did not propose to amend any rules. As a reminder, the next report for these rules was to be completed by February 2025. However, at the June 6, 2023 Council Meeting, the Council voted pursuant to A.R.S. § 41-1056(D) to require the Department to conduct its review of Title 12, Chapter 5, Article 23 outside the 5YRR process and set the new deadline for the report for November 1, 2023. Subsequently, at the October 31, 2023 Study Session, the Council voted pursuant to A.R.S. § 41-1056(F) to grant the Department an extension to submit the report on Title 12, Chapter 5, Article 23 by April 30, 2024. The Department submitted a report for Title 12, Chapter 5, Article 23 on April 23, 2024, which is now before the Council.

Proposed Action

In the current report, the Department is not proposing to take any action regarding the rules.

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 determined that there have been no additional economic impacts since the rules were amended in 2008, when it was predicted that the amendments would have minimum economic impact because the rule did not impose any fees or regulations and the amendments were non-substantive.

Stakeholders are identified as the Department, individuals looking to file an appeal and those engaged in the appeal process, and Board members

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 the probable benefit of these rules outweighs any cost associated with it and that the rules meet the stated objectives.

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 consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

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 there are no corresponding federal laws.

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 indicates the rules reviewed in this report were not adopted after July 29, 2010. As such, analysis of this factor is not required under A.R.S. § 41-1056(A)(11).

11. Conclusion

This 5YRR from the Department relates to fifteen (15) rules in Title 12, Chapter 5, Article 23 regarding the Board of Appeals. Specifically, these rules outline the criteria, processes, and procedures for filing appeals with the Land Department Board of Appeals. The Department indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. As such, the Department does not propose to take any action regarding these rules.

Council staff recommends approval of this report.

Katie Hobbs
Governor

Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner

Arizona State Land Department
1110 West Washington Street, Phoenix, AZ 85007
(602) 542-4631

April 23, 2024

Jessica Klein, Chairperson
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

Re: Five-Year Rule Review Report for A.A.C. Title 12, Chapter 5, Article 23

Dear Chairperson Klein:

Enclosed, please find the Arizona State Land Department's ("Department") five-year rule review report for A.A.C. Title 12, Chapter 5, Article 23. The Department has reviewed all rules within Article 23. The Department does not intend for any rules to expire under A.R.S. § 41-1056(J). The Department certifies it is in compliance with A.R.S. § 41-1091.

Please contact Lynn Córdova at 602-542-2654 or via email at lcordova@azland.gov with any questions regarding this report.

Sincerely,

Simone Westbrook Hall
Deputy Commissioner

Arizona State Land Department

5 YEAR REVIEW REPORT

Title 12. Natural Resources

Chapter 5. State Land Department

Article 23. Board of Appeals

April 23, 2024

1. Authorization of the rule by existing statutes:

A.R.S. § 37-213(E)

2. The objective of each rule:

Rule	Objective
R12-5-2301	This rule defines terms used throughout this Article.
R12-5-2302	This rule explains the process and criteria for filing an appeal under this Article.
R12-5-2303	This rule describes the timeframe for setting a hearing date, service of a notice of hearing, and the contents for the notice of hearing.
R12-5-2304	This rule establishes requirements for witnesses, exhibits, and testimony to be used in hearing.
R12-5-2305	This rule outlines the criteria for and process of hearing continuances.
R12-5-2306	This rule explains how timeframes are computed as they relate to filing and service of process deadlines.
R12-5-2307	This rule outlines the requirements and determination of service of process documents other than subpoenas.
R12-5-2308	This rule outlines the requirements for a subpoena and the determination of service of process of subpoenas, as well as objections thereto.
R12-5-2309	This rule outlines the procedures and deadline for filing motions, as well as the party responsible for ruling on certain types of motions.
R12-5-2310	This rule explains the requirements to record and conduct a hearing.
R12-5-2311	This rule outlines the evidentiary process of the hearing.
R12-5-2312	This rule describes the process for a Board member to object to a decision made by the Chairperson.
R12-5-2313	This rule prohibits certain ex parte communication with Board members and the consequences thereof.
R12-5-2314	This rule outlines the time and content requirements of final Board decisions.
R12-5-2315	This rule outlines procedures, grounds, and time limits that apply to a motion for a rehearing o review of a decision of the Board.

3. Are the rules effective in achieving their objectives? **Yes** _x_ **No** __

The Department finds all rules within Article 23 are effective in achieving their objectives.

4. Are the rules consistent with other rules and statutes? **Yes** x **No** __

The Department finds all rules within Article 23 are consistent with other rules and statutes.

5. Are the rules enforced as written? **Yes** x **No** __

The Department finds all rules within Article 23 are enforced as written.

6. Are the rules clear, concise, and understandable? **Yes** x **No** __

The Department finds all rules within Article 23 to be clear, concise, and understandable.

7. Has the agency received written criticisms of the rules within the last five years? **Yes** __ **No** x

The Department has not received any written criticisms of the rules within the last five years.

8. Economic, small business, and consumer impact comparison:

Relative to all rules within Article 23, the Department offers the following:

In 2008, it was predicted that the proposed amendments to this rule would have minimum economic impact because the rule did not impose any fees or regulations and the amendments were non-substantive. There have been no additional economic impacts since the amendments were made in 2008.

9. Has the agency received any business competitiveness analyses of the rules? **Yes** __ **No** x

The Department has not received any business competitiveness analyses of the rules within Article 23.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

In the previous five-year review report in 2020, the Department proposed to retain all rules and did not recommend any changes to rules within Article 23.

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:

Relative to all rules within Article 23, the Department offers the following:

The Department has determined the probable benefit of these rules outweighs any cost associated with it and that the rules meet the stated objectives.

12. Are the rules more stringent than corresponding federal laws? **Yes** __ **No** __ **N/A** x

Relative to all rules within Article 23, the Department offers the following:

There are no corresponding federal laws applicable to this Article.

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:

Relative to all rules within Article 23, the Department offers the following:

The rules reviewed in this report were not adopted after July 29, 2010, therefore this factor does not apply.

14. **Proposed course of action:**

Rule	Proposed Course of Action
R12-5-2301	The Department plans to retain the rule as written.
R12-5-2302	The Department plans to retain this rule as written.
R12-5-2303	The Department plans to retain this rule as written.
R12-5-2304	The Department plans to retain this rule as written.
R12-5-2305	The Department plans to retain this rule as written.
R12-5-2306	The Department plans to retain this rule as written.
R12-5-2307	The Department plans to retain this rule as written.
R12-5-2308	The Department plans to retain this rule as written.
R12-5-2309	The Department plans to retain this rule as written.
R12-5-2310	The Department plans to retain this rule as written.
R12-5-2311	The Department plans to retain this rule as written.
R12-5-2312	The Department plans to retain this rule as written.
R12-5-2313	The Department plans to retain this rule as written.
R12-5-2314	The Department plans to retain this rule as written.
R12-5-2315	The Department plans to retain this rule as written.

93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2214. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-863 repealed, new Section R12-5-863 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2214 renumbered from Section R12-5-863 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2215. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-864 repealed, new Section R12-5-864 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2215 renumbered from Section R12-5-864 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2216. Abandonment -- Other Uses
As provided for in A.R.S. § 27-667(C) any well drilled for geothermal resource which has penetrated fresh water zones may be disposed of as a fresh water well subject to the following conditions:

1. State's lessee must file written request for such use with the Department.
2. Condition of the hole must be such that plugging back to fresh water zone can be safely accomplished.
3. Must meet the requirements of the rules and regulations of the Department pertaining to such use.
4. Must meet the requirements of the Commission's rules and regulations pertaining to disposal of groundwater.

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-865 repealed, new Section R12-5-865 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2216 renumbered from Section R12-5-865 (Supp. 93-3).

R12-5-2217. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-866 repealed, new Section R12-5-866 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2217 renumbered from Section R12-5-866 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2218. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2218 renumbered from Section R12-5-867 (Supp. 93-3).

R12-5-2219. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2219 renumbered from Section R12-5-868 (Supp. 93-3).

R12-5-2220. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2220 renumbered from Section R12-5-869 (Supp. 93-3).

R12-5-2221. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2221 renumbered from Section R12-5-870 (Supp. 93-3).

R12-5-2222. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2222 renumbered from Section R12-5-871 (Supp. 93-3).

R12-5-2223. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2223 renumbered from Section R12-5-872 (Supp. 93-3).

R12-5-2224. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2224 renumbered from Section R12-5-873 (Supp. 93-3).

ARTICLE 23. BOARD OF APPEALS

R12-5-2301. Definitions
Unless the context requires otherwise, in this Article:

1. "Appellant" means the person that files a notice of appeal with the Clerk under A.R.S. § 37-215.
2. "Board" means the Land Department Board of Appeals appointed by the Governor under A.R.S. § 37-213(A).
3. "Chairperson" means the Chairperson or, in the Chairperson's absence or by designation, the Vice-chairperson of the Board.
4. "Clerk" means the person designated by the Board to handle administrative matters for the Board.
5. "Commissioner" means the State Land Commissioner appointed under A.R.S. § 37-131, or the Commissioner's designee.
6. "Department" means the State Land Department.
7. "Good cause" means a reason that the Board determines is substantial enough to afford a legal excuse.
8. "Party" has the same meaning as prescribed in A.R.S. § 41-1001.
9. "Person" means an individual, limited liability company, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, group acting as a unit, and any department, agency, or instrumentality of the state or a political subdivision.

Historical Note
Adopted effective September 9, 1983 (Supp. 83-5). Section R12-5-2301 renumbered from Section R12-5-901 (Supp. 93-3). Former Section R12-5-2301 renumbered to R12-5-2315, new Section R12-5-2301 adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2302. Notice of Appeal
A. A person that files a notice of appeal under A.R.S. § 37-215 shall ensure that the notice is written and contains a clear and

concise statement of the grounds for appeal and the specific relief requested.

B. If a notice of appeal regards a final decision of the Commissioner relating to classification or appraisal of lands or improvements, the person filing the notice of appeal shall file it with the Commissioner under this Article.

C. If a notice of appeal regards a final decision of the Commissioner not relating to classification or appraisal of lands or improvements, the person filing the notice of appeal shall file it with the Department under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note
Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2303. Notice of Hearing

A. Setting a hearing date. Within 10 days after receipt of a notice of appeal under A.R.S. § 37-215 and R12-5-2302(B), the Clerk shall set a date for the hearing.

B. Service of a notice of hearing. At least 30 days before a hearing, the Clerk shall serve notice of the hearing, by certified mail or personal service, to the appellant, Department, and all other parties to the appeal.

C. Contents of a notice of hearing. The Clerk shall ensure that a notice of hearing contains a statement:
1. Identifying the Board, parties, and matters asserted;
2. Establishing the date, time, and place of the hearing;
3. Identifying the legal authority and jurisdiction under which the hearing is to be held;
4. Advising the parties of the requirements of R12-5-2305; and
5. Referencing the particular statutes and rules involved.

Historical Note
Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 88, effective February 17, 2003 (Supp. 02-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2304. Prehearing Disclosure

A. Witnesses and exhibits. At least 15 days before the hearing date, each party shall:
1. File with the Clerk:
   a. A list of all witnesses who may be called to testify on behalf of the party, and
   b. Eight copies of all documentary exhibits to be offered on behalf of the party; and
2. Serve upon each other party a copy of the list of witnesses and a list of all exhibits to be offered on behalf of the party.

B. The Board shall exclude the testimony of a witness and the admission of an exhibit not disclosed under subsection (A), unless the Board determines that admission of the evidence is in the interest of fairness and justice.

Historical Note
Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2305. Continuances

A. General. The Chairperson may, for good cause, continue or reschedule a hearing on the Chairperson's own motion, application of a party, or stipulation of the parties.

B. Application for continuance.
1. Filing. To obtain a continuance of a hearing, a party shall file an application for continuance with the Clerk and serve a copy of the application on all parties no later than 10 days before the scheduled hearing. For good cause, the Chairperson may allow a party to file and serve an application for continuance less than 10 days before the scheduled hearing.
2. Contents. A party filing an application for continuance shall ensure that the application states why the continuance is requested, why a stipulation from adverse parties was not obtained, and the amount of time requested.
3. Response and reply. An opposing party may file and serve a response within five days after service of an application for continuance. The Board shall permit a reply that is filed and served within five days after the response is served.

C. Stipulations. The parties may stipulate to a continuance. The Board shall accept a stipulation that is filed no later than 72 hours before the time scheduled for the hearing.

D. Time limits. Unless the parties agree, the Board shall not grant a continuance if granting the continuance causes the hearing not to be conducted in compliance with A.R.S. § 37-215(C).

Historical Note
Adopted effective November 27, 1995 (Supp. 95-4). Typographical correction made to A.R.S. reference in R12-5-2305(E) (Supp. 96-3). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2306. Computation of Time; Additional Time After Service by Mail

A. Computation. To compute any period prescribed or allowed by this Article or order of the Board, the day of the act, event, or default after which the period begins to run is not included. The last day of the period is included, unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and legal holidays are excluded in the computation.

B. Service by mail. If a party has a right or is required to do some act or proceed within a prescribed period after service of a notice or other paper and if the notice or paper is served by mail, five calendar days are added to the prescribed period.

Historical Note
Adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2307. Service of Documents Other than Subpoenas

A. Method of service. Unless otherwise specified in this Article, a person shall serve a document other than a subpoena by:
1. Personal service with receipt or certificate of delivery,
2. Legible fax with confirmed receipt, or
3. Regular mail.

B. Service on attorney. If a party has appeared through an attorney, service upon the attorney is deemed service upon the party.

C. Time of service. Service is made at the time a document is:
1. Personally served;
2. Faxed to the number contained in Board's records for the person being served; or
3. Deposited in the United States mail, postage prepaid, in a sealed envelope addressed to the person being served, at the person's address of record.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2308. Subpoenas

A. Issuance of a subpoena. Upon written application of a party or on the Chairperson's own motion, the Chairperson may issue a subpoena requiring the attendance and testimony of a witness, production of documentary or other tangible evidence, or both.

B. Specificity required. A party that applies for a subpoena to compel production of documentary or other tangible evidence shall ensure that the application specifically identifies the books, papers, documents, or other evidence to be produced.

C. Service of a subpoena. A party that applies for a subpoena shall ensure that the subpoena is personally served. The person serving a subpoena shall provide proof of service by filing with the Board a certified statement of the date and manner of service and the name of the person served.

D. Objection to a subpoena. A party or the person served with a subpoena who objects to the subpoena, or a portion of the subpoena, may file a written objection with the Board. The person filing an objection shall:

1. File it within five days after service of the subpoena or at the beginning of the hearing, whichever occurs first; and
2. Ensure that the objection states why the subpoena is unreasonable or oppressive or how the desired testimony or evidence may be obtained by an alternative method.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2309. Motions

A. Generally. A party that requests an order or other relief from the Board shall file a motion. Unless made during a hearing, a motion shall be made in writing at least 10 days before the hearing. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion and the relief or order sought.

B. Response to motion; reply. A party may file a response to a pre-hearing motion within five days after service of the pre-hearing motion. The responding party shall serve the response on the moving party. The moving party may file a reply within five days after service of the response.

C. Affidavits. If a party makes a motion that relies on facts that are neither apparent in the record nor subject to official notice, the party shall support the motion by affidavit or other satisfactory evidence.

D. Rulings on motions. The Board shall consider a pre-hearing motion on the written materials submitted by the parties, unless the Chairperson directs otherwise. The Chairperson may rule on a procedural motion. The Board shall rule on a non-procedural motion.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2310. Hearing

A. Recording of hearing. The Board shall ensure that a hearing record is made by tape recorder or stenographer.

B. Order of appearance. The Chairperson shall designate the order in which parties introduce their evidence.

C. Improper conduct. It is improper conduct to fail to comply with an order of the Chairperson or to disrupt a hearing. A person who engages in improper conduct shall be excluded from the hearing if the Chairperson determines that exclusion is necessary to facilitate the hearing.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2311. Evidence

A. Generally. A witness at a hearing shall testify under oath or affirmation. To encourage a full and true disclosure of the facts, the Chairperson shall ensure that all parties have the right to present oral or documentary evidence and conduct cross-examination. The Chairperson shall admit evidence that the Chairperson determines is relevant, probative, and material and rule upon offers of proof. The Chairperson shall exclude evidence the Chairperson determines is irrelevant, immaterial, or unduly repetitious.

B. Evidence. The Chairperson may conduct a hearing in an informal manner without adherence to the rules of evidence required in judicial proceedings.

C. Official notice. The Board may take official notice of any matter than might be judicially noticed by a superior court of Arizona or any matter that is peculiarly within the knowledge of the Board as an expert body.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2312. Objection to Decision by Chairperson

If any member of the Board objects to a decision made by the Chairperson under this Article, the Board member may request that the Board vote on the matter in question and the Chairperson shall submit the matter to a vote of the Board.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2313. Ex Parte Communications

A. Prohibitions. A party shall not communicate, directly or indirectly, orally or in writing, with a member of the Board about any substantive issue relating to a proceeding before the Board unless:

1. All parties are present, either personally or by an attorney;
2. It is during a scheduled proceeding where an absent party fails to appear after proper notice; or
3. It is by written motion with a copy to all parties.

B. Record. A Board member who receives an ex parte communication shall place in the public record of the proceeding:

1. A copy of the ex parte communication if the communication is written; or
2. A summary of the substance of the ex parte communication if the communication is oral.

C. Action by Board. Upon receipt of an ex parte communication by a member of the Board, the Board, to the extent consistent with the interests of justice, may require the party making the ex parte communication to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by the violation.

Historical Note

Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2314. Decision of the Board

A. Time limit. Unless the parties stipulate otherwise, the Board shall render its final decision within 60 days after the hearing.

B. Contents. The Board shall include findings of facts and conclusions of law, separately stated, in the Board's decision.

Historical Note
Adopted effective November 27, 1995 (Supp. 95-4).
Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2315. Rehearing or Review of Decision

A. Generally. Except as provided in subsection (G), within 30 days after service of notice of a final decision issued by the Board, a party may file with the Board a written motion for rehearing or review of the decision. A party is not required to file a motion for rehearing or review of a decision to exhaust the party's administrative remedies. A party may seek judicial review of the Board's final decision under A.R.S. Title 12, Chapter 7, Article 6.

B. Amendment of motion; response; oral argument. A party may amend a motion for rehearing or review at any time before the Board rules on the motion. Another party may file a response to a motion for rehearing or review within 10 days after service of the motion or amended motion. A party shall ensure that a motion or response is supported by a memorandum discussing legal and factual issues. Oral argument may be requested by either party or the Board.

C. Grounds for rehearing or review. The Board 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 Board, its staff, or the prevailing party;
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; or
6. The findings of fact or decision is not justified by the evidence or is contrary to law.

D. Affirmation or modification of decision; grant of rehearing or review. The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (C). The Board 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. Board-initiated rehearing or review. Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of the decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in a motion. The Board shall specify with particularity the grounds on which a rehearing or review is granted under this subsection.

F. Affidavits. When a party bases a motion for rehearing or review upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Chairperson for a maximum 10 days for good cause or by written stipulation of the parties. The Board may permit a party to file a reply affidavit.

G. Exigency. If, in a particular decision, the Board 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 may be issued as a final decision without an opportunity for a rehearing or review.

H. Time limits. The Board shall rule on a motion for review or rehearing within 90 days after it is filed. If the Board grants a rehearing or review, the Board shall conduct the rehearing or review within 90 days after issuing the order granting the rehearing or review.

Historical Note
Adopted effective September 9, 1983 (Supp. 83-5). Section R12-5-2301 renumbered from Section R12-5-901 (Supp. 93-3). Section R12-5-2315 renumbered from R12-5-2301 and amended effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

ARTICLE 24. EXPIRED

Article 24, consisting of R12-5-2401 through R12-5-2405, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2401. Expired

Historical Note
Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2402. Expired

Historical Note
Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2403. Expired

Historical Note
Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2404. Expired

Historical Note
Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2405. Expired

Historical Note
Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 8, 1993

Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 2. Investigation, Classification and Appraisal (Refs & Annos)

A.R.S. § 37-213

§ 37-213. Board of appeals

Currentness

A. There is established a board of appeals consisting of five members appointed by the governor pursuant to § 38-211. No more than three members shall be appointed from the same political party. Members shall be appointed as follows:

1. One member from each of three districts into which the state is divided as follows:

(a) First district: Pima, Santa Cruz, Cochise, Graham and Greenlee counties.

(b) Second district: Maricopa, Yuma, La Paz, Pinal and Gila counties.

(c) Third district: Mohave, Yavapai, Coconino, Apache and Navajo counties.

2. The remaining two members of the board of appeals shall be appointed at large by the governor.

B. To be eligible for appointment as a member of the board a person shall be experienced in the classification and appraisal of all types of real estate.

C. The term of office of each member is six years, ending on the third Monday in January of the sixth year after his appointment. Appointments to fill vacancies resulting other than from expiration of term shall be for the unexpired portion of the term only.

D. Each member of the board is eligible to receive compensation as determined pursuant to § 38-611.

E. The board may adopt administrative rules necessary to perform its duties prescribed by law.

Credits

Amended by Laws 1970, Ch. 204, § 143; Laws 1972, Ch. 163, § 38; Laws 1981, 1st S.S., Ch. 1, § 9; Laws 1983, Ch. 291, § 11, eff. April 27, 1983; Laws 1984, Ch. 228, § 1.

A. R. S. § 37-213, AZ ST § 37-213

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Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

End of Document

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G-10.

STATE LAND DEPARTMENT
Title 12, Chapter 5, Articles 18-22

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: July 15, 2024

SUBJECT: **STATE LAND DEPARTMENT**
Title 12, Chapter 5, Articles 18-22

Summary

This Five-Year Review Report (5YRR) from the State Land Department (Department) relates to twenty-eight (28) rules in Title 12, Chapter 5, Articles 18-22. Specifically these Articles relate to the following:

- Article 18 - Mineral Leases
- Article 19 - Prospecting Permits
- Article 20 - Common Mineral Materials and Natural Products
- Article 21 - Oil and Gas Leases
- Article 22 - Geothermal Resources

In the prior 5YRR for Articles 18, which was approved by the Council in April 2017, the Department proposed to amend the rules to improve clarity, conciseness, remove redundant statutory language, and make other minor changes by February 2019. The Department indicates it did not complete this course of action.

In the prior 5YRR for Article 19, which was approved by the Council in April 2017, the Department did not propose to amend the rules.

In the prior 5YRR for Article 20, which was approved by the Council in January 2020, the Department indicated it planned to amend the rules R12-5-2003 and R12-5-2007 not later than June 2020. The Department indicates it did not complete the proposed course of action.

In the prior 5YRR for Article 21, which was approved by the Council in January 2020, the Department indicated it planned to amend the rule R12-5-2104 not later than June 2020. The Department indicates it did not complete the proposed course of action.

In the prior 5YRR for Article 22, which was approved by the Council in May 2019, the Department did not propose to amend the rules.

As a reminder, at the June 6, 2023 Council Meeting, the Council voted pursuant to A.R.S. § 41-1056(D) to require the Department to conduct its review of Title 12, Chapter 5, Articles 18-22 outside the 5YRR process and set the new deadline for the report for November 1, 2023. Subsequently, at the October 31, 2023 Study Session, the Council voted pursuant to A.R.S. § 41-1056(F) to grant the Department an extension to submit the report on Title 12, Chapter 5, Articles 18-22 by April 30, 2024. The Department submitted a report for Title 12, Chapter 5, Articles 18-22 on April 23, 2024, which is now before the Council.

Proposed Action

In the current report, the Department is proposing to take the following actions regarding the rules in these Articles:

Article 18

- R12-5-1801
    - The rule could be more consistent and more effective by removing provisional redundancies to statutes and other rules, and amending and/or repositioning terms within Article 1.
- R12-5-1805
    - This rule is not entirely effective, consistent, clear, or concise, as it contains archaic and repetitive language as well as language which is not consistent with Department operations.
- R12-5-1806
    - This rule is functional, however, could benefit from clarifying provisions, and removing archaic language.
- R12-5-1807
    - This rule contains language which is found to be, in part, inconsistent with statute.

Article 19

- R12-5-190
    - This rule is not effective and is only somewhat clear, concise, and understandable.
- R12-5-1903
    - This rule is not effective. While it is mostly consistent and enforced, it could be more clear, concise, and understandable.

- R12-5-1905
    - This rule contains information found to be inconsistent, unclear, and not concise, and not understandable.

Article 20

- R12-5-2001
    - This rule is inconsistent with statute.
- R12-5-2002
    - This rule is not effective, consistent, clear, concise, or understandable.
- R12-5-2003
    - This rule is not consistent due to archaic language and reference of outdated processes.
- R12-5-2004
    - This rule is not effective, consistent, clear, concise, or understandable as it is found to be confusing as written and does not address the exploration phase for common variety mineral materials.
- R12-5-2005
    - This rule is not effective, consistent, or enforced in its current state.
- R12-5-2006
    - This rule is not consistent, clear, concise, or understandable in its current state.
- R12-5-2007
    - This rule is not effective, consistent, clear, concise, or understandable.
- R12-5-2008
    - While this rule is found to be effective, consistent, enforced, clear, concise, and understandable, this rule would be more clear if it were combined with language from R12-5-2009.
- R12-5-2009
    - While R12-5-2009 is found to be effective, consistent, enforced, clear, concise, and understandable, the Department believes this rule may be more clear if language were combined with R12-5-2008 and then subsequently repealed.

Article 21

- R12-5-2101
    - This rule is not effective, not consistent, and is not clear.
- R12-5-2104
    - This rule contains language which is not effective, not consistent, and not clear.
- R12-5-2115
    - This rule is not consistent as statute provides all bids can be rejected and rebid, while rule provides for award to highest qualified bidder. Further, it is duplicative of R12-5-505, et. seq., therefore providing limited benefit to the Department or stakeholders.
- R12-5-2118
    - This rule is only somewhat effective and consistent and is not clear or understandable.
- R12-5-2120

    - This rule contains somewhat ineffective, inconsistent, and unenforceable language.
- R12-5-2122
    - This rule is not effective as it should include a date which the production report should be submitted.

Article 22

- R12-5-2201
    - While effective, consistent, enforced, clear, and understandable, R12-5-2201 is almost entirely redundant to A.R.S.§ 27-651.
- R12-5-2204
    - While R12-5-2204 is effective and enforced, it is not consistent as this rule contains an incorrect citation to statute. Further, additional consideration of referencing appropriate payment information via Article 12 may make this rule more clear, concise, and understandable.
- R12-5-2209
    - This rule is not consistent, clear, concise, or understandable due to archaic language, redundancy to statute.
- R12-5-2210
    - This rule contains inconsistent language related to water terms.
- R12-5-2211
    - This rule contains inconsistent, archaic language relating to applications for Cooperative and/or Unit Agreements.
- R12-5-2216
    - This rule could be more consistent and clearer by broadly referencing other agencies' requirements.

The Department indicates it is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Articles 18-22. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. The Department indicates there are three planned phases for the process improvement and the Department is currently in Phase 1, which includes identifying issues within statute. Phase 2 will include proposing legislative changes to statute. The Department indicates Phases 1 and 2 will possibly drive statutory changes in 2025-2026. The Department indicates Phase 3 will be to amend the rules according to statutory changes through rulemaking in 2026-2027. Given the complete timeframe, which includes the legislative component, the Department does not anticipate rulemaking on this process to be completed until December 2027.

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 in Articles 18, 19, and 20 were adopted in the 1970s without the benefit of an economic, small business, and consumer impact statement. The Department believes that the current assessment of the economic impact to the Department and its lessees is accurate, and any costs are minor. Since the last review, the Department states there have been no changes in these rules' economic impact. Article 21 was adopted or otherwise amended in 2008, since then, differences in the economic impact statement reflect annual rent and royalty amounts which vary from year to year. There was no prior economic impact statement with which to compare Article 22's economic impact, and there is no actual estimated economic impact.

Stakeholders are identified as entities engaged in mineral leasing, oil and gas leasing, and geothermal leasing; patentees or contract purchasers of State Trust Lands; entities engaged in the process of securing or utilizing a prospecting permit; entities interested in the lease of land for common mineral material or natural product extraction and use; and sellers of common mineral materials at public auctions.

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 probable benefits of the rules outweigh their probable costs, and they impose the least burden and costs to persons regulated by the rule, while meeting their underlying objectives.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates, while no formal written criticism has been received by the Department in the last five years, the mineral industry has expressed substantial interest in modernizing and streamlining rule R12-5-1903 and increasing timely agency response. There is no known registry to ascertain withdrawn lands, which could prevent disruptive filings, while pending applications are processed. Specific provisions for GFOPs should be added.

Furthermore, the Department indicates it received written criticism on rule R12-5-2003 in which industry stakeholders have indicated that the State is authorized to sell or lease for aggregate and natural product, however, the rule has no provisions for leasing specifically.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the following rules are not clear, concise, and understandable:

Article 18

- R12-5-1805
    - This rule is, in part, repetitive of statute. Examples include but are not limited to: R12-5-1805(A): A.R.S. § 27-254; R12-5-1805(B)(1)(a): §27-235(C)(1);

R12-5-1805(B)(3): § 27-235(C)(2) and § 27-235(C)(3). Additionally, some items are inconsistent with Department operations.

- R12-5-1806
    - While there are a few areas of opportunity to provide clarity, overall, the rule clearly and concisely identifies the need for records to be produced and maintained by the mineral lessee and the Department.
- R12-5-1807
    - Portions of this rule reiterate statute and contain definitions which will be moved to Article 1.

Article 19

- R12-5-1901
    - This rule would be more clear, concise, and understandable by eliminating language redundant to statute, other regulations, and conflicting definitions, and relocating this rule to Article 1.
- R12-5-1903
    - This rule would be more clear, concise, and understandable by eliminating language which is redundant to statute and duplicative to other rules throughout the Chapter, removing typographical errors, and ensuring consistency with statute. Additionally, references to date stamping upon filing by U.S. Mail have evolved to computer receipt verification.
- R12-5-1905
    - This rule is mostly clear, however, subparagraph (3) is found to be particularly confusing and potentially unnecessary, and the reference to rectangular subdivisions of 20 acres as constituting claims is confusing relative to federal requirements for claim locations on federal lands open to location but does reflect state statute A.R.S. § 27-254.

Article 20

- R12-5-2001
    - This rule is inconsistent with statute. Further, this rule would serve customers and the Department more concisely if amended definitions were included in Title 12, Chapter 5, Article 1, which is the intended location of Department definitions.
- R12-5-2002
    - This rule is not clear, concise, or understandable due to issues with consistency outlined in item #6, below.
- R12-5-2004
    - This rule is not clear, concise, or understandable as it is found to be confusing as written and does not address all necessary aspects of exploration or lesser invasive sampling and testing which may be more applicable to natural products.
- R12-5-2005
    - This rule is not clear, concise or understandable due to issues with effectiveness as outlined in #7 below.
- R12-5-2006

    - This rule is not clear, concise or understandable due to issues with consistency for reasons noted in item #6, below. Further, subsection (B) is redundant to the Enabling Act and statute.
- R12-5-2007
    - This rule is not clear, concise, or understandable. In addition to the information provided in item #6, below, the Department finds this entire rule to be generally unclear and confusing.

Article 21

- R12-5-2101
    - While concise and understandable, this rule is not clear as it does not provide stakeholders with information relating to the two types of oil and gas lease applications provided by the Department - noncompetitive and competitive.
- R12-5-2104
    - While concise and understandable, this rule is not clear as it provides incorrect references to statute and rule which expired effective January 15, 2020. Further, there are redundancies to statute within this rule.
- R12-5-2115
    - While somewhat understandable, this rule is not concise as it is duplicative of A.R.S. § 27-256 and R12-5-505, *et. seq.*, therefore providing no benefit to the Department or to stakeholders.
- R12-5-2118
    - This rule is not clear or understandable, as there should be standards for approval like those set forth in A.R.S. § 27-531.

Article 22

- R12-5-2204
    - This rule is not consistent, as it contains an error in reference to statute "...A.R.S. § 27-6710..." which does not exist.
- R12-5-2209
    - This rule contains inconsistent, archaic language such as the term "prospecting".
- R12-5-2210
    - This rule is inconsistent in part as it contains inconsistent terms relative to water which could be more consistent with updated language and should address all aspects of A.R.S. § 27-668(B).
- R12-5-2211
    - This rule is inconsistent in part as it contains archaic language relating to applications for Cooperative and/or Unit Agreements. Consideration could also be given to incorporating elements of A.R.S. § 27-664, applicable to private land utilization appraisal by the Oil & Gas Commission.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the following rules are not consistent with other rules and statutes:

Article 18

- R12-5-1801
    - This rule is only somewhat consistent. There are instances where the removal of language would provide more consistency with statute. Some terms were found to be inconsistent with statute
- R12-5-1805
    - This rule is, in part, repetitive of statute. Examples include but are not limited to: R12-5-1805(A): A.R.S. § 27-254; R12-5-1805(B)(1)(a): §27-235(C)(1); R12-5-1805(B)(3): § 27-235(C)(2) and § 27-235(C)(3). Additionally, some items are inconsistent with agency operations.
- R12-5-1807
    - This is inconsistent because it does not include provisions for notification to surface owners to exercise the first right of refusal.

Article 19

- R12-5-1903
    - While this rule is mostly consistent, there are items which conflict with statute which should be amended or removed.
- R12-5-1905
    - While most of this rule is redundant to statute, it is somewhat consistent. However, subparagraph (2) contains information which contradicts R12-5-1201 regarding fees. Additional language could also be added to conform all necessary requirements in Article 18. Further, whether mineral leases include or exclude extra lateral rights is inconsistent.

Article 20

- R12-5-2001
    - This rule is inconsistent with ARS § 27-271. The term common variety minerals should be maintained and utilized by rule, specifically to clarify exclusion of materials with distinct and special value.
- R12-5-2002
    - This rule is not consistent as: 1.) It is the only rule which includes a "Scope of Rules" and "Application of Rules" throughout the entirety of the Chapter; 2.) It does not provide any process for execution of common variety mineral agreements (A.R.S.§ 27-272); 3.) (A), (B), and (C) may imply this portion of rules govern all natural product and not just common mineral material (aggregate); 4.) (E) references rules which were previously renumbered or have otherwise expired; and 5.0 (G) is unclear as to how royalty provisions reflect the sale of natural product.
- R12-5-2003
    - The title of the Rule, "Application for Purchase" is not accurate, as it should read "Application for Lease". Section (A) is duplicative to Departmental requirements, section (B) is redundant to statute; the ongoing process improvement initiative with the Department, the mineral industry, and consultants will likely amend this

process to have a single application which has severable portions; (C) does not entirely conform to Department operations, as the citizenship portion is not validated by the Department, rather the Department relies on the ability for the applicant to conduct business with the State of Arizona as determined by either the Arizona Secretary of State's Office or the Arizona Corporation Commission; section (D) is somewhat related to application fees and should be moved to Article 12, where applicable. Further, other references for applicant or lessee ventures (including commercial ventures or place improvements) are generally addressed via the lease agreement or special land use permit.

- R12-5-2004
    - This rule is not consistent with Department practices. This rule will be addressed via the ongoing process improvement initiative with the Department, mining industry, and consultants who will likely amend this process, and thus, the rules.
- R12-5-2005
    - This rule is not consistent. It references renumbered rule R12-5-773 and R12-5-774 and includes archaic language which is inconsistent with Department operations.
- R12-5-2006
    - This rule is not consistent with A.R.S. § 37-237. Section (A)(2) is inconsistent with Department operations because governmental entities may not purchase common mineral materials or natural products outside of an auction. Additionally, this rule should conform to the rules associated with the Department's competitive sales, leases and auction practices.
- R12-5-2007
    - This rule is not consistent. There are multiple references to incorrect rules or rules which have been subsequently renumbered. The Native Plant Survey which is referenced should follow the same processes as set forth in Long Term Commercial Leases. Further, the groundwater extraction information is not applicable to the common mineral material lease. The references to the auction and notices of auction should be consistent with the Department's Commercial Auction process. Section (C) includes language which suggests that the mineral annual production is determined by the Department; this is not the case, as the mineral annual production is determined by the Applicant/Lessee. Section (F) should additionally include language on the percentage of the reappraisal for rent collection. Consideration should also be afforded to the language relating to insurance, aligning requirements as specified by ADOA Risk Management.

Article 21

- R12-5-2101
    - This rule is not consistent with the type of oil and gas lease applications provided by the Department.
- R12-5-2104
    - While the majority of the rule is consistent, this rule does contain some information inconsistent with statute and rule. Inconsistencies include subsection (B) which currently reads "...advanced rent payment as calculated per...", but

should read per statute, "...advanced rent payment as provided per..."; further, subsection (B) contains inaccurate references to R12-5-2105 which expired effective January 15, 2020.

- R12-5-2115
    - This rule is not consistent as statute provides all bids can be rejected and rebid, while rule provides for award to highest qualified bidder.
- R12-5-2118
    - This rule is not consistent as hearings are required for utilization of State Trust land per A.R.S. § 27-531.
- R12-5-2120
    - Portions of this rule are not consistent with A.R.S. § 27-562.

Article 22

- R12-5-2204
    - This rule is not consistent, as it contains an error in reference to statute "...A.R.S. § 27-6710..." which does not exist.
- R12-5-2209
    - This rule contains inconsistent, archaic language such as the term "prospecting".
- R12-5-2210
    - This rule is inconsistent in part as it contains inconsistent terms relative to water which could be more consistent with updated language and should address all aspects of A.R.S. § 27-668(B).
- R12-5-2211
    - This rule is inconsistent in part as it contains archaic language relating to applications for Cooperative and/or Unit Agreements. Consideration could also be given to incorporating elements of A.R.S. § 27-664, applicable to private land utilization appraisal by the Oil & Gas Commission.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the following rules are not effective in achieving their objectives:

Article 18

- R12-5-1801
    - Some definitions are redundant with statute and Title 12, Chapter 5, Article 19, while some are in conflict with statute.
- R12-5-1805
    - Most of this rule conflicts with or is redundant to statute. The remaining language is effective.
- R12-5-1807
    - This rule satisfies the statutory mandate in A.R.S. § 37-235(E) to promulgate a rule, but as currently written, is not effective. The purpose of A.R.S. § 37-235(E) is to require "total mineral reservation" of lands sold after March 18, 1986. (Prior

to this time, the State only reserved a 1/16 interest.) However, the rule is not timely or uniformly administered.

Article 19

- R12-5-1901
  - This rule is not effective, as it contains terms which are redundant to statute and Title 12, Chapter 5, Article 18 and conflicts with A.R.S. § 27-231.
- R12-5-1903
  - This rule is not effective, as it contains terms which are redundant to statute and other rules, at times conflicts with statute.

Article 20

- R12-5-2001
  - This rule is mostly effective, but inconsistent with ARS § 27-271
- R12-5-2002
  - This rule is not effective for reasons outlined in item #6, above.
- R12-5-2004
  - This rule is not effective, as it does not clearly address the exploration phase for common variety mineral materials or natural products. Further exploration should not be subject to a prior application to purchase.
- R12-5-2005
  - This rule is, in part, not effective as it references renumbered rules R12-5-773 and R12-5-774 and includes archaic language. It also fails to properly distinguish between rights of buyer & lessees and rights of buyer vs. lessees and contains contracts requiring perfecting purchase rights via lease.
- R12-5-2006
  - While this rule is effective, it does fail to address leases offered at auction.
- R12-5-2007
  - This rule is not effective due to its complexity, references to renumbered rules, references to incorrect rules, and other items which are addressed in item #6, above, and it fails to address leasing.
- R12-5-2008
  - This rule should be combined with language within R12-5-2009.
- R12-5-2009
  - This rule should be combined with R12-5-2008 and then subsequently repealed.

Article 21

- R12-5-2101
  - This rule is not effective as it does not provide a description of the two types of potential oil and gas lease applications: noncompetitive or competitive.
- R12-5-2104
  - This rule contains ineffective language. Applications are now filed electronically and, therefore, do not need to be submitted physically at the Department per subsection (B). Additionally, in subsection (B), there is an incorrect citation of statute as A.R.S. § 37-108 when it should be § 37-107. Within subsection (B), the

last sentence is not effective, as it indicates "...in accordance with Section R12-5-2105..."; this rule was expired effective January 15, 2020.

- R12-5-2115
    - This rule is effective, however, redundant to statute and R12-5-505, *et. seq*., but could better prescribe the required lease terms in addition to those set forth by § 27-556.
- R12-5-2118
    - While technically effective, the Department may consider adding language referencing the proposed operation's inclusion of anticipated construction and operational workforce, lifespan of operation, and plan for remediation, among other items, depending upon the outcome of the Department's large-scale process improvement project.
- R12-5-2120
    - This rule is not effective as it is inconsistent with A.R.S. §27-562 and provisions to confirm lease compliance, reclamation upon surrender, and partial bond release.
- R12-5-2122
    - This rule is not effective. It should include a date that the production report should be submitted.

Article 22

- R12-5-2210
    - This rule is effective, but does not address standards for multiple, dominant, or single uses of the leased land.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the following rules are not enforced as written:

Article 18

- R12-5-1807
    - This rule is enforced, but not uniformly.

Article 19

- R12-5-1903
    - While the majority of this rule is enforced, there are items within the language which are not required by statute, and therefore, are not enforced, such as a statement of citizenship, age, and marital status. Stakeholders have also noted that timely enforcement of Department response has been problematic.

Article 20

- R12-5-2002
    - This rule is only somewhat enforced, due to issues outlined in item #6, above.
- R12-5-2003
    - This rule is only somewhat enforced, due to issues outlined in item #6, above.

- R12-5-2004
    - While this rule is enforced, there are large portions of the Department's practice for exploration permits which are not addressed in this rule.
- R12-5-2005
    - This rule is only somewhat enforced, due to issues outlined in item #7, above.
- R12-5-2006
    - This rule is enforced except where noted in item #6, above, regarding governmental entities.
- R12-5-2007
    - This rule is enforced except where it is inconsistent with Department operations, as noted in item #6, above.

Article 21

- R12-5-2104
    - Parts of this rule are not enforced, as the Department does not require applications to be submitted to the Department's office in physical form, rather the Department now predominantly receives applications in electronic format. Further, in the event there is a simultaneous electronic filing, conflicts would be resolved pursuant to A.R.S. § 27-555.
- R12-5-2120
    - Parts of this rule are not enforced. For example, the Department does not require a copy of the lease to be submitted by the lessee upon surrender.

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 there are no corresponding federal laws applicable to the rules in these Articles.

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 indicates the rules in these Articles were not adopted after July 29, 2010. As such, analysis under A.R.S. § 41-1056(A)(11) is not applicable.

11. Conclusion

This Five-Year Review Report (5YRR) from the State Land Department (Department) relates to twenty-eight (28) rules in Title 12, Chapter 5, Articles 18-22. Specifically these Articles relate to the following: Article 18 - Mineral Leases; Article 19 - Prospecting Permits; Article 20 - Common Mineral Materials and Natural Products; Article 21 - Oil and Gas Leases; Article 22 - Geothermal Resources.

The Department has identified numerous rules that are not clear, concise, understandable, consistent, effective, and enforced as written. The Department indicates it is currently working

with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Articles 18-22. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. The Department indicates there are three planned phases for the process improvement and the Department is currently in Phase 1, which includes identifying issues within statute. Phase 2 will include proposing legislative changes to statute. The Department indicates Phases 1 and 2 will possibly drive statutory changes in 2025-2026. The Department indicates Phase 3 will be to amend the rules according to statutory changes through rulemaking in 2026-2027. Given the complete timeframe, which includes the legislative component, the Department does not anticipate rulemaking on this process to be completed until December 2027.

Council staff recommends approval of this report.

Katie Hobbs
Governor

Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner

Arizona State Land Department
1110 West Washington Street, Phoenix, AZ 85007
(602) 542-4631

April 23, 2024

Jessica Klein, Chairperson
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

Re: Five-Year Rule Review Report for A.A.C. Title 12, Chapter 5, Articles 18, 19, 20, 21, and 22

Dear Chairperson Klein:

Enclosed, please find the Arizona State Land Department's ("Department") five-year rule review report for A.A.C. Title 12, Chapter 5, Articles 18-22. The Department has reviewed all rules within these Articles. The Department does not intend for any rules to expire under A.R.S. § 41-1056(J). The Department certifies it is in compliance with A.R.S. § 41-1091.

Please contact Lynn Córdova at 602-542-2654 or via email at lcordova@azland.gov with any questions regarding this report.

Sincerely,

Simone Westbrook Hall
Deputy Commissioner

Arizona State Land Department

5 YEAR REVIEW REPORT

Title 12. Natural Resources

Chapter 5. State Land Department

Article 18. Mineral Leases

April 23, 2024

1. **Authorization of the rule by existing statutes:**

Rule	Statutory Authority
R12-5-1801	A.R.S. § 37-132(A)(1); § 37-231(E)
R12-5-1805	A.R.S. § 37-132(A)(1); § 37-231(E)(1); § 27-235(A); 27-254; 27-255
R12-5-1806	A.R.S. § 37-132(A)(1); § 27-234
R12-5-1807	A.R.S. § 37-132(A)(1); § 27-235(E)(1)

2. **The objective of each rule:**

Rule	Objective
R12-5-1801	The objective of this rule is to define terms used in the development of mineral deposit found within Title 12, Chapter 5, Article 18. This rule is necessary to define terms used in the rules and applied in mineral leasing.
R12-5-1805	The objective of this rule is to outline the provisions of a state mineral claim and mineral leases. The rule also lacks provisions directing/authorizing bond requirements and releases.
R12-5-1806	The objective of this rule is to clarify the requirements pursuant to requirements within A.R.S. §27-234 as to the type of records and reports, and the timing of the same, to be submitted to the Department regarding the annual and monthly work performed on a mineral lease.
R12-5-1807	The objective of this rule is to provide protection of a patentee or contract purchaser of State Trust Lands from possible damage to the purchased land, or to livestock, water, crops, improvements, etc., resulting from mining, oil & gas, and geothermal resource exploration and development.

3. **Are the rules effective in achieving their objectives?**

Rule	Effective? Yes or No	Comments
R12-5-1801	No	Some definitions are redundant with statute and Title 12, Chapter 5, Article 19, while some are in conflict with statute.
R12-5-1805	No	Most of this rule conflicts with or is redundant to statute. The remaining language is effective.
R12-5-1806	Yes	

(con't from #3) Rule	Effective? Yes or No	Comments
R12-5-1807	No	This rule satisfies the statutory mandate in A.R.S. § 37-235(E) to promulgate a rule, but as currently written, is not effective. The purpose of A.R.S. § 37-235(E) is to require "total mineral reservation" of lands sold after March 18, 1986. (Prior to this time, the State only reserved a 1/16 interest.) However, the rule is not timely or uniformly administered.

4. Are the rules consistent with other rules and statutes?

Rule	Consistent? Yes or No	Comments
R12-5-1801	No	This rule is only somewhat consistent. There are instances where the removal of language would provide more consistency with statute. Some terms were found to be inconsistent with statute
R12-5-1805	No	This rule is, in part, repetitive of statute. Examples include but are not limited to: R12-5-1805(A): A.R.S. § 27-254; R12-5-1805(B)(1)(a): §27-235(C)(1); R12-5-1805(B)(3): § 27-235(C)(2) and § 27-235(C)(3). Additionally, some items are inconsistent with agency operations.
R12-5-1806	Yes	This rule is foundationally consistent with both A.R.S. § 27-234(G)(1)-(3), which requires annual mineral production reports, tax records, and other relevant information, and A.R.S. § 27-234(I), which requires monthly royalty payments based on monthly production. There are minor areas of opportunity to clarify references to archaic language, such as the reference to mineral claims on State Trust land, and assessment of work and labor.
R12-5-1807	No	This is inconsistent because it does not include provisions for notification to surface owners to exercise the first right of refusal.

5. Are the rules enforced as written?

Rule	Enforced? Yes or No	Comments
R12-5-1801	Yes	
R12-5-1805	Yes	
R12-5-1806	Yes	
R12-5-1807	No	This rule is enforced, but not uniformly.

6. Are the rules clear, concise, and understandable?

Rule	Clear, Concise, Understandable? Yes or No	Comments
R12-5-1801	Yes	Generally, this rule is understandable.
R12-5-1805	No	This rule is, in part, repetitive of statute. Examples include but are not limited to: R12-5-1805(A): A.R.S. § 27-254; R12-5-1805(B)(1)(a): §27-235(C)(1); R12-5-1805(B)(3): § 27-235(C)(2) and § 27-235(C)(3). Additionally, some items are inconsistent with Department operations.
R12-5-1806	In part	While there are a few areas of opportunity to provide clarity, overall, the rule clearly and concisely identifies the need for records to be produced and maintained by the mineral lessee and the Department.
R12-5-1807	In part	Portions of this rule reiterate statute and contain definitions which will be moved to Article 1.

7. Has the agency received written criticisms of the rules within the last five years?

Rule	Written Criticisms? Yes or No	Comments
R12-5-1801	No	
R12-5-1805	No	
R12-5-1806	No	
R12-5-1807	No	

8. Economic, small business, and consumer impact comparison:

Relative to all rules within Article 18, the Department offers the following:

The rules were adopted in 1976 without the benefit of an economic, small business, and consumer impact statement. The Department discusses the probable impact of this rule in the economic impact portion of this rule review. The Department believes that the current assessment of the economic impacts to the Department and its lessees is accurate, and any costs are minor. Since the last review, there are no changes in the rule's economic impact.

9. Has the agency received any business competitiveness analyses of the rules?

Rule	Has the agency received any business competitiveness analyses of the rules?
R12-5-1801	No
R12-5-1805	No
R12-5-1806	No
R12-5-1807	No

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Rule	Has the agency completed the course of action indicated in the agency's previous five-year-review report?
R12-5-1801	In the previous five-year-review report, the Department indicated the intent to amend this rule to offer clarification and reduce redundancy by February 2019. The Department did not complete this course of action.
R12-5-1805	In the previous five-year-review report, the Department indicated the intent to amend this rule to improve clarity and conciseness by February 2019. The Department did not complete this course of action.
R12-5-1806	In the previous five-year-review report, the Department indicated the intent to amend this rule to provide further clarification and make other minor changes by February 2019. The Department did not complete this course of action.
R12-5-1807	In the previous five-year-review report, the Department indicated the intent to amend this rule to remove redundant statutory language and make the rule effective and functional by February 2019. The Department did not complete this 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:

Relative to all rules within Article 18, the Department offers the following:

The Department has determined that the probable benefits of the rule outweigh their probable costs, and they impose the least burden and costs to persons regulated by the rule, while meeting their underlying objectives.

12. Are the rules more stringent than corresponding federal laws? Yes __ No __ N/A x

Relative to all rules within Article 18, the Department offers the following:

There are no corresponding federal laws wholly applicable to this Article.

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:

Relative to all rules within Article 18, the Department offers the following:

The rules reviewed in this report were not adopted after July 29, 2010, therefore this factor does not apply.

14. Proposed course of action:

Rule	Proposed Course of Action
R12-5-1801	R12-5-1801 could be more consistent and more effective by removing provisional redundancies to statutes and other rules, and amending and/or repositioning terms within Article 1. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 18. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-1805	R12-5-1805 is not entirely effective, consistent, clear, or concise, as it contains archaic and repetitive language as well as language which is not consistent with Department operations. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 18. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-1806	R12-5-1806 is functional, however, could benefit from clarifying provisions, and removing archaic language. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 18. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-1807	R12-5-1807 contains language which is found to be, in part, inconsistent with statute. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 18. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.

Arizona State Land Department

5 YEAR REVIEW REPORT

Title 12. Natural Resources

Chapter 5. State Land Department

Article 19. Prospecting Permits

April 23, 2024

1. Authorization of the rule by existing statutes:

Rule	Statutory Authority
R12-5-1901	A.R.S. § 37-101; § 37-132(A)(1); § 27-231; § 27-251
R12-5-1903	A.R.S. § 37-132(A)(1); § 27-251
R12-5-1905	A.R.S. § 37-132(A)(1); § 27-251; § 27-254

2. The objective of each rule:

Rule	Objective
R12-5-1901	The objective of this rule is to define terms used in securing and utilizing a prospecting permit, more appropriately termed mineral exploration permit, on State Trust Lands.
R12-5-1903	This rule provides the applicant criteria required to acquire a prospecting permit, i.e., mineral exploration permit, on State Trust Land.
R12-5-1905	The objective of this rule is to provide criteria by which a State prospecting permit, i.e., mineral exploration permit, may be converted to a State mineral lease.

3. Are the rules effective in achieving their objectives?

Rule	Effective? Yes or No	Comments
R12-5-1901	No	This rule is not effective, as it contains terms which are redundant to statute and Title 12, Chapter 5, Article 18 and conflicts with A.R.S. § 27-231.
R12-5-1903	No	This rule is not effective, as it contains terms which are redundant to statute and other rules, at times conflicts with statute.
R12-5-1905	Yes	

4. Are the rules consistent with other rules and statutes?

Rule	Consistent? Yes or No	Comments
R12-5-1901	Yes	This rule is consistent with statute and reflects some terms used in the mining industry; but there also are terms lacking for new and emerging technologies.
R12-5-1903	No	While this rule is mostly consistent, there are items which conflict with statute which should be amended or removed.
R12-5-1905	No	While most of this rule is redundant to statute, it is somewhat consistent. However, subparagraph (2) contains information which contradicts R12-5-1201 regarding fees. Additional language could also be added to conform all necessary requirements in Article 18. Further, whether mineral leases include or exclude extra lateral rights is inconsistent.

5. Are the rules enforced as written?

Rule	Enforced? Yes or No	Comments
R12-5-1901	Yes	
R12-5-1903	No	While the majority of this rule is enforced, there are items within the language which are not required by statute, and therefore, are not enforced, such as a statement of citizenship, age, and marital status. Stakeholders have also noted that timely enforcement of Department response has been problematic.
R12-5-1905	Yes	

6. Are the rules clear, concise, and understandable?

Rule	Clear, Concise, Understandable? Yes or No	Comments
R12-5-1901	No	This rule would be more clear, concise, and understandable by eliminating language redundant to statute, other regulations, and conflicting definitions, and relocating this rule to Article 1.
R12-5-1903	No	This rule would be more clear, concise, and understandable by eliminating language which is redundant to statute and duplicative to other rules throughout the Chapter, removing typographical errors, and ensuring consistency with statute. Additionally, references to date stamping upon filing by U.S. Mail have evolved to computer receipt verification.
R12-5-1905	No	This rule is mostly clear, however, subparagraph (3) is found to be particularly confusing and potentially unnecessary, and the reference to rectangular subdivisions of 20 acres as constituting claims is confusing relative to federal requirements for claim locations on federal lands open to location but does reflect state statute A.R.S. §27-254.

7. Has the agency received written criticisms of the rules within the last five years?

Rule	Written Criticisms? Yes or No	Comments
R12-5-1901	No	
R12-5-1903	No	While no formal, written criticism of this rule has been received by the Department within the past 5 years, the mineral industry has expressed substantial interest in modernizing and streamlining this rule and increasing timely agency response. There is no known registry to ascertain withdrawn lands, which could prevent disruptive filings, while pending applications are processed. Specific provisions for GFOPs should be added.
R12-5-1905	No	

8. Economic, small business, and consumer impact comparison:

Relative to all rules within Article 19, the Department offers the following:

The rules were adopted in 1976 without the benefit of an economic, small business, and consumer impact statement. The Department discusses the probable impact of this rule in the economic impact portion of this rule review. The Department believes that the current assessment of the economic impacts to the Department and its lessees is accurate, and any costs are minor. Since the last review, there are no changes in the rule's economic impact.

9. Has the agency received any business competitiveness analyses of the rules?

Rule	Has the agency received any business competitiveness analyses of the rules?
R12-5-1901	No business competitiveness analysis for the rule has been received by the Department.
R12-5-1903	No business competitiveness analysis for the rule has been received by the Department.
R12-5-1905	No business competitiveness analysis for the rule has been received by the Department.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Rule	Has the agency completed the course of action indicated in the agency's previous five-year-review report?
R12-5-1901	In the previous five-year-review report, the Department did not propose any course of action on this rule.
R12-5-1903	In the previous five-year-review report, the Department did not propose any course of action on this rule.
R12-5-1905	In the previous five-year-review report, the Department did not propose any course of action on this rule.

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:

Relative to all rules within Article 19, the Department offers the following:

The Department has determined that the probable benefits of the rule outweigh their probable costs, and they impose the least burden and costs to persons regulated by the rule, while meeting their underlying objectives.

12. Are the rules more stringent than corresponding federal laws? **Yes __ No __ N/A x**

Relative to all rules within Article 19, the Department offers the following:

There are no corresponding federal laws applicable to this rule.

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:

Relative to all rules within Article 19, the Department offers the following:

The rules reviewed in this report were not adopted after July 29, 2010, therefore this factor does not apply.

14. Proposed course of action:

Rule	Proposed Course of Action
R12-5-1901	R12-5-1901 is not effective and is only somewhat clear, concise, and understandable. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 19. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-1903	R12-5-1903 is not effective. While it is mostly consistent and enforced, it could be more clear, concise, and understandable. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 19. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-1905	R12-5-1905 contains information found to be inconsistent, unclear, and not concise, and not understandable. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 19. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.

Arizona State Land Department

5 YEAR REVIEW REPORT

Title 12. Natural Resources

Chapter 5. State Land Department

Article 20. Common Mineral Materials and Natural Products

April 23, 2024

1. Authorization of the rule by existing statutes:

Rule	Statutory Authority
R12-5-2001	A.R.S. § 37-132; § 27-271; § 27-272(E); § 37-481
R12-5-2002	A.R.S. § 37-132; § 27-272
R12-5-2003	A.R.S. § 37-132; § 27-272
R12-5-2004	A.R.S. § 37-132; § 27-272
R12-5-2005	A.R.S. § 37-132; § 27-272
R12-5-2006	A.R.S. § 37-132; § 27-272; § 37-237; § 37-238
R12-5-2007	A.R.S. § 37-132; § 27-272; § 27-273
R12-5-2008	A.R.S. § 37-132; § 37-481
R12-5-2009	A.R.S. § 37-132; § 37-481

2. The objective of each rule:

Rule	Objective
R12-5-2001	This rule defines terms relating to common variety mineral materials and natural products.
R12-5-2002	This rule outlines the scope and applicability of the common mineral material and natural product rules.
R12-5-2003	This rule outlines the process for an applicant interested in the lease of land for common mineral material or natural product extraction and use.
R12-5-2004	The objective of this rule is to outline the conditions for an interested party to conduct exploration and due diligence in order to determine whether to proceed to auction for a common mineral materials lease.
R12-5-2005	This rule authorizes and prohibits certain activities on and uses of land by applicants for sales and leases of a common mineral material and natural products.
R12-5-2006	This rule outlines the process to sell common mineral materials at public auction.

(con't from #2) Rule	Objective
R12-5-2007	This rule outlines some of the required common mineral material sale agreement provisions, including restrictions, conditions, royalty payment calculations, and bonding. It also outlines the advertising process for auction and appraisal requirements.
R12-5-2008	This rule enhances clarity for the sale of groundwater at public auction.
R12-5-2009	This rule enhances clarity for the sale of natural products, other than mineral materials and ground water, at public auction.

3. Are the rules effective in achieving their objectives?

Rule	Effective? Yes or No	Comments
R12-5-2001	No	This rule is mostly effective, but inconsistent with ARS § 27-271
R12-5-2002	No	This rule is not effective for reasons outlined in item #4, below.
R12-5-2003	Yes	
R12-5-2004	No	This rule is not effective, as it does not clearly address the exploration phase for common variety mineral materials or natural products. Further exploration should not be subject to a prior application to purchase.
R12-5-2005	No	This rule is, in part, not effective as it references renumbered rules R12-5-773 and R12-5-774 and includes archaic language. It also fails to properly distinguish between rights of buyer & lessees and rights of buyer vs. lessees and contains contracts requiring perfecting purchase rights via lease.
R12-5-2006	Yes	While this rule is effective, it does fail to address leases offered at auction.
R12-5-2007	No	This rule is not effective due to its complexity, references to renumbered rules, references to incorrect rules, and other items which are addressed in item #4, below, and it fails to address leasing.
R12-5-2008	No	This rule should be combined with language within R12-5-2009.
R12-5-2009	No	This rule should be combined with R12-5-2008 and then subsequently repealed.

4. Are the rules consistent with other rules and statutes?

Rule	Consistent? Yes or No	Comments
R12-5-2001	No	This rule is inconsistent with ARS § 27-271. The term common variety minerals should be maintained and utilized by rule, specifically to clarify exclusion of materials with distinct and special value.
R12-5-2002	No	This rule is not consistent as: 1. It is the only rule which includes a "Scope of Rules" and "Application of Rules" throughout the entirety of the Chapter. 2. It does not provide any process for execution of common variety mineral agreements (A.R.S.§ 27-272). 3. (A), (B), and (C) may imply this portion of rules govern all natural product and not just common mineral material (aggregate). 4. (E) references rules which were previously renumbered or have otherwise expired. 5. (G) is unclear as to how royalty provisions reflect the sale of natural product.
R12-5-2003	No	The title of the Rule, "Application for Purchase" is not accurate, as it should read "Application for Lease". Section (A) is duplicative to Departmental requirements, section (B) is redundant to statute; the ongoing process improvement initiative with the Department, the mineral industry, and consultants will likely amend this process to have a single application which has severable portions; (C) does not entirely conform to Department operations, as the citizenship portion is not validated by the Department, rather the Department relies on the ability for the applicant to conduct business with the State of Arizona as determined by either the Arizona Secretary of State's Office or the Arizona Corporation Commission; section (D) is somewhat related to application fees and should be moved to Article 12, where applicable. Further, other references for applicant or lessee ventures (including commercial ventures or place improvements) are generally addressed via the lease agreement or special land use permit.
R12-5-2004	No	This rule is not consistent with Department practices. This rule will be addressed via the ongoing process improvement initiative with the Department, mining industry, and consultants who will likely amend this process, and thus, the rules.
R12-5-2005	No	This rule is not consistent. It references renumbered rule R12-5-773 and R12-5-774 and includes archaic language which is inconsistent with Department operations.
R12-5-2006	No	This rule is not consistent with A.R.S. § 37-237. Section (A)(2) is inconsistent with Department operations because governmental entities may not purchase common mineral materials or natural products outside of an auction. Additionally, this rule should conform to the rules associated with the Department's competitive sales, leases and auction practices.

(con't from #4) Rule	Consistent? Yes or No	Comments
R12-5-2007	No	This rule is not consistent. There are multiple references to incorrect rules or rules which have been subsequently renumbered. The Native Plant Survey which is referenced should follow the same processes as set forth in Long Term Commercial Leases. Further, the groundwater extraction information is not applicable to the common mineral material lease. The references to the auction and notices of auction should be consistent with the Department's Commercial Auction process. Section (C) includes language which suggests that the mineral annual production is determined by the Department; this is not the case, as the mineral annual production is determined by the Applicant/Lessee. Section (F) should additionally include language on the percentage of the reappraisal for rent collection. Consideration should also be afforded to the language relating to insurance, aligning requirements as specified by ADOA Risk Management.
R12-5-2008	Yes	While, in practice, this rule is consistent, it would be more consistent if it referenced leasing, as well.
R12-5-2009	Yes	While, in practice, this rule is consistent, it would be more consistent if it referenced leasing, as well.

5. Are the rules enforced as written?

Rule	Enforced? Yes or No	Comments
R12-5-2001	Yes	
R12-5-2002	No	This rule is only somewhat enforced, due to issues outlined in item #4, above.
R12-5-2003	No	This rule is only somewhat enforced, due to issues outlined in item #4, above.
R12-5-2004	Yes	While this rule is enforced, there are large portions of the Department's practice for exploration permits which are not addressed in this rule.
R12-5-2005	No	This rule is only somewhat enforced, due to issues outlined in item #3, above.
R12-5-2006	No	This rule is enforced except where noted in item #4, above, regarding governmental entities.
R12-5-2007	No	This rule is enforced except where it is inconsistent with Department operations, as noted in item #4, above.
R12-5-2008	Yes	
R12-5-2009	Yes	

6. Are the rules clear, concise, and understandable?

Rule	Clear, Concise, Understandable? Yes or No	Comments
R12-5-2001	No	This rule is inconsistent with statute. Further, this rule would serve customers and the Department more concisely if amended definitions were included in Title 12, Chapter 5, Article 1, which is the intended location of Department definitions.
R12-5-2002	No	This rule is not clear, concise, or understandable, due to issues outlined in item #4, above.
R12-5-2003	Yes	
R12-5-2004	No	This rule is not clear, concise, or understandable as it is found to be confusing as written and does not address all necessary aspects of exploration or lesser invasive sampling and testing which may be more applicable to natural products.
R12-5-2005	No	This rule is not clear, concise or understandable as outlined in #3 above.
R12-5-2006	No	This rule is not clear, concise or understandable for reasons noted in item #4, above. Further, subsection (B) is redundant to the Enabling Act and statute.
R12-5-2007	No	This rule is not clear, concise, or understandable. In addition to the information provided in item #4, above, the Department finds this entire rule to be generally unclear and confusing.
R12-5-2008	Yes	
R12-5-2009	Yes	

7. Has the agency received written criticisms of the rules within the last five years?

Rule	Written Criticisms? Yes or No	Comments
R12-5-2001	No	
R12-5-2002	No	
R12-5-2003	Yes	Industry stakeholders have indicated that he State is authorized to sell or lease for aggregate and natural product, however, the rule has no provisions for leasing specifically.
R12-5-2004	No	
R12-5-2005	No	
R12-5-2006	No	
R12-5-2007	No	
R12-5-2008	No	
R12-5-2009	No	

8. Economic, small business, and consumer impact comparison:

Relative to all rules within Article 20, the Department offers the following:

The rules were adopted in 1978 without the benefit of an economic, small business, and consumer impact statement. The Department discusses the probable impact of this rule in the economic impact portion of this rule review. The Department believes that the current assessment of the economic impacts to the Department and its lessees is accurate, and any costs are minor. Since the last review, there are no changes in the rule's economic impact.

9. Has the agency received any business competitiveness analyses of the rules?

Rule	Has the agency received any business competitiveness analyses of the rules?
R12-5-2001	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2002	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2003	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2004	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2005	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2006	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2007	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2008	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2009	No business competitiveness analysis for the rule has been received by the Department.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Rule	Has the agency completed the course of action indicated in the agency's previous five-year-review report?
R12-5-2001	In the previous five-year-review report, the Department did not propose any course of action on this rule.
R12-5-2002	In the previous five-year-review report, the Department did not propose any course of action on this rule.
R12-5-2003	The Department indicated it planned to amend the rule not later than June 2020. The Department did not amend this rule.
R12-5-2004	In the previous five-year-review report, the Department did not propose any course of action on this rule.
R12-5-2005	In the previous five-year-review report, the Department did not propose any course of action on this rule.
R12-5-2006	In the previous five-year-review report, the Department did not propose any course of action on this rule.
R12-5-2007	The Department indicated it planned to amend the rule no later than June 2020. The Department did not amend this rule.
R12-5-2008	In the previous five-year-review report, the Department did not propose any course of action on this rule.
R12-5-2009	In the previous five-year-review report, the Department did not propose any course of action on this rule.

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:

Relative to all rules within Article 20, the Department offers the following:

The Department has determined that the probable benefits of the rule outweigh their probable costs, and they impose the least burden and costs to persons regulated by the rule, while meeting their underlying objectives.

12. Are the rules more stringent than corresponding federal laws? **Yes __ No __ N/A x**

Relative to all rules within Article 20, the Department offers the following:

There are no corresponding federal laws applicable to this rule.

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:

Relative to all rules within Article 20, the Department offers the following:

The rules reviewed in this report were not adopted after July 29, 2010, therefore this factor does not apply.

14. Proposed course of action:

Rule	Proposed Course of Action
R12-5-2001	R12-5-2001 is inconsistent with statute. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 20. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2002	R12-5-2002 is not effective, consistent, clear, concise, or understandable. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 20. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2003	R12-5-2003 is not consistent due to archaic language and reference of outdated processes. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 20. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.

(con't from #14) Rule	Proposed Course of Action
R12-5-2004	R12-5-2004 is not effective, consistent, clear, concise, or understandable as it is found to be confusing as written and does not address the exploration phase for common variety mineral materials. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 20. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2005	R12-5-2005 is not effective, consistent, or enforced in its current state. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 20. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2006	R12-5-2006 is not consistent, clear, concise, or understandable in its current state. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 20. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2007	R12-5-2007 is not effective, consistent, clear, concise, or understandable. The Department is actively engaging in a large-scale process improvement project in conjunction with the mining industry and consultants to improve the entirety of the minerals section processes, including rules within Article 20. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2008	While R12-5-2008 is found to be effective, consistent, enforced, clear, concise, and understandable, this rule would be more clear if it were combined with language from R12-5-2009. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 20. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2009	While R12-5-2009 is found to be effective, consistent, enforced, clear, concise, and understandable, the Department believes this rule may be more clear if language were combined with R12-5-2008 and then subsequently repealed. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 20. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.

Arizona State Land Department

5 YEAR REVIEW REPORT

Title 12. Natural Resources

Chapter 5. State Land Department

Article 21. Oil And Gas Leases

April 23, 2024

1. Authorization of the rule by existing statutes:

Rule	Statutory Authority
R12-5-2101	A.R.S. § 37-132; § 27-552
R12-5-2104	A.R.S. § 37-132; § 27-552
R12-5-2115	A.R.S. § 37-132; § 27-552; § 27-556
R12-5-2118	A.R.S. § 37-132; § 27-552; § 27-557
R12-5-2120	A.R.S. § 37-132; § 27-252; § 27-562
R12-5-2122	A.R.S. § 37-132; § 27-552

2. The objective of each rule:

Rule	Objective
R12-5-2101	This rule explains the criteria for an oil and gas lease application.
R12-5-2104	This rule outlines the process to submit an application for an oil and gas lease which is not within a known geological structure of of a producing oil and gas field. It also outlines a process to resolve conflicts in the event simultaneous applications are filed and the limit on acreage that can be included with one such lease.
R12-5-2115	This rule describes the bid process to award a competitive oil and gas lease. A competitive lease exists when the land is located within a known geological structure of a producing oil and gas field.
R12-5-2118	This rule outlines the conditions and requirements for an oil and gas lease to join in cooperative unit plans.
R12-5-2120	This rule provides for the surrender and relinquishment of an oil and gas lease, or portion thereof, and the requirements for doing so.
R12-5-2122	This purpose of this rule is to notify oil and gas lessees of their obligation to submit a monthly statement of production.

3. Are the rules effective in achieving their objectives?

Rule	Effective? Yes or No	Comments
R12-5-2101	No	This rule is not effective as it does not provide a description of the two types of potential oil and gas lease applications: noncompetitive or competitive.
R12-5-2104	No	This rule contains ineffective language. Applications are now filed electronically and, therefore, do not need to be submitted physically at the Department per subsection (B). Additionally, in subsection (B), there is an incorrect citation of statute as A.R.S. § 37-108 when it should be § 37-107. Within subsection (B), the last sentence is not effective, as it indicates "...in accordance with Section R12-5-2105..."; this rule was expired effective January 15, 2020.
R12-5-2115	Yes	This rule is effective, however, redundant to statute and R12-5-505, *et. seq.*, but could better prescribe the required lease terms in addition to those set forth by § 27-556.
R12-5-2118	Yes	While technically effective, the Department may consider adding language referencing the proposed operation's inclusion of anticipated construction and operational workforce, lifespan of operation, and plan for remediation, among other items, depending upon the outcome of the Department's large-scale process improvement project.
R12-5-2120	No	This rule is not effective as it is inconsistent with A.R.S. §27-562 and provisions to confirm lease compliance, reclamation upon surrender, and partial bond release.
R12-5-2122	No	This rule is not effective. It should include a date that the production report should be submitted.

4. Are the rules consistent with other rules and statutes?

Rule	Consistent? Yes or No	Comments
R12-5-2101	No	This rule is not consistent with the type of oil and gas lease applications provided by the Department.
R12-5-2104	No	While the majority of the rule is consistent, this rule does contain some information inconsistent with statute and rule. Inconsistencies include subsection (B) which currently reads "...advanced rent payment as calculated per...", but should read per statute, "...advanced rent payment as provided per..."; further, subsection (B) contains inaccurate references to R12-5-2105 which expired effective January 15, 2020.
R12-5-2115	No	This rule is not consistent as statute provides all bids can be rejected and rebid, while rule provides for award to highest qualified bidder.
R12-5-2118	No	This rule is not consistent as hearings are required for utlization off State Trust land per A.R.S. § 27-531.
R12-5-2120	No	Portions of this rule are not consistent with A.R.S. § 27-562.
R12-5-2122	Yes	

5. Are the rules enforced as written?

Rule	Enforced? Yes or No	Comments
R12-5-2101	Yes	
R12-5-2104	In part	Parts of this rule are not enforced, as the Department does not require applications to be submitted to the Department's office in physical form, rather the Department now predominantly receives applications in electronic format. Further, in the event there is a simultaneous electronic filing, conflicts would be resolved pursuant to A.R.S. § 27-555.
R12-5-2115	Yes	
R12-5-2118	Yes	
R12-5-2120	In part	Parts of this rule are not enforced. For example, the Department does not require a copy of the lease to be submitted by the lessee upon surrender.
R12-5-2122	Yes	

6. Are the rules clear, concise, and understandable?

Rule	Clear, Concise, Understandable? Yes or No	Comments
R12-5-2101	No	While concise and understandable, this rule is not clear as it does not provide stakeholders with information relating to the two types of oil and gas lease applications provided by the Department - noncompetitive and competitive.
R12-5-2104	No	While concise and understandable, this rule is not clear as it provides incorrect references to statute and rule which expired effective January 15, 2020. Further, there are redundancies to statute within this rule.
R12-5-2115	No	While somewhat understandable, this rule is not concise as it is duplicative of A.R.S. § 27-256 and R12-5-505, *et. seq.,* therefore providing no benefit to the Department or to stakeholders.
R12-5-2118	No	This rule is not clear or understandable, as there should be standards for approval like those set forth in A.R.S. § 27-531.
R12-5-2120	Yes	
R12-5-2122	Yes	

7. Has the agency received written criticisms of the rules within the last five years?

Rule	Written Criticisms? Yes or No	Comments
R12-5-2101	No	
R12-5-2104	No	
R12-5-2115	No	
R12-5-2118	No	
R12-5-2120	No	

8. Economic, small business, and consumer impact comparison:

Relative to all rules within Article 21, the Department offers the following:

When these rules were adopted or otherwise amended in 2008, an EIS was submitted with the rulemaking. There are no substantive differences with that EIS except for those outlined in the EIS attached to the report in the appendix, and those differences reflect annual rent and royalty amounts which vary from year to year.

9. Has the agency received any business competitiveness analyses of the rules?

Rule	Has the agency received any business competitiveness analyses of the rules?
R12-5-2101	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2104	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2115	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2118	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2120	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2122	No business competitiveness analysis for the rule has been received by the Department.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Rule	Has the agency completed the course of action indicated in the agency's previous five-year-review report?
R12-5-2101	In the previous five-year-review-report, the Department did not propose any course of action on this rule.
R12-5-2104	In the previous five-year-review-report, the Department indicated it planned to amend the rule no later than June 2020. However, the Department did not amend the rule.
R12-5-2115	In the previous five-year-review-report, the Department did not propose any course of action on this rule.
R12-5-2118	In the previous five-year-review-report, the Department did not propose any course of action on this rule.
R12-5-2120	In the previous five-year-review-report, the Department did not propose any course of action on this rule.
R12-5-2122	In the previous five-year-review-report, the Department did not propose any course of action on this rule.

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:

Relative to all rules within Article 21, the Department offers the following:

The Department has determined that the probable benefits of the rules within this Article outweigh their probable costs, and they impose the least burden and costs to persons regulated by the rule, while meeting their underlying objectives.

12. Are the rules more stringent than corresponding federal laws? **Yes __ No __ N/A** x

Relative to all rules within Article 21, the Department offers the following:

There are no corresponding federal laws applicable to this Article.

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:

Relative to all rules within Article 21, the Department offers the following:

The rules reviewed in this report were not adopted after July 29, 2010, therefore this factor does not apply.

14. Proposed course of action:

Rule	Proposed Course of Action
R12-5-2101	R12-5-2101 is not effective, not consistent, and is not clear. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 21. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2104	R12-5-2104 contains language which is not effective, not consistent, and not clear. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 21. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2115	R12-5-2115 is not consistent as statute provides all bids can be rejected and rebid, while rule provides for award to highest qualified bidder. Further, it is duplicative of R12-5-505, *et. seq.,* therefore providing limited benefit to the Department or stakeholders. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 21. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.

(con't from #14) Rule	Proposed Course of Action
R12-5-2118	R12-5-2118 is only somewhat effective and consistent and is not clear or understandable. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 21. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2120	R12-5-2120 contains somewhat ineffective, inconsistent, and unenforceable language. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 21. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2122	R12-5-2122 is not effective as it should include a date which the production report should be submitted. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 21. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.

Arizona State Land Department

5 YEAR REVIEW REPORT

Title 12. Natural Resources

Chapter 5. State Land Department

Article 22. Geothermal Resources

April 23, 2024

1. Authorization of the rule by existing statutes:

Rule	Statutory Authority
R12-5-2201	A.R.S. § 37-132(A)(1); § 27-651; § 27-668(B); § 27-669
R12-5-2204	A.R.S. § 37-132(A)(1); § 27-668(B); § 27-671; § 27-672
R12-5-2209	A.R.S. § 37-132(A)(1); § 27-673
R12-5-2210	A.R.S. § 37-132(A)(1); § 27-668(B); § 27-652
R12-5-2211	A.R.S. § 37-132(A)(1); § 27-672
R12-5-2216	A.R.S. § 37-132(A)(1); § 27-668(B); § 27-667

2. The objective of each rule:

Rule	Objective
R12-5-2201	This rule defines terms used in this Article relative to geothermal leases.
R12-5-2204	The objective of this rule is to inform stakeholders of the method the Department uses to determine and limit the term upon expiration of a geothermal lease.
R12-5-2209	This rule informs geothermal lessees of their right to use the surface of the land as reasonably necessary to conduct their operations and also defines what those rights entail. This rule additionally establishes liability and the rights of the Department to require a bond.
R12-5-2210	The objective of this rule is to provide environmental protection requirement.
R12-5-2211	The objective of this rule is to outline criteria required of geothermal lessees when establishing a cooperative or unit agreement covering a geothermal lease area.
R12-5-2216	The objective of this rule is to inform geothermal lessees of the requirements to convert a geothermal well to another use.

3. Are the rules effective in achieving their objectives?

Rule	Effective? Yes or No	Comments
R12-5-2201	Yes	
R12-5-2204	Yes	
R12-5-2209	Yes	
R12-5-2210	Yes	This rule is effective, but does not address standards for multiple, dominant, or single uses of the leased land.
R12-5-2211	Yes	
R12-5-2216	Yes	

4. Are the rules consistent with other rules and statutes?

Rule	Consistent? Yes or No	Comments
R12-5-2201	Yes	
R12-5-2204	No	This rule is not consistent, as it contains an error in reference to statute "...A.R.S. § 27-6710..." which does not exist.
R12-5-2209	No	This rule contains inconsistent, archaic language such as the term "prospecting".
R12-5-2210	No	This rule is inconsistent in part as it contains inconsistent terms relative to water which could be more consistent with updated language and should address all aspects of A.R.S. § 27-668(B).
R12-5-2211	No	This rule is inconsistent in part as it contains archaic language relating to applications for Cooperative and/or Unit Agreements. Consideration could also be given to incorporating elements of A.R.S. § 27-664, applicable to private land utilization appraisal by the Oil & Gas Commission.
R12-5-2216	Yes	While this rule is consistent with A.R.S. § 27-667, additional detail could provide greater consistency regarding approvals from other agencies.

5. Are the rules enforced as written?

Rule	Enforced? Yes or No	Comments
R12-5-2201	Yes	
R12-5-2204	Yes	
R12-5-2209	Yes	
R12-5-2210	Yes	
R12-5-2211	Yes	
R12-5-2216	Yes	

6. Are the rules clear, concise, and understandable?

Rule	Clear, Concise, Understandable? Yes or No	Comments
R12-5-2201	No	While clear and understandable, this rule is not concise as terms 1 through 13 are redundant to A.R.S. § 27-651.
R12-5-2204	No	While this rule is concise, it is not clear or understandable, as it provides an incorrect citation to statue. Further, this rule may be made clearer by referencing appropriate payment information via Article 12.
R12-5-2209	No	While this rule is concise, there are several items which would benefit an amendment to make this rule clearer and more understandable, especially with item (B) of this rule. Further, much of (B) is redundant to statute.
R12-5-2210	No	While clear and concise, section (C) is essentially redundant of (A) and there are no measurable noise pollution standards to enforce.
R12-5-2211	Yes	
R12-5-2216	No	This rule is concise and understandable, though it could be made clearer by broadly referencing other agencies' requirements.

7. Has the agency received written criticisms of the rules within the last five years?

Rule	Written Criticisms? Yes or No	Comments
R12-5-2201	No	
R12-5-2204	No	
R12-5-2209	No	
R12-5-2210	No	
R12-5-2211	No	
R12-5-2216	No	

8. Economic, small business, and consumer impact comparison:

Relative to all rules within Article 22, the Department offers the following:

There is no prior EIS with which to compare this rule's economic impact, and there is not actual estimated economic impact.

9. Has the agency received any business competitiveness analyses of the rules?

Rule	Has the agency received any business competitiveness analyses of the rules?
R12-5-2201	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2204	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2209	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2210	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2211	No business competitiveness analysis for the rule has been received by the Department.
R12-5-2216	No business competitiveness analysis for the rule has been received by the Department.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Rule	Has the agency completed the course of action indicated in the agency's previous five-year-review report?
R12-5-2201	In the previous five-year-review-report, the Department did not propose any course of action on this rule.
R12-5-2204	In the previous five-year-review-report, the Department did not propose any course of action on this rule.
R12-5-2209	In the previous five-year-review-report, the Department did not propose any course of action on this rule.
R12-5-2210	In the previous five-year-review-report, the Department did not propose any course of action on this rule.
R12-5-2211	In the previous five-year-review-report, the Department did not propose any course of action on this rule.
R12-5-2216	In the previous five-year-review-report, the Department did not propose any course of action on this rule.

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:

Relative to all rules within Article 22, the Department offers the following:

The Department has determined that the probable benefits of the rules within this Article outweigh their probable costs, and they impose the least burden and costs to persons regulated by the rule, while meeting their underlying objectives.

12. Are the rules more stringent than corresponding federal laws? **Yes __ No __ N/A** x

Relative to all rules within Article 22, the Department offers the following:

There are no corresponding federal laws applicable to this Article.

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:

Relative to all rules within Article 22, the Department offers the following:

The rules reviewed in this report were not adopted after July 29, 2010, therefore this factor does not apply.

14. Proposed course of action:

Rule	Proposed Course of Action
R12-5-2201	While effective, consistent, enforced, clear, and understandable, R12-5-2201 is almost entirely redundant to A.R.S.§ 27-651. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 22. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2204	While R12-5-2204 is effective and enforced, it is not consistent as this rule contains an incorrect citation to statute. Further, additional consideration of referencing appropriate payment information via Article 12 may make this rule more clear, concise, and understandable. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 22. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2209	R12-5-2209 is not consistent, clear, concise, or understandable due to archaic language, redundancy to statute. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 22. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2210	R12-5-2210 contains inconsistent language related to water terms. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 22. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2211	R12-5-2211 contains inconsistent, archaic language relating to applications for Cooperative and/or Unit Agreements. The Department is currently working with the industry on a process improvement project for all subsurface estate applications and leases, including rules within Article 22. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.
R12-5-2216	R12-5-2216 could be more consistent and clearer by broadly referencing other agencies' requirements. The Department is actively engaging in a large-scale process improvement project in conjunction with the mining industry and consultants to improve the entirety of the minerals section processes, including rules within Article 20. A large part of this process will include continued evaluation and recommendations relating to applicable rules and statute. Should the Department be permitted to obtain the appropriate authorization to do so, the Department wishes to amend this rule by December 2027.

tion repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1717. Repealed

Historical Note
Original rule, Ch. V (Supp. 76-4). Section R12-5-1717 renumbered from Section R12-5-616 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1718. Repealed

Historical Note
Original rule, Ch. V (Supp. 76-4). Section R12-5-1718 renumbered from Section R12-5-617 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1719. Repealed

Historical Note
Original rule, Ch. V (Supp. 76-4). Section R12-5-1719 renumbered from Section R12-5-618 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1720. Repealed

Historical Note
Original rule, Ch. V (Supp. 76-4). Section R12-5-1720 renumbered from Section R12-5-619 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1721. Repealed

Historical Note
Original rule, Ch. V (Supp. 76-4). Section R12-5-1721 renumbered from Section R12-5-620 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1722. Repealed

Historical Note
Original rule, Ch. V (Supp. 76-4). Section R12-5-1722 renumbered from Section R12-5-621 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1723. Repealed

Historical Note
Original rule, Ch. V (Supp. 76-4). Section R12-5-1723 renumbered from Section R12-5-622 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

R12-5-1724. Repealed

Historical Note
Original rule, Ch. V (Supp. 76-4). Section R12-5-1724 renumbered from Section R12-5-623 (Supp. 93-3). Section repealed by final rulemaking at 6 A.A.R. 3180, effective August 1, 2000 (Supp. 00-3).

ARTICLE 18. MINERAL LEASES

R12-5-1801. Definitions
Unless the context otherwise requires:

1. "Commissioner" means the State Land Commissioner.
2. "Contiguous" means adjoining and having at least part of one side in common.
3. "Department" means the State Land Department.
4. "Geochemical surveys" means surveys on the ground for mineral deposits by the proper application of principles and techniques of the science of chemistry as they relate to the search for and the discovery of mineral deposits.
5. "Geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.
6. "Geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations.
7. "Lessee" means the holder of any lease issued pursuant to the provisions of these rules and regulations and includes the holder of an approved assignment of such lease.
8. "Mineral" means all natural inorganic substances that may be extracted from the earth, and includes mineral compounds and mineral aggregates, natural building stone, saline deposits, and such organic substances as coal and guano, but does not include petroleum and related hydrocarbon gases or other natural gases.
9. "Mining" means extracting mineral from the earth, but shall not include any activity carried on after the mineral has been detached from the earth and has reached the natural or original surface of the earth.
10. "Qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.
11. "Shipping" means the transportation of extracted mineral, after mining, to the place of processing or sale.

Historical Note
Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1801 renumbered from Section R12-5-701 (Supp. 93-3).

R12-5-1802. Expired

Historical Note
Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1802 renumbered from Section R12-5-702 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

R12-5-1803. Expired

Historical Note
Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1803 renumbered from Section R12-5-703 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

R12-5-1804. Expired

Historical Note
Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1804 renumbered from Section R12-5-704 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

R12-5-1805. Lease for Mineral Claim

A. Term of lease. Every mineral lease of state land shall be for a term of 20 years.

B. Lessee's right of possession and enjoyment. Every mineral lease shall confer the right:

1. To extract and ship minerals from the claim located within planes drawn vertically downward through the exterior boundary lines thereof, provided:
   a. That in case of each lease of a claim located pursuant to the provisions of subsection (C) of these rules and regulations (Type A claim), the lease shall confer extralateral rights, in the discovery vein only, as follows:

      Exclusive right of possession and enjoyment of the vein, lode, or ledge throughout its entire depth, the top or apex of which lies inside the surface lines of the claim extended downward vertically, although such veins, lodes or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But the right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of the location, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. Nothing in this subsection shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.
2. To use as much of the surface as required for purposes incident to mining.
3. Of ingress to and egress from other state lands, whether or not leased for purposes other than mining.
   a. Proposed routes of ingress and egress over state lands, preferably reflecting agreement on the part of the lessees concerned, shall be subject to final approval by the Commissioner. Construction of roadways shall not be initiated by the mineral claimant or lessee until such approval is had.

C. Provisions of mineral lease
1. Every mineral lease of state lands shall provide for:
   a. The annual performance of not less than $100.00 worth of labor or of improvements made upon each claim or group of contiguous claims in common ownership. The annual expenditure shall become due and shall be performed during the year commencing at the expiration of one year from the date of location at 12:00 o'clock meridian and during each year thereafter.
      i. The term "labor" shall include, without being limited to, geological, geochemical and geophysical surveys conducted by qualified experts and verified by a detailed report filed with the Commissioner which sets forth fully
         (1) the location of the work performed in relation to the point of discovery and boundaries of the claim,
         (2) the nature, extent and cost thereof,
         (3) the basic findings therefrom, and
         (4) the name, address, and professional background of the persons conducting the work.

      Such surveys, however, may not be applied as labor for more than two consecutive years or for a total of more than five years on any one mining claim, and each such survey shall be non-repetitive of any previous survey of the same claim.
      ii. Improvements mentioned in (A)(1) above shall be limited to those necessary and incident to mining or which develop, or tend to develop, mineral.
      iii. Proof of annual labor on each claim shall be filed with the Commissioner, in such form as the Commissioner may prescribe, within 90 days after expiration of the period provided for its performance.
   b. The fencing of all shafts, prospect holes, adits, tunnels and other dangerous mine workings for the protection of livestock.
   c. The construction of necessary improvements and installation of necessary machinery and equipment with the right to remove it upon expiration, termination or abandonment of the lease, if all the monies owing to the state under the terms of the lease have been paid.
   d. The cutting and use of timber and stone upon the claim, not otherwise appropriated, for fuel, construction of necessary improvements, or for drains, roadways, tramways, supports, or other necessary purposes.
   e. The right of the lessee and his assigns to transfer the lease.
   f. Termination of the lease by the Commissioner upon written notice specifically setting forth the default for which forfeiture is declared, and preserving the right of the lessee to cure the default within a period of not less than 30 days.

      Notices of termination shall be mailed to the address of record of the lessee. Such notice shall set forth the default and inform the lessee of the time and place he may appear before the Commissioner to show cause why the lease should be restored to good standing.
   g. Termination of the lease by the lessee at any time during its term by giving the Commissioner 30 days' notice of termination in writing; provided, the lessee is not delinquent in the payment of rent or royalty to the date of termination.

D. Lease rental. The rental for a lease of a mineral claim on state lands shall be $15.00 per annum, payable in advance at the time of application for lease and at the beginning of each yearly period thereafter.

E. Royalty
1. Every mineral lease of state land shall provide for payment to the state by the lessee of a royalty of 5% of the net value of the minerals produced from the claim. The net value shall be deemed to be the gross value after processing, where processing is necessary for commercial use, less the actual cost of transportation from the place of production to the place of processing, less costs of processing and taxes levied and paid upon the production thereof. In case of minerals not processed for commercial use, the net value shall be the gross proceeds, or gross value, at the place of sale or use, less the actual cost of transportation from the place of production to the place of sale or use, less taxes, if any, levied and paid upon the production thereof.
2. In the case of limestone, silica, shale, and clay manufactured into building materials, the royalty shall be 3¢ per gross short ton of material removed. The 3¢ per ton royalty shall be based upon the average regional wholesale

price of the building material so manufactured over the 12-month period immediately preceding June 14, 1958. The royalty shall be adjusted at the end of each five-year period thereafter in direct proportion to the decrease or increase in the five-year average of the average yearly regional prices for such building materials over the preceding five-year period, providing the decrease or increase amounts to 10% or more of the previous base price.

3. In case of sand, rock and gravel to be used in the construction of roads, buildings or other structures, the royalty shall be 5¢ per cubic yard.
   a. As used as a basis of classification for royalty purposes, the word "rock" means the granular material coarser than gravel, and usually associated with natural deposits of sand and gravel.
4. The minimum rental paid for each year shall be credited upon royalties which may become due during the year.

F. Assignment of lease. The lessee of each mineral claim, if not in default of rent or royalty, and who has kept and performed all the conditions of his lease, may with the written approval of the Commissioner assign his lease. Application for assignment and assignments will be in such form as the Commissioner may require.

G. Renewal. Upon application to the Commissioner, not less than 30 nor more than 60 days prior to the expiration of the lease, the lessee of mineral lands, if he is not delinquent in the payment of rental or royalty on the date of expiration of the lease, shall have a preferred right to renew the lease bearing even date with the expiration of the old lease for a term of 20 years.

H. Sub-leases. No sub-lease shall be valid without the written permission of the Department.

I. Lease, reserved mineral interest; bond
1. Each mineral lease of the state's reserved mineral interest, resulting from sale of state land, shall contain such special conditions and terms as are necessary to the protection of the pertinent patentee or contract purchaser of state lands, or their successors in interest and the state of Arizona, against damage to lands, livestock, water, crops or other tangible improvements on lands held by such patentee or contract purchaser and suffered by the reason of the use or occupation of such land by the lessee.
   a. Lease applicant will be required to execute a bond in a reasonable principal amount, conditioned upon payment for such damage.
   b. Failure by lease applicant to post bond within 30 days after notice of such requirement has been served by the Department shall be deemed to constitute forfeiture of right to the lease.

Historical Note
Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1805 renumbered from Section R12-5-705 (Supp. 93-3).

R12-5-1806. Records and Reports

A. Annual lease report. An annual report shall be submitted by the lessee of each mineral claim showing any and all work performed, improvements made, the cost thereof, and such other information as the Commissioner may require. The report, covering the mining operation in general, shall be filed with the Commissioner within 90 days after expiration of the period provided for the performance of annual labor, shall be incorporated with the report of that labor and shall be in such form as the Commissioner may prescribe.

B. Monthly production report. A monthly report of production shall be submitted by the lessee of each mineral claim within 15 days after the end of the month in which production is first had and before the 15th of each succeeding month for the month immediately preceding, unless otherwise ordered by the Commissioner. Any negative report subsequent to the initial production report shall be submitted unless waived by the Commissioner. The report shall be in such form as the Commissioner may prescribe and shall contain such information as the Commissioner may require, including, but not limited to, information regarding amounts of mineral extracted, use, or sold, the costs of shipping and processing, and the monetary returns therefrom.

C. Records. Each lessee of a mineral claim shall make and keep appropriate books and records covering the mining, shipping, processing and selling of mineral from the claim. The Commissioner or his representative shall have the right at all times during the existence of each lease of a mineral claim, and for six months thereafter, to make such reasonable examination of such books, records or other material as may be necessary to obtain information desired.

Historical Note
Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1806 renumbered from Section R12-5-706 (Supp. 93-3).

R12-5-1807. Relating to Mineral Reservations

A. Definitions. Unless the context otherwise requires:
1. "Commissioner" means the State Land Commissioner.
2. "Department" means the State Land Department.
3. "Reserved minerals" means those minerals, hydrocarbons and other substances as defined in A.R.S. § 37-231, subsection (E).

B. Scope and authority. These rules and regulations are for the protection of the patentee or contract purchaser of state lands, sold under the authority granted by A.R.S. § 37-231, subsection (E), or their successors in interest, and the state of Arizona, against damage to the lands, livestock, water, crops, or other tangible improvements on lands held by such patentee or contract purchaser, and suffered by reason of the use or occupation of such lands by lessees or permittees engaged in mining and oil and gas exploration and development under leases or permits executed by the Department.

C. Nature of mineral reservation. In accordance with the provisions of A.R.S. § 37-231, wherein the state of Arizona reserves and retains all oil, gas, other hydrocarbon substances, helium or other substances of a gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description, together with all uranium, thorium, or any other material determined to be peculiarly essential to the production of fissionable materials, and the exclusive right thereto, on, in, or under such land regardless of any sale of its lands and the subsequent issuance of any instrument conveying title thereto, the State Land Department, for, and on behalf of the state of Arizona, at the same time reserves the right to sever and ship the reserved minerals therefrom; at the same time recognizing its responsibility to properly provide for the protection of the purchaser against damage to his lands and certain improvements on the lands held by him as provided by law.

D. Surface and subsurface use. A lessee or permittee engaged in mining and oil and gas exploration and development under leases or permits executed by the Department shall have the right to reasonable use of so much of the surface or subsurface of the lands of a patentee or contract purchaser as may be necessary for the conduct of operations to explore for, sever and remove the reserved minerals under such leases or permits, provided that the Commissioner in his discretion may require a lessee or permittee to, first, secure the written consent or

waiver of the patentee or contract purchaser; or, second, pay to the patentee or contract purchaser the damages to the lands, livestock, water, crops, or other tangible improvements under agreement; or, third, in lieu of either of the foregoing provisions, post with the Department prior to his entry upon the lands, a cash deposit or surety bond, in an amount to be fixed by the Commissioner, conditioned upon payment to the patentee or contract purchaser for all such damage caused by lessee or permittee.

Historical Note

Original rule, Art. VI, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1807 renumbered from Section R12-5-707 (Supp. 93-3).

ARTICLE 19. PROSPECTING PERMITS

R12-5-1901. Definitions

A. "Commissioner" means State Land Commissioner.

B. "Date of issuance of permit" means the 15th day after approval of the designated land by the Commissioner.

C. "Department" means State Land Department.

D. "Exploration" means activity conducted upon the state land covered by an exploration permit to determine the existence or nonexistence of a valuable mineral deposit, including but not limited to geological, geochemical or geophysical surveys conducted by qualified experts, and drilling, sampling and excavation, together with the costs of assay and metallurgical testing of samples from such land.

E. "Geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits.

F. "Geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.

G. "Geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations.

H. "Mineral" means all natural inorganic substances that may be extracted from the earth and includes mineral compounds and aggregates, natural building stone, saline deposits, and such organic substances as coal and guano but does not include petroleum and related hydrocarbon gases or other natural gases.

I. "Qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

Historical Note

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1901 renumbered from Section R12-5-731 (Supp. 93-3).

R12-5-1902. Expired

Historical Note

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1902 renumbered from Section R12-5-732 (Supp. 93-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 297, effective January 31, 2012; filed in the Office January 11, 2017 (Supp. 17-1).

R12-5-1903. Application for Permit

A. Qualifications of applicant. Any citizen of the United States, partnership or association of citizens, or a corporation organized under the laws of the United States or any state or territory thereof, and authorized to transact business in the state, may apply to the Commissioner for a mineral exploration permit on state land.

B. Area covered by permit application. Separate application shall be made for each mineral exploration permit. A permit may include one or more of the rectangular subdivisions of 20 acres, more or less, or lots of state land in any one section of the public land surveys.

C. Information to be furnished by the applicant

1. The application for permit shall be in such form as the Commissioner may prescribe, shall be in writing, signed by the applicant or an authorized agent or attorney for the applicant, and shall contain the following information:
   a. Name and address of applicant.
   b. Statement whether applicant is an individual, partnership or corporation.
   c. Statement of citizenship.
   d. If a corporation:
      i. Name.
      ii. State of incorporation.
      iii. Arizona business address.
      iv. Affirmation of authorization to do business in Arizona.
   e. Age and marital status.
   f. Description according to the public land survey of the land for which application is being made.
   g. Location of mineral locations, claims or leases on the land under application.
   h. Location of abandoned underground or other major workings on the land under application.
   i. Location of proposed roadways within the area under application and of proposed of ingress and egress over other state land concerned.
   j. Location of improvements or crops on land under application, or on land over which proposed routes of ingress and egress pass. (Information required in (g), (h), and (i) above, shall be conveyed by means of a reasonably accurate plat, or drawing, accompanying the application form.)
2. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the furnishing by the applicant of such additional information as may appear to him to be necessary or desirable, either generally or specifically, for the proper administration of the law governing prospecting permits.

D. Filing application for permit; fee; time of filing

1. Each application filed with the Department shall be accompanied by payment to the Department of a failing fee of $15.00.
2. Each application so filed that meets the requirements of (A), (B), and (C)(1) above shall be stamped by the Department with the time and date it is filed with the Department and, upon being so stamped, shall have a priority over any other application for a permit involving the same state land which may be filed with the Department subsequent to such time and date.
   a. Each application filed by U.S. Mail shall be considered to have been filed in the Department at the time and date it is delivered to the mail room of the Department, provided the requirements of (A), (B), and (C)(1) have been met.
   b. When two or more applications are delivered to the mail room of the Department in the same mail, the applications shall be deemed to have been simultaneously filed.

3. Each application not meeting the requirements of (A), (B), and (C)(1) above shall be rejected by the Department.

E. Withdrawal from mineral location of lands under application. The open state land involved in a filed and time-stamped application for permit shall be deemed withdrawn from mineral location at the time the application is stamped and shall remain so withdrawn so long as the application is pending.

F. Adjudication of rights; notice to applicant; issue of permit

1. Not less than 30 days, nor more than 45 days from the filing of the application with the Department, provided there is no prior application for a mineral exploration permit involving the same state land then pending before the Department, or if such prior application is then pending but is subsequently cancelled, not more than 15 days after it is cancelled, the Department shall mail to the applicant, by registered or certified mail at the address shown on the application, a written notice designating:
   a. The state land described in the application which, at the time the application was filed with the Department, was open to entry and location as a mineral claim or claims upon discovery of a valuable mineral deposit thereon,
   b. The amount of rental required to be paid for the mineral exploration permit, and
   c. Whether a bond will be required as a condition to issuance of such permit.
2. If, within 15 days after the mailing of such notice, the applicant shall pay to the Department as rental for the permit, the amount of $2.00 per acre for each acre of state land designated in the notice and shall file with the Department the bond, if any, required as a condition to issuance, the Commissioner shall issue to the applicant a mineral exploration permit for the state land designated in the notice.

G. Default by applicant; cancellation of application. Upon failure of the applicant for a mineral exploration permit to make the payment or furnish the required bond within the period of 15 days, as provided in (F) above, the application shall be deemed cancelled, of no further effect and the filing fee forfeited.

H. Simultaneous filings; conflicts; adjudication of priority

1. In the event it is determined by the Department that two or more applications for a mineral exploration permit have been filed at the same time, as indicated by the time-stamp, and that the applications include one or more rectangular subdivisions of 20 acres, more or less, or lots of state land which are identical, a conflict of priority shall exist as to such identical land.
2. Resolution of conflicts of priority shall be by drawing held by the Department not less than ten, nor more than 20 days after the simultaneous filing. Ample notice by registered mail of conflict and drawing shall be given each applicant involved. The drawing shall be conducted in such a manner as to resolve the order of priority of filing between or among the simultaneously filed applications, and suitable notice of the determined order of priority shall be given to each such applicant by the Department.

I. Right of applicant to use of land. The filing of an application for a mineral exploration permit shall not confer upon the applicant any greater right to use of the land under application than that held before such filing.

Historical Note

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1903 renumbered from Section R12-5-733 (Supp. 93-3).

R12-5-1904. Expired

Historical Note

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-1904 renumbered from Section R12-5-734 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective January 31, 2002 (Supp. 02-1).

R12-5-1905. Conversion of Permitted Acreage to Mineral Lease

Application for lease.

1. Following discovery of a valuable mineral deposit upon the state land covered by a mineral exploration permit with a rectangular subdivision of 20 acres, more or less, or lot of the public land survey, the permittee may apply to the Commissioner for a mineral lease upon state land so contained.
   a. For the purpose of the application and any mineral lease issued pursuant to such application, such rectangular subdivision or lot shall constitute a mineral claim without extra-lateral rights and shall be deemed to have been located as of the date of filing the application for mineral lease.
2. The application for mineral lease shall be on a form provided by the Commissioner and shall be accompanied by:
   a. Lease application fee of $25.00 per lease.
   b. Advance annual rental of $15.00 per claim.
   c. A plat, to scale, accurately showing location of the claim properly tied in to known U.S. Public Survey corner monuments to properly identify the land claimed.
   d. A reasonably accurate drawing showing the proposed route of ingress and egress over other state land concerned.
   e. Evidence, in a form acceptable to the Commissioner, constituting the applicant's proof of a valuable mineral deposit within the bounds of the claim. Final determination as to such proof shall be made by the Commissioner from the evidence submitted or by any other means at his disposal.
3. Ordinarily, both the application to lease, and the lease, shall be on the basis of one application per claim and one lease per claim. However,
   a. The Commissioner may permit the acceptance of applications embracing more than one claim provided the claims are contiguous and further provided, that prior arrangement for such consolidation has been made and approval had; and
   b. The Commissioner may permit or cause consolidation of claims for lease purposes to the extent consistent with required Departmental administrative procedures. Any consolidation thus effected shall not alter the provisions of subsection (2) above.
4. From and after the date of issuance of a mineral lease, the mineral claim or claims covered by such mineral lease shall be deemed to be excluded from the prospecting permit.

Historical Note

Original rule, Art. VI-A, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency

expired. Section R12-5-1905 renumbered from Section R12-5-735 (Supp. 93-3).

ARTICLE 20. COMMON MINERAL MATERIALS AND NATURAL PRODUCTS

R12-5-2001. Definitions

A. "Common mineral materials" includes cinders, sand, gravel and associated rock, fill-dirt, common clay, disintegrated granite, boulders and loose float rock, waste rock and materials of similar occurrence commonly used as aggregate road material, rip-rap, ballast, borrow, fill, for general construction and for similar purposes.

B. "Natural products" includes all other products severed from the land including, but not limited to, water and plants but shall not include geothermal resources and those substances subject to the mining prospecting permit and leasing laws of Arizona.

C. "Royalty" means the monetary consideration representing the true appraised value of the common mineral materials of natural products.

D. For the purposes of any common mineral materials sales agreement, unless otherwise stated, the following terms shall have these meanings.

1. "Ton" is 2,000 pounds.
2. A "cubic yard" is a measurement of material that will fill a container that measures 1 yard by 1 yard by 1 yard and when a cubic yard is to be converted to tons industry accepted measures of conversion will be used.
3. "Annual production" is the number of tons of material that the Department determines is a reasonable amount to be extracted from the site in any 12-month period.
4. "Unit royalty rate" is the amount of money to be paid by the buyer to the Department for each ton of common mineral materials extracted.

Historical Note

Former Section R12-5-771 repealed as an emergency effective October 31, 1977, new Section R12-5-771 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-771 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2001 renumbered from Section R12-5-771 (Supp. 93-3).

R12-5-2002. Miscellaneous Rules

A. Scope. These rules are promulgated pursuant to authority vested in the State Land Department by statute and provide for the disposition of common mineral products and natural products in conformance with the enabling Act and Arizona Constitution. These rules and regulations shall supersede any existing rules or procedures of the Department under this Chapter.

B. Application of rules. As applicable, these rules shall govern the sale of all common mineral materials and natural products.

C. State land subject to application to purchase. Any state-owned land containing deposits or accumulations of common mineral materials and natural products shall be subject to application for sale thereof it being understood that the state reserves the right to refuse to authorize the sale of common mineral materials or natural products on its lands.

D. Location prohibited. Common mineral materials and natural products are not subject to location as a claim, application for prospecting permit or to application for a mineral lease, as provided by Title 27, Chapter 2, Articles 3 and 4 of the Arizona Revised Statutes. The right to enter upon state land for the purpose of exploring and testing of common mineral materials is reserved by the Department.

E. Nature of agreement. A common mineral materials or natural products sales agreement is an agreement by virtue of which the holder may enter designated state trust lands and recover, extract, use, store, remove and dispose of the materials or natural products designated in the sales agreement, as set forth in R12-5-775(B), R12-5-778, and R12-5-779.

F. Area of activity. The agreement entitles the holder to pursue any permitted activity on or within the premises as determined by boundaries drawn vertically downward through the exterior boundaries of the premises.

G. Environmental protection. At any time during the course of the agreement, the Department may require the purchaser to employ new or other conservation measures in addition to any required at the time of purchase. Any such requirement shall not affect the royalty or minimum annual guarantee requirement.

H. Rehearings and appeals. The right to a rehearing or an appeal from an intermediate or final order of the Department, Commissioner or Board of Appeals from any action taken pursuant to this Article, shall be as authorized by the law pertaining to the conduct of the Department, Commissioner and Board of Appeals, the general rules pertaining to such rehearings and appeals and such right is neither enlarged nor diminished by this Article.

Historical Note

Former Section R12-5-772 repealed as an emergency effective October 31, 1977, new Section R12-5-772 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-772 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2002 renumbered from Section R12-5-772 (Supp. 93-3).

R12-5-2003. Application for Purchase

A. Qualification of applicant. Any citizen, or one who has declared his intention to become a citizen, of the United States, partnership, or association of citizens, or a corporation organized under the laws of the United States or any state, or territory thereof, and authorized to transact business in the state, and any agency of the state of Arizona or any political subdivision thereof may apply to the Department to purchase common mineral materials or natural products.

B. Area covered by application. A separate application shall be made for each common mineral materials or other natural products sale that relates to land in a different section or to non-contiguous parcels within a section. The size of any area subject to sale shall be determined by the Department in order to further the best interests of the state, and may represent consolidated applications.

C. Information to be furnished by the applicant.

1. The application to purchase shall be in such form as the Commissioner may prescribe, shall be filed with the Department by the applicant or an authorized agent for the applicant, and shall contain the following information:
   a. Name and address of applicant.
   b. Statement whether applicant is an individual, partnership or corporation or agency of the state or political subdivision thereof.
   c. Statement of citizenship, when applicable.
   d. If a corporation:
      i. Name.
      ii. State of incorporation.
      iii. Arizona business address.
      iv. Affirmation of authorization to do business in Arizona.

e. Age and marital status, when applicable.
f. Description, according to the public land survey, of the land for which application is being made.
g. Location of mineral claims or leases on the land under application.
h. Location of abandoned mineral workings or common mineral materials pits on the land under application.
i. Location of proposed roadways within the area under application and of proposed routes of ingress and egress over other state land.
j. Location of improvements or crops on land under application or on land over which proposed routes of ingress and egress pass (information required in (g) through (j) herein shall be conveyed by means of a reasonably accurate plat or drawing accompanying the application form).

2. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the applicant to furnish such additional information, either generally or specifically, as the Commissioner may deem necessary for the proper administration of the law governing sales of common mineral materials or other natural products.

D. Filing application for sale. Each application filed with the Department shall be accompanied by the filing fee provided by law and an application for commercial lease of whatever portion, if any, of the lands covered by the sale application upon which the applicant intends to undertake related commercial activities, place permanent improvements or otherwise use the surface.

Historical Note
Former Section R12-5-773 repealed as an emergency effective October 31, 1977, new Section R12-5-773 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-773 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2003 renumbered from Section R12-5-773 (Supp. 93-3).

R12-5-2004. Exploration Permits
Common mineral materials and natural products, exploration, permits.

1. Scope. Following receipt of an application to purchase, the Department may issue permits to any person to explore for common mineral materials or natural products which are subject to sale.
2. Issuance of permits. Such permits will be issued only for limited entry into designated areas for the purpose of exploring or testing for common mineral material or natural products.
3. Non-assignability of permits. Such permits are non-assignable and subject to control stipulations by the Department.
4. No reimbursable improvements will be authorized or recognized by the Department in connection with any activity pursuant to an exploration permit.
5. Filing an application for sale shall entitle an applicant to an exploration permit without payment of further fees; any other person wishing to explore must pay a sum equal to the application fee.
6. All related state land must be restored after exploration and before sale by the exploring person(s).

Historical Note
Former Section R12-5-774 repealed as an emergency effective October 31, 1977, new Section R12-5-774 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-774 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2004 renumbered from Section R12-5-774 (Supp. 93-3).

R12-5-2005. Use of Land

A. Rights of applicant. Except as may be provided by an exploration permit duly issued pursuant to R12-5-774, the filing of an application for a common mineral material or other natural products sale shall not confer upon the applicant any greater right to the use of the land under application or to the common mineral materials or other natural products therein than were held by the applicant before filing.

B. Rights of Buyer. The Buyer shall have the right to use as much of the surface of the premises as is reasonably necessary for the extraction, severance, temporary storage, removal and disposition of the materials from the premises, including the right to wash, screen, crush, sort or otherwise mechanically process those materials, together with the right of ingress to and egress from the premises across other state lands along designated routes approved by the Department. The right herein granted shall be perfected by Buyer obtaining the commercial lease referred to in R12-5-773(D).

C. Use by other than Buyer; assignability of Buyer's rights. No one other than the employees or officers of the Buyer or those of an independent contractor engaged in the performance of a written contract with the Buyer shall have the right to enter upon the premises to perform any act permitted Buyer under the sales agreement. However, Buyer may assign its interest upon the prior written approval of the Department upon a form provided for such.

D. No reimbursable improvements shall be authorized or recognized by the Department no matter by whom or for what purpose constructed insofar as the Buyer of a common mineral materials or natural products agreement is concerned. The Buyer shall have 90 days following the expiration or termination of the agreement, provided Buyer has performed all acts to be performed by it to remove any improvements; further provided that such removal does not interfere with the land being returned to an acceptable condition. Otherwise, any such improvements shall be deemed abandoned to the trust. Nothing in this provision, however, shall interfere with any right to reimbursement for improvements which Buyer might have by virtue of its status as a lessee of the Department.

Historical Note
Former Section R12-5-775 repealed as an emergency effective October 31, 1977, new Section R12-5-775 adopted effective September 16, 1977 (Supp. 77-5). Former Section R12-5-775 repealed as an emergency now repealed, new Section adopted effective September 21, 1978 (Supp. 78-5). Section R12-5-2005 renumbered from Section R12-5-775 (Supp. 93-3).

R12-5-2006. Notice and Conduct of Competitive Sales

A. Nature

1. All sales of common mineral materials and natural products, except to governmental agencies, shall be by public auction.
2. Common mineral materials or natural products may be sold to governmental agencies without public auction on terms specified by the Commissioner, provided that the materials or products are sold at their true appraised value and that they are to be used for governmental purposes.

B. Sales notice. Public notice of sale at public auction for common mineral materials or natural products shall be published once each week for not less than ten successive weeks in a

newspaper of general circulation published regularly at the state Capitol and in a newspaper of general circulation published regularly nearest the location of the interest to be sold and with the same formality as required for the sale of land.

C. Conduct of sales. A representative of the Department shall conduct the public auction in a manner as consistent as possible as that provided for sales of land. Specifically, bidding shall be conducted in the following manner:

1. Bidding shall be by voice bid but no bid will be considered or recorded which is not higher than the highest preceding bid, except the initial bid may be for the unit royalty rate established in the notice of sale.
2. No bid shall be accepted for less than the unit royalty rate established in the notice of sale and the Department reserves the right to reject any or all bids, if determined by it to be in the best interests of the state.
3. Before a final bid at public auction is accepted, bidder must present to the auctioneer the amount of money that represents the minimum required in the notice of sale. The successful bidder shall have an additional 30 days from the date of sale in which to pay such additional sums, post such bonds and complete whatever other requirements may be required. Failing to do so will result in the abandonment of such sums already paid to the Department as liquidated damages and the freeing of the Department to reconsider such other bidders as the proper recipient of the sales agreement.

D. Execution of agreement

1. Upon approval by the Department of the successful bid for a common mineral materials or other natural products sale, the Department, by mail, will tender the sales agreement to the Buyer for its signature and simultaneously will notify it of the bond coverage required by the Department as a condition of issuing the sales agreement and will further state the execution fee required by law.
   a. When the executed sales agreement is filed with the Department by the Buyer and the Buyer has posted the bond or bonds required as a condition of issuance of the agreement, and the agreement has been signed by the Commissioner, the agreement will be in full force and effect.
   b. The date of commencement of the agreement will be the date of sale.

Historical Note

Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2006 renumbered from Section R12-5-776 (Supp. 93-3).

R12-5-2007. Common Mineral Materials

A. Material to be specified. Common mineral materials sales agreements will recite the material or materials covered by such agreements and the rights of Buyers will pertain only to such materials as specified in the agreement.

1. It is understood that flora will necessarily be distributed by Buyer's activities, but such disturbance shall be minimal and the Department may so direct Buyer's activities to assure such minimal disturbance.
2. Buyer shall not be entitled to keep, give, sell or otherwise dispose of any flora on the premises unless the agreement so provides, in which event such flora shall have been appraised by or for the Department and a separate price therefore set forth in the agreement.
3. This agreement shall confer the right on the Buyer to extract groundwater from the land area subject to the sale for the purposes stated in R12-5-772, subsection (E) and R12-5-775, subsection (B), and purposes incidental or related thereto which uses and purposes shall be set forth in the Notice of Sale and which shall have been a factor in the establishment of the minimum acceptable unit royalty rate however, groundwater may be separately noted for sale in which event the notice of sale shall specifically so provide.
4. The granting of a right to extract groundwater shall not constitute a representation or guarantee by the Department that there is any groundwater available at any level or any quality for extraction.
5. Any right to extract groundwater conferred hereby is subject to any and all limitations and provisions existing in law or regulation of any agency including any such applicable other regulation of this Department.
6. Nothing herein shall affect any right to the use of groundwater which buyer might otherwise possess by virtue of being a lessee of the Department or having otherwise acquired a groundwater permit through Public Auction Sale by the Department.

B. Advertising of sale. The advertising of sale of common mineral materials shall state the location by legal description of the tract or tracts on which the material is being offered, the kind of material, the term, the time and place of auction, the unit, the minimum unit royalty rate, minimum annual production, total bid deposit required, bond requirements, the office where additional information may be obtained and such additional information as the Department may deem necessary.

1. When the materials to be sold on a basis other than the standard one set forth in these rules, the notice of sale shall so state in specific detail.

C. Appraisals. Common mineral materials to be sold will be appraised by the Department when the materials are in their undisturbed natural condition ("in situ") using acceptable appraisal standards. The appraisal will determine the minimum unit royalty rate and minimum annual production.

D. Annual royalty. Until any reappraisal goes into effect, the annual royalty shall be the higher of

1. The minimum annual royalty as determined by the bidding process as provided in R12-5-777(E),
2. The number of units of material extracted multiplied by the unit royalty rate.

   Upon reappraisal, subsections (D)(1) and (2) shall be adjusted to reflect the reappraisal.
   a. The minimum annual royalty payment shall be due and payable in advance on the anniversary of the agreement. Royalty for any material extracted, severed or disposed of in excess of the minimum annual production shall be due and payable in advance on the anniversary of the agreement. Royalty for any material extracted, severed or disposed of in excess of the minimum annual production shall be due and payable monthly within 30 days after billing by the State Land Department.
   b. Minimum annual royalty payments shall be applied as a credit to payment for materials for which payment must be made, provided, however, that monies so advanced and not credited against payments for materials shall become the sole property of the state upon termination or expiration of the agreement.
   c. For purposes of determining minimum annual royalty payment due in any particular year:
      i. Multiply the original minimum annual royalty by the number of years of the agreement;
      ii. Subtract the royalties thus far paid by (i);

iii. Divide (ii) by the years remaining and that will give the minimum annual royalty for the year in question.

d. In no event will the minimum royalty be less than 5% of the original minimum annual royalty.

E. Bids. Unless otherwise provided by the Commissioner and specifically published in the notice of sale, all bids shall be by the unit royalty rate.

1. In determining the minimum annual royalty, the Department shall multiply the unit royalty rate bid by the successful bidder times the minimum annual production which shall be determined solely by the Department and set forth in the notice of sale.

F. Reappraisals. The royalty rate established initially shall remain fixed for the first two years of the agreement. For each subsequent year the Department may reappraise in the following manner:

1. No later than 60 days before the end of any anniversary date, the Department may reappraise the material to determine the unit rate and/or the acceptable minimum annual royalty; that reappraisal shall be effective for the second year following the one in which the reappraisal is made.
2. The Department shall notify the Buyer within 30 days of the reappraisal and Buyer shall be obligated for payments based on such reappraisal for the second year following the one in which the reappraisal is made. If any proper appeal is taken by Buyer and not concluded before the effective date of the reappraisal, the prior royalty shall be paid, with any necessary adjustment being made immediately upon the conclusion of such appeal.
3. The Department is not obligated to reappraise in any particular year and its failure to do so merely means the last appraisal results shall remain in effect until a proper reappraisal is made.

G. Provisions of the agreement

1. Term
   a. The term of a common mineral material sales agreement shall not be for more than 20 years.
   b. The Department will set the term of each sales agreement in such manner as to best utilize the resources and provide an economically sound term compatible with the law, the best interest of the trust and of the state.
2. For contract administration and sales-related expenses, a charge of 2% will be added to the minimum annual royalty and to royalties paid for production in excess of minimum annual production.
3. The royalty provisions shall be set forth in the agreement.
4. All common mineral materials removed from the premises shall be measured by volume, weight or truck tally or a combination of these methods or any other form of measurement the Department determines to be to the best interest of the state.
5. Buyer's conduct on premises
   a. The Buyer will conduct its operations in a workmanlike manner at all times, to protect the premises and soils thereof and including, but not limited to:
      i. Keeping the premises free of all litter, junk or debris;
      ii. Taking precautions as necessary to protect the safety of persons or property upon the premises;
      iii. Complying with all flood control regulations which may be applicable to the premises;
      iv. Fencing all dangerous workings for the protection of humans and livestock;
      v. Complying with all other rules and regulations prescribed from time to time by the Department or any other agency having jurisdiction over the premises or the activities.
   b. Upon termination of the agreement, the Buyer will restore the surface of the premises to a reasonable condition in accordance with good mining practices, such restoration to include:
      i. The sloping of side banks of the excavation resulting from the operation to a grade of not more than one foot vertical for each two feet of horizontal distance, unless otherwise specified by the Department;
      ii. The backfilling into the excavation of all unused waste materials and overburden resulting from the operation, and the leveling of such backfill to a reasonably uniform depth on the floor excavation, unless otherwise specified by the Department;
      iii. The removal and restoration of the surface of any new haul roads constructed on state land by Buyer, which roads the Department does not elect to retain, any such election of retention to be made in writing.
   c. The Buyer will indemnify, hold and save harmless, the state of Arizona, the Department and all of their officers and employees, against all loss, damage, liability, expense, costs and charges incident to or resulting in any way from use, condition or occupation of the premises.
6. Transfers
   a. The Buyer, with prior approval of the Commissioner, may assign the agreement.
   b. The application for assignment and the assignment and assumption of the agreement will be on such forms as the Department may prescribe.
   c. Assignment shall not relieve the Buyer from any duties under the agreement but the assignee shall succeed to all of the rights and be jointly and severally liable, along with the assignor, to all of the obligations existing under the agreement dating from its inception.
   d. No transfer of the Buyer's interest or any portion thereof is authorized except as specifically provided in these rules.
7. Termination of sales agreement
   a. Upon 30 days' written notice to Buyer, the Department may terminate the agreement for the failure or neglect of the Buyer to perform any of its provisions, including those specified by these rules. Failure to pay royalties when due is such a failure of performance.
   b. Notices of termination shall be mailed to the address of record at the Department of the Buyer. Such notice shall set forth the reason for the termination.
   c. Provided Buyer is not in default in any of the terms and conditions of the agreement, the Buyer shall have the right to terminate the agreement upon any annual anniversary date thereof by giving the Seller not less than 30 days' prior notice in writing of Buyer's intention to do so.
8. Upon termination or expiration of the agreement, Buyer shall have 90 days, provided it has fully performed under the agreement, to remove any stockpiled material on the

premises. The Commissioner may, if the Buyer so requests in writing within ten days before the expiration of any such removal period, or extension thereof, grant a further extension not to exceed 60 days and provided that the cumulative removal period, along with extensions, shall not exceed 210 days. If the Buyer has not fully performed or fails to remove the stockpiled material within that specified time, such material will be deemed abandoned to the Trust. Any subsequent buyer of material on the portion of the premises on which stockpiled will succeed to its ownership and pay the Department the new Buyer's royalty rate therefor upon removal.

9. The agreement shall not provide for any renewal thereof.
10. Bonds
    a. The Commissioner may require the Buyer to post a cash deposit or surety bond to guarantee the performance of the sales agreement and the payment of all monies due the state under the sales agreement.
    b. Restoration and surface damage bond
        i. The Commissioner shall require the Buyer to furnish bond, in a reasonable amount, to be fixed by the Commissioner, conditioned that the Buyer will guarantee restoration of the surface of the land described in the sales agreement to a reasonable condition in accordance with good mining practices, upon termination of the sales agreement.
        ii. The Commissioner shall also require the Buyer to include in the above bond an amount set by the Department as a surety bond in the form, amount, and with surety approved by the Commissioner, conditioned upon prompt payment to the owner or lessee of the surface of state land covered by the common mineral materials sales agreement, or across which the common mineral materials Buyer exercises the right of ingress, for any loss to such owner or lessee for damage or destruction caused by the common mineral materials Buyer or Buyer's agents or employees, to grasses, forage, crops and improvements upon such land.
        iii. Assignment of the sales agreement will not relieve the assignor of his obligation as principal under the bond. Release of the assignor's obligation under the bond may be effected through the posting of a replacement bond by the assignee, but only after approval by the Commissioner in lieu of a replacement bond, the bonding company may furnish a bond rider form changing the name of principal.
        iv. The Commissioner, in his discretion reasonably exercised, may reduce or increase the principal amount of any bond.
        v. After determination by the Commissioner that full discharge of the conditions of the obligation under any bond has been effected, he will, in writing, notify the principal and surety held by the bond so that it may be formally terminated.
        vi. Surety on the bond shall have the right to cancel the bond and be relieved of future liability, but not previous liability after the period of notice, by giving 30 days' notice to the Buyer and the Department of its desire to so cancel. Failure by the Buyer to post a replacement bond before the expiration of the 30 days, mentioned next above, shall constitute a default by the Buyer and cause for cancellation of the sales agreement.
11. Records and reports
    a. A monthly report of production (either affirmative or negative) shall be submitted by the Buyer of each common mineral materials sales agreement within 15 days after the end of the month in which his sales agreement was issued, and by the 15th of each month thereafter.
    b. The report shall be in such form as the Commissioner shall prescribe and shall contain such information as the Commissioner shall require, including, but not limited to, the type, volumes, weights and classifications of the common mineral materials removed or disposed of.
    c. Each Buyer shall make and keep an accurate account of all operations, showing the sales, prices, dates, purchasers and the total amount of material disposed or removed from the subject premises.

Historical Note
Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2007 renumbered from Section R12-5-777 (Supp. 93-3).

R12-5-2008. Natural Products -- Groundwater
When the law permits and the Department believes it consistent with the best interests of the state, groundwater may be sold at public auction in the same manner and subject to the same forms, insofar as possible, as are common mineral materials.

Historical Note
Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2008 renumbered from Section R12-5-778 (Supp. 93-3).

R12-5-2009. All Other Natural Products
When the Department believes it consistent with the best interests of the state, natural products other than groundwater may be sold at public auction in the same manner and subject to the same terms, insofar as possible, as are common mineral materials.

Historical Note
Adopted effective September 16, 1977 (Supp. 77-5). Section R12-5-2009 renumbered from Section R12-5-779 (Supp. 93-3).

ARTICLE 21. OIL AND GAS LEASES

R12-5-2101. Completed Oil and Gas Lease Application
An oil and gas lease application, filed pursuant to this Article, shall be on a form prescribed and furnished by the Department. The application is complete if all blank spaces are addressed with all required attachments. The applicant may indicate "not applicable" or "N/A" on any blank, as appropriate. The applicant shall complete the application's certification page pursuant to the instructions. An applicant shall appropriately sign and date the application.

Historical Note
Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2101 renumbered from Section R12-5-781 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1). New Section made by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

R12-5-2102. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2102 renumbered from Section R12-5-782 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2103. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2103 renumbered from Section R12-5-783 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2104. Application for Noncompetitive Lease; Acreage Limitation

A. The Department shall not issue an oil and gas lease on land already leased for that purpose. If state lands are not located within a known geological structure of a producing oil or gas field, a person shall submit a noncompetitive oil and gas lease application for a noncompetitive oil and gas lease. State lands under a single oil and gas lease application shall not exceed 2,560 acres which shall be the maximum acreage of state lands in a noncompetitive oil and gas lease. The lands under application shall be in as compact a body as possible. The application may include non-contiguous state lands within a six mile square area if the maximum acreage of contiguous land is not available, but shall not exceed 2,560 acres.

B. An applicant shall submit the completed noncompetitive oil and gas lease application to the Department's Phoenix Office, 1616 W. Adams, Phoenix, AZ 85007, to the attention of Public Records, along with payment of the required application fee pursuant to A.R.S. § 37-108 and advanced rent payment as calculated under A.R.S. § 27-555(D). The first applicant to file a complete noncompetitive oil and gas lease application with required fees and advance rental payment has priority to the lease. The Department shall resolve conflicts resulting from simultaneously filed noncompetitive oil and gas lease applications in accordance with Section R12-5-2105.

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2104 renumbered from Section R12-5-784 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

R12-5-2105. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2105 renumbered from Section R12-5-785 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 290, effective January 15, 2020 (Supp. 20-1).

R12-5-2106. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2106 renumbered from Section R12-5-786 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 290, effective January 15, 2020 (Supp. 20-1).

R12-5-2107. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2107 renumbered from Section R12-5-787 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2108. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2108 renumbered from Section R12-5-788 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2109. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2109 renumbered from Section R12-5-789 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2110. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2110 renumbered from Section R12-5-790 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2111. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2111 renumbered from Section R12-5-791 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2112. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2112 renumbered from Section R12-5-792 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2113. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2113 renumbered from Section R12-5-793 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2114. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2114 renumbered from Section R12-5-794 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2115. Competitive Lease; Award of Lease

When state lands are located within a known geological structure of a producing oil or gas field, the oil and gas interest in the land shall be leased only by sealed bid.

1. Within 30 days of opening of sealed bids, the Department, subject to its right to reject a bid, shall award the lease to the highest qualified bidder. The Department shall give notice of its decision, by certified mail, to the applicants.
2. The Department shall send a lease offer to the successful bidder. The successful bidder shall execute the leases and pay the first year's rental, within 30 days from receipt of the lease offer.
3. If two or more tracts, where the acreage does not exceed more than two sections of land, are awarded to any bidder the tracts may, if not otherwise prohibited by law, be included in a single lease.

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2115 renumbered from Section R12-5-795 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

R12-5-2116. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2116 renumbered from Section R12-5-796 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2117. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2117 renumbered from Section R12-5-797 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2118. Cooperative and Unit Agreements

A lessee seeking the Commissioner's approval of a cooperative or unit agreement under A.R.S. § 27-557, shall comply with the following procedure and requirements.

1. To facilitate the Department's decision making process and to allow an applicant to obtain feedback prior to formal submission, an applicant shall submit the following information no less than 60 days before submitting a cooperative or unit agreement for approval:
   a. A copy of a plat map showing the area to be included in the cooperative or unit agreement;
   b. Structural and geological information that supports the land to be included in the cooperative or unit agreement; and
   c. A draft of the proposed cooperative or unit agreement for the Department's review.
   d. If the proposed cooperative or unit agreement includes federal lands, and if by inclusion of those lands, the federal government requires standard provisions for a cooperative or unit agreement, the applicant shall submit a proposed cooperative or unit agreement that includes the federal provisions.
2. A cooperative or unit agreement does not affect the leasehold of any leased state lands outside of the cooperative or unit area. The cooperative or unit agreement does not affect leaseholds within the cooperative or unit area unless the lessees' land is committed to the cooperative or unit area pursuant to A.R.S. §§ 27-557 or 27-531 et seq.

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2118 renumbered from Section R12-5-798 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

R12-5-2119. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2119 renumbered from Section R12-5-799 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2120. Surrender

A lessee may surrender to the Department a lease or any part of a lease, but not less than an approximate 40 acre parcel. A lessee shall surrender the lease or a part of a lease to the Department by submitting to the Department one copy of the lease and any monies owed.

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2120 renumbered from Section R12-5-800 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

R12-5-2121. Expired

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2121 renumbered from Section R12-5-801 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1).

R12-5-2122. Monthly Statement

A lessee shall submit to the Department a monthly statement of oil or gas production and other statements required of the lessee under the lease.

Historical Note

Original rule, Art. VII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-2122 renumbered from Section R12-5-802 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4310, effective January 5, 2008 (Supp. 07-4).

ARTICLE 22. GEOTHERMAL RESOURCES

R12-5-2201. Definitions

In these rules and regulations the following terms shall have the meaning herein given:

1. "Commission" means the Oil and Gas Conservation Commission.
2. "Completion" or "completed well" means a well that has produced or is capable of producing geothermal resources or has been determined to be a dry hole, temporarily abandoned or plugged and abandoned, or has been readied for other phases of exploitation.
3. "Department" means the State Land Department.
4. "Environment" means the sum total of all the external conditions which may act upon an organism or community, to influence its development or existence.
5. "Geothermal area" means the same general surface area which is underlain or reasonably appears to be underlain by one or more formations containing geothermal resources.
6. "Geothermal resources" means:
   a. All products of geothermal processes embracing indigenous steam, hot water and hot brines.

b. Steam and other gases, hot water and hot brines resulting from water, other fluids or gas artificially introduced into geothermal formations.
c. Heat or other associated energy found in geothermal formations, including any artificial stimulation or induction thereof.
d. Any mineral or minerals, exclusive of fossil fuels and helium gas, which may be present in solution or in association with geothermal steam, water or brines.

7. "Lease" means a geothermal resources development lease issues for state lands pursuant to the provisions of this Article.
8. "Lessee" means the holder of a lease or any assignee of an original lease or part thereof.
9. "Operator" means any person drilling, maintaining, operating, pumping or in control of any well, and includes the owner, when any well is or has been or is about to be operated or under the direction of the owner.
10. "Owner" means and includes the operator when any well is operated or has been operated or is about to be operated by any person other than the owner.
11. "Person" means and includes any individual, firm, association, corporation or any other group or combination acting as a unit.
12. "Waste" means any physical waste including, but not limited to, underground waste resulting from the inefficient, excessive or improper use of dissipation of reservoir energy or resulting from the location, spacing, drilling, equipping, operation or production of a geothermal resources well in such a manner that reduces or tends to reduce the ultimate economic recovery of the geothermal resources within a reservoir, and surface waste resulting from the inefficient storage or utilization of geothermal resources and the location, spacing, drilling, equipping, operation or production of a geothermal resources well in such a manner that causes or tends to cause the unnecessary or excessive surface loss or destruction of geothermal resources obtained or released from the reservoir.
13. "Well" means any well drilled in search of geothermal resources or any development well on lands in areas proved to be underlain by one or more formations containing geothermal resources or reasonably presumed to contain geothermal resources or any well drilled for information purposes, or any producing well or reentered abandoned well used for the injection of fluids into the geothermal formation or disposition of fluids into non-geothermal formations, or any well drilled for the purpose of stimulating the heat of a formation or for the creation of heat in a formation by nuclear or any other form of energy.
14. "Known Geothermal Resource Area (KGRA)" means an area in which the geology, nearby discoveries, competitive interests, and other indicia would, in the opinion of the Department, engender a belief in the people who are experienced in the subject matter that the prospects for the extraction of geothermal resources are sufficient to warrant expenditures of money for that purpose.

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-850 repealed, new Section R12-5-850 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2201 renumbered from Section R12-5-850 (Supp. 93-3).

R12-5-2202. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-851 repealed, new Section R12-5-851 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2202 renumbered from Section R12-5-851 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2203. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-852 repealed, new Section R12-5-852 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2203 renumbered from Section R12-5-852 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2204. Terms of Lease

A. If, after the expiration of the ten year primary term or the additional two-year period provided for in A.R.S. § 27-6710, this lease is maintained in force and effect by the production of geothermal resources in paying quantities and the production shall cease, this lease shall continue in force and effect provided lessee pays the rentals provided for in these rules and conducts operations on the lands with reasonable diligence for the purpose of restoring the paying production of geothermal resources from the lands. In the event paying production of geothermal resources from the lands is restored within one year from the date of cessation of production, this lease shall remain in full force and effect.

B. If geothermal resources in paying quantities are discovered on the lands covered by this lease or on lands joined therewith in a cooperative or pooled unit, while the lease is in full force and effect, but lessee is unable to produce any geothermal resources because of lack of transportation, processing or generating facilities, the lease shall be extended beyond the primary term of ten years from year to year, but not to exceed a period of three years, by payment of a shut-in geothermal resources royalty of $2.00 per acre per year, payable in advance annually on the anniversary date of the lease, and if the payment is made it will be considered geothermal resources are being procured and produced in paying quantities from the leased premises for such year.

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-853 repealed, new Section R12-5-853 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2204 renumbered from Section R12-5-853 (Supp. 93-3).

R12-5-2205. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-854 repealed, new Section R12-5-854 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2205 renumbered from Section R12-5-854 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2206. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-855 repealed, new Section R12-5-855 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2206 renumbered from Section R12-5-855 (Supp.

93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2207. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-856 repealed, new Section R12-5-856 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2207 renumbered from Section R12-5-856 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2208. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-857 repealed, new Section R12-5-857 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2208 renumbered from Section R12-5-857 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2209. Surface Use

A. Geothermal resources lessees shall have the right to use so much of the surface of the lands as may be reasonably necessary for the conduct of their operations under the leases.

B. Surface rights to include:

1. Prospecting, exploration drilling and production.
2. Right to construct and maintain all roads, communication lines, pipelines, reservoirs, storage tanks, pumping stations, or other structures reasonably necessary to the production thereof, to the extent such construction is compatible with existing and future surface use of the land, as determined by the State Land Commissioner.

However, the lessee shall be liable for unnecessary or excessive damage caused by lessee, in the judgment of the Department, to the state's interest in the surface, or to the interest of a surface lessee, if any, and the Department may require the lessee at any time to execute a bond in a reasonable principal amount as determined by the Department conditioned upon payment for all such damage. If the lessee and a surface lessee cannot agree upon the amount of damages caused by lessee, such damages shall be appraised by the Department or its agent and appeal from the judgment of the Department may be taken as provided by law.

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-858 repealed, new Section R12-5-858 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2209 renumbered from Section R12-5-858 (Supp. 93-3).

R12-5-2210. Environmental Protection and Conduct of Operations

A. All lessees and operators shall comply with all applicable Arizona environmental statutes as now in effect or as hereafter enacted or amended, and all applicable rules and regulations. In addition, lessee must comply with all federal environmental statutes and regulations.

B. Lessee or operator shall be subject to liability for any excessive or unnecessary damage to the surface of the ground and improvements thereon, and is charged to conduct operations so as not to pollute surface or subsurface waters on the lands covered by the lease or on neighboring lands.

C. In addition, operations shall be conducted so as to prevent pollution to the air, noise pollution, compliance with the Arizona Antiquities Act and acts providing for the protection of native flora and fauna.

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-859 repealed, new Section R12-5-859 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2210 renumbered from Section R12-5-859 (Supp. 93-3).

R12-5-2211. Cooperative and Unit Agreements

Commitment of leases of state lands to cooperative or unit agreements shall be conditioned on the following procedure and requirements which shall be submitted at time of application.

1. There shall be submitted to the Department two copies of a plat showing the area to be unitized, together with such geophysical and geological information as will tend to support the delineation of a geothermal resource area. The information so furnished shall be held confidential by the Department until released by the applicant or applicants.
2. There shall be submitted to the Department two preliminary drafts of the agreement for approval as to form. Where the amount of federal land predominates in any unit area, the standard form of unit agreement of the United States should be followed.
3. After determination by the Department that it is for the best interest of the state to permit a lessee to participate in a cooperative or unit agreement for the development and operation of a geothermal resource area, the Department may grant approval therefor when a request for such approval is submitted.
4. A cooperative or unit agreement shall not affect the leasehold of any leased state lands lying outside of the unit area, and shall not be effective as to the leaseholds lying within the unit area unless the lessees thereof and the then approved operating interests shall subscribe to such an agreement.
5. The terms and conditions of leases covering state lands will be modified and changed to the extent necessary to conform the same to the terms and conditions of the agreement.

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-860 repealed, new Section R12-5-860 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2211 renumbered from Section R12-5-860 (Supp. 93-3).

R12-5-2212. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-861 repealed, new Section R12-5-861 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2212 renumbered from Section R12-5-861 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2213. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-862 repealed, new Section R12-5-862 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2213 renumbered from Section R12-5-862 (Supp.

93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2214. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-863 repealed, new Section R12-5-863 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2214 renumbered from Section R12-5-863 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

R12-5-2215. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-864 repealed, new Section R12-5-864 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2215 renumbered from Section R12-5-864 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2216. Abandonment -- Other Uses
As provided for in A.R.S. § 27-667(C) any well drilled for geothermal resource which has penetrated fresh water zones may be disposed of as a fresh water well subject to the following conditions:

1. State's lessee must file written request for such use with the Department.
2. Condition of the hole must be such that plugging back to fresh water zone can be safely accomplished.
3. Must meet the requirements of the rules and regulations of the Department pertaining to such use.
4. Must meet the requirements of the Commission's rules and regulations pertaining to disposal of groundwater.

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-865 repealed, new Section R12-5-865 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2216 renumbered from Section R12-5-865 (Supp. 93-3).

R12-5-2217. Expired

Historical Note
No original number assigned (Supp. 76-4). Former Section R12-5-866 repealed, new Section R12-5-866 adopted effective March 14, 1979 (Supp. 79-2). Section R12-5-2217 renumbered from Section R12-5-866 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 474, effective January 31, 2009 (Supp. 09-1).

R12-5-2218. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2218 renumbered from Section R12-5-867 (Supp. 93-3).

R12-5-2219. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2219 renumbered from Section R12-5-868 (Supp. 93-3).

R12-5-2220. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2220 renumbered from Section R12-5-869 (Supp. 93-3).

R12-5-2221. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2221 renumbered from Section R12-5-870 (Supp. 93-3).

R12-5-2222. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2222 renumbered from Section R12-5-871 (Supp. 93-3).

R12-5-2223. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2223 renumbered from Section R12-5-872 (Supp. 93-3).

R12-5-2224. Renumbered

Historical Note
No original numbers assigned (Supp. 76-4). Repealed effective March 14, 1979 (Supp. 79-2). Section R12-5-2224 renumbered from Section R12-5-873 (Supp. 93-3).

ARTICLE 23. BOARD OF APPEALS

R12-5-2301. Definitions
Unless the context requires otherwise, in this Article:

1. "Appellant" means the person that files a notice of appeal with the Clerk under A.R.S. § 37-215.
2. "Board" means the Land Department Board of Appeals appointed by the Governor under A.R.S. § 37-213(A).
3. "Chairperson" means the Chairperson or, in the Chairperson's absence or by designation, the Vice-chairperson of the Board.
4. "Clerk" means the person designated by the Board to handle administrative matters for the Board.
5. "Commissioner" means the State Land Commissioner appointed under A.R.S. § 37-131, or the Commissioner's designee.
6. "Department" means the State Land Department.
7. "Good cause" means a reason that the Board determines is substantial enough to afford a legal excuse.
8. "Party" has the same meaning as prescribed in A.R.S. § 41-1001.
9. "Person" means an individual, limited liability company, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, group acting as a unit, and any department, agency, or instrumentality of the state or a political subdivision.

Historical Note
Adopted effective September 9, 1983 (Supp. 83-5). Section R12-5-2301 renumbered from Section R12-5-901 (Supp. 93-3). Former Section R12-5-2301 renumbered to R12-5-2315, new Section R12-5-2301 adopted effective November 27, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 4216, effective February 2, 2008 (Supp. 07-4).

R12-5-2302. Notice of Appeal
A. A person that files a notice of appeal under A.R.S. § 37-215 shall ensure that the notice is written and contains a clear and

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Article 3. Lease of State Lands for Mineral Claims (Refs & Annos)

A.R.S. § 27-231

§ 27-231. Definition of mineral

Currentness

In this article, unless the context otherwise requires, "mineral" means all metallic ore minerals and industrial minerals other than common variety minerals as defined in § 27-271.

Credits
Added by Laws 1998, Ch. 133, § 2.

A. R. S. § 27-231, AZ ST § 27-231
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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A.R.S. § 27-234

§ 27-234. Rent; royalty; appeal; interest; penalty; lien

Currentness

A. Before issuing a mineral lease the state land commissioner shall establish the annual land rental for the mineral lease. The rental shall be based on an appraisal of the land that, for purposes of establishing the rent, shall not include the contributory value of mining. The annual rental:

1. Shall be at least the average rental assessed per acre by the states of Colorado, New Mexico and Utah. If a state assesses a range of rental rates rather than a single rental rate, the median of the range of rental rates assessed by that state shall be used in calculating the average under this paragraph.

2. Is payable in advance of executing the mineral lease agreement by the commissioner and at the beginning of each annual period thereafter.

B. In addition to the annual rental, a production royalty of at least two per cent is assessed against the gross value of all minerals produced and sold from the mineral lease. Where processing is performed after the mineral is extracted, the mineral shall be deemed produced and sold when the concentrate or cathode results from that processing. The royalty rate for each mineral lease shall be based on an appraisal of this state's interest as a lessor in the mineral and shall be established according to the appraisal standard prescribed by subsection C of this section. The gross value shall be based on the monthly average price of the mineral as quoted by the mineral commodities market and industry trade journals as determined by the commissioner and specified in the lease. If a mineral does not have a published price quotation, the gross value shall be based on an appraisal that establishes the fair market price of the mineral. The royalty shall not be based on any hedging or price protection arrangements that may be entered into by the lessee and any of these arrangements shall not be considered in any appraisal that established the fair market price of the mineral.

C. The commissioner shall appraise this state's interest as a lessor in the mineral according to standard appraisal methodology and, to the extent feasible, shall base the appraisal on market royalty rates. The appraisal shall be completed in order to determine whether a royalty rate greater than two per cent of the gross value is required in order to obtain a fair market value for this state's interests as a lessor in the mineral. The appraisal shall be completed before issuing a mineral lease, at the end of the first year of commercial production and again for each renewal of the lease. If, during the term of the lease, new minerals are produced and sold from the mineral lease, or changes in technology substantially affect the value of this state's interest as a lessor, the commissioner at that time may reappraise that interest and, if appropriate, adjust the royalty rate.

D. For mines existing on state lands on June 8, 1989, the royalty paid under this section shall not be less than the royalty which would have been paid under statutes in effect immediately before June 8, 1989.

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E. The costs of all appraisals conducted under this section shall be assessed against the lessee and added to the amount due as rental under this section.

F. The department shall review all property tax assessment information relevant to the mineral lease. The department shall maintain that information on a confidential basis as prescribed by title 42, chapter 2, article 1.[1]

G. Every mineral lease of state land shall require the lessee to make the following records available on an annual basis:

1. Itemized statements of mineral production.

2. Relevant tax records.

3. Additional relevant records pertinent to appraisal, compliance with the lease and mineral production deemed necessary by the commissioner.

H. The information obtained under subsection G, paragraph 2 of this section and any trade secrets are confidential. For purposes of this subsection, trade secrets are information to which all of the following apply:

1. A person has taken reasonable measures to protect the information from disclosure and the person intends to continue to take those measures.

2. The information is not and has not been reasonably obtainable by legitimate means by other persons without the person's consent, other than by governmental entities and other than in discovery based on a showing of special need in a judicial or quasi-judicial proceeding.

3. A statute does not specifically require disclosure of the information to the public.

4. The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the person's competitive position.

I. Mineral lessees shall make monthly royalty payments based on the mineral production activity of the previous month.

J. Appeals of the appraisal decision of the commissioner may be taken pursuant to § 37-215 to the board of appeals, established by § 37-213, which shall affirm, modify or reverse the decision of the commissioner within one hundred eighty days. Except as provided in § 41-1092.08, subsection H, decisions of the board of appeals under this subsection are subject to judicial review pursuant to title 12, chapter 7, article 6.[2] As a condition of the appeal, the lessee must continue to make all rental and royalty payments due based on the commissioner's final appraisal decision, and the court shall not stay the commissioner's decision,

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in whole or in part, pending a final disposition of the case. The state shall segregate rents and royalties paid while an appeal is pending and shall not distribute such monies to the state general fund or to the trust beneficiaries until the appeal is completed.

K. If a lessee fails to pay rent or royalty, including appraisal costs under subsection C of this section, on or before the date the payment is due, the amount due accrues interest at the rate and in the manner determined pursuant to § 42-1123. In addition, if it is determined that the failure to pay is not due to reasonable cause, a penalty of five per cent of the amount found to be remaining due shall be added to the rent or royalty for each month or fraction of a month elapsing between the due date and the date on which it is paid. The total penalty shall not exceed one-third of the rent or royalty remaining due. The penalty so added to the rent or royalty is due and payable on notice and demand from the commissioner.

L. If any rent, royalty, appraisal assessment, interest or penalty is not paid by the lessee when due, the unpaid amounts constitute a lien from the date the amounts become due on all property and rights to property that belong to the lessee and that are located on state land.

Credits

Added by Laws 1989, Ch. 288, § 3, eff. June 28, 1989. Amended by Laws 1996, Ch. 25, § 1; Laws 1997, Ch. 221, § 95; Laws 1998, Ch. 1, § 64, eff. Jan. 1, 1999; Laws 1998, Ch. 52, § 8, eff. Jan. 1, 1999; Laws 1998, Ch. 133, § 4; Laws 2000, Ch. 113, § 64; Laws 2000, Ch. 193, § 162.

Footnotes

1 Section 42-2001 et seq.

2 Section 12-901 et seq.

A. R. S. § 27-234, AZ ST § 27-234

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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A.R.S. § 27-235

§ 27-235. Offering permits and leases at auction; terms of lease; financial security termination

Effective: July 20, 2011
Currentness

A. The state land commissioner may offer mineral exploration permits or mineral leases at public auction, after advertising, for state lands on which a mineral exploration permit or mineral lease has been cancelled, terminated or not been renewed by the lessee or permittee, or may offer mineral exploration permits at public auction, after advertising, for state trust lands that have been closed by commissioner's order. The commissioner may establish by rule the procedure for conducting the auction, but bidding is limited to a cash bonus to be paid in full before the commissioner executes the permit or the lease documents. The land rental and royalty rate are not subject to bidding.

B. Every mineral lease of state lands shall be for a term of twenty years.

C. The lease shall confer the right:

1. To extract and ship minerals from the leased land located within planes drawn vertically downward through the exterior boundary lines of the leased land.

2. To use as much of the surface as required for purposes incident to mining.

3. Of ingress to and egress from other state lands, whether or not leased for purposes other than mining.

D. Every mineral lease of state lands shall provide for:

1. The development and use of the property according to the lessee's general mining plan approved by the commissioner.

2. The fencing of all shafts, exploration holes, adits, tunnels and other dangerous mine workings for the protection of public health and safety and livestock.

3. The construction of necessary improvements and installation of necessary machinery and equipment with the right to remove it upon expiration, termination or abandonment of the lease, if the lessee is not in default of the terms and conditions of the lease.

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4. The right of the lessee and the lessee's assigns to transfer the lease.

5. Termination of the lease by the commissioner upon written notice specifically setting forth the default for which forfeiture is declared, and preserving the right to cure the default within a stated period of not less than thirty days.

E. If financial security is required under this subsection, it shall be in the form of a cash deposit, a certificate of deposit, a surety bond or any other form of financial assurance acceptable to the commissioner. On default, the commissioner may use the proceeds of the financial security for the purposes described in paragraph 1, 2 or 3 of this subsection. Financial security may be required in the following circumstances:

1. The commissioner may require financial security to guarantee the payment of all monies due under the lease as royalty to this state.

2. The commissioner shall require financial security in a reasonable amount to be fixed by the commissioner conditioned on the lessee's reclaiming the surface of the land described in the lease to a reasonable condition in accordance with the reclamation measures approved by the commissioner. The commissioner may enter into agreements pursuant to title 11, chapter 7, article 3[1] with the state mine inspector's office, the United States bureau of land management, the United States forest service and other agencies that manage public lands and take other appropriate measures to coordinate the review and approval of reclamation plans, including designating a lead agency for reclamation plan review and action. The commissioner shall avoid redundant, inconsistent or contradictory reclamation, inspection, administration, enforcement and financial assurance requirements unless such requirements are necessary as a result of the commissioner's trust obligations.

3. The commissioner shall require financial security conditioned on the lessee's prompt payment to the owner or lessee of the surface of the state land described in the lease, or across which the lessee exercises the right of ingress, for any loss to the owner or lessee from damage or destruction caused by the lessee or the lessee's agents or employees to grass, forage, crops or improvements on the land.

F. The lessee of any mineral lease who has met the applicable terms and conditions of the lease from the time of issuance to the time of termination, as determined by the commissioner, may terminate the lease at any time during its term by giving the commissioner thirty days' written notice of the termination.

Credits

Amended by Laws 1989, Ch. 288, § 4, eff. June 28, 1989; Laws 1998, Ch. 133, § 5; Laws 2011, Ch. 284, § 1.

Footnotes

1 Section 11-951 et seq.

A. R. S. § 27-235, AZ ST § 27-235

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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A.R.S. § 27-231

§ 27-231. Definition of mineral

Currentness

In this article, unless the context otherwise requires, "mineral" means all metallic ore minerals and industrial minerals other than common variety minerals as defined in § 27-271.

Credits
Added by Laws 1998, Ch. 133, § 2.

A. R. S. § 27-231, AZ ST § 27-231
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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A.R.S. § 27-254

§ 27-254. Mineral lease

Currentness

Following discovery of a valuable mineral deposit upon the state land covered by a mineral exploration permit within a rectangular subdivision of twenty acres, more or less, or lot, of the public land survey, the permittee may apply to the commissioner for a mineral lease upon the state land within such rectangular subdivision, or lot, and such land shall, for the purpose of the application and any mineral lease issued pursuant to such application, constitute a mineral claim without extralateral rights, and shall be deemed to have been located as of the date of filing the application for the mineral lease. Upon receipt of an application from the permittee for a mineral lease, and satisfactory proof of discovery of a valuable mineral deposit, the commissioner shall issue a mineral lease to the applicant for the mineral claim or claims covered by the application. From and after the date of issuance of a mineral lease, the mineral claim or claims covered by such mineral lease shall be deemed to be excluded from the exploration permit. Upon application to the commissioner, not less than thirty nor more than sixty days prior to the expiration of the lease, the lessee, if not delinquent in the payment of rental or royalty on the date of expiration of the lease, shall have a preferred right to renew the lease bearing even date with the expiration of the old lease for a term of twenty years.

Credits

Added by Laws 1961, Ch. 24, § 1. Amended by Laws 1998, Ch. 133, § 11.

A. R. S. § 27-254, AZ ST § 27-254

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 3. Sale of State Lands (Refs & Annos)

A.R.S. § 37-255

§ 37-255. Sale of or mortgage or other lien on interest of lessee or holder of certificate of purchase

Currentness

A. The interest of the holder of any certificate of purchase of state land, or any lease or permit on state land, shall be subject to sale, mortgage or other lien to the same extent as patented land, without prejudice to the state. A contract of sale, mortgage or other lien affecting any certificate of purchase, lease or permit on state land shall not become effective unless a copy of the document is filed with the state land department. When filed, no assignment of the certificate of purchase, lease or permit affected shall be made without notice to and the consent of all parties.

B. Upon foreclosure of a contract of sale, mortgage or other lien filed with the department as provided in subsection A of this section, the department shall assign the instrument in question to the party entitled to the instrument, if all taxes, rent and assessment payments are current.

C. If a cancellation or assignment order is issued pursuant to § 37-247, 37-281.04 or 37-289, the cancellation or assignment order shall not become final until any foreclosure action by a party registered with the department as a mortgagee or other lienholder of the purchaser's interest or the lessee's interest is finally resolved, if the mortgagee or lienholder does both of the following:

1. Within thirty days of the date of issuance of a notice of default, files written notice with the department of its intent to proceed with a foreclosure action.

2. Within one hundred twenty days of the date of issuance of a notice of default, has commenced either a foreclosure action in court or a nonjudicial foreclosure of a deed of trust, and has provided the department with a certified copy of the complaint or other document that officially commences the foreclosure process, and thereafter prosecutes the foreclosure with reasonable diligence.

D. If a default notice has been sent to a purchaser pursuant to § 37-247, subsection A or to a lessee pursuant to § 37-289, subsection A, and the purchaser or lessee thereafter applies to assign the certificate of purchase or lease to a mortgagee or lienholder registered with the department, before the date a cancellation or assignment order becomes final and conclusive, the department shall approve the assignment if all taxes, purchase payments, rent and assessment payments are current and subject to the written consent of any other mortgagees or lienholders of record.

E. On proof that a lessee or purchaser has rejected a lease or certificate of purchase in a bankruptcy proceeding, the department shall issue a lease or certificate of purchase to the registered mortgagee or other lienholder in order of priority on application by the mortgagee or other lienholder within thirty days after the rejection if all taxes, purchase payments, rent and assessment

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payments are current. Any lease or certificate of purchase that is issued pursuant to this subsection shall be for the remaining term and on the same conditions and priority as the rejected lease or certificate of purchase.

Credits

Amended by Laws 1984, Ch. 252, § 1; Laws 1991, Ch. 80, § 4; Laws 1993, Ch. 168, § 5, eff. April 20, 1993; Laws 1997, Ch. 249, § 3; Laws 2001, Ch. 298, § 2; Laws 2002, Ch. 336, § 8.

A. R. S. § 37-255, AZ ST § 37-255

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Article 5. Lease of State Lands for Common Variety Minerals (Refs & Annos)

A.R.S. § 27-271

§ 27-271. Definition of common variety minerals

Currentness

For purposes of this article, “common variety minerals”:

1. Includes deposits of petrified wood, stone, pumice, pumicite or cinders, decomposed granite, sand, gravel, boulders, common clay, fill dirt and waste rock.

2. Includes deposits that, although they may have value for use in trade, manufacturing and the construction, landscaping and decorative rock industries, do not possess a distinct, special economic value for those uses beyond the normal uses of those deposits.

3. Includes material used as road base material, riprap, ballast, borrow, fill, facing stone, landscaping or ornamental uses and other similar uses.

4. Does not include limestone suitable for use in producing cement, metallurgical or chemical grade limestone or gypsum.

Credits
Added by Laws 1998, Ch. 133, § 13.

A. R. S. § 27-271, AZ ST § 27-271
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A.R.S. § 27-272

§ 27-272. Common variety mineral leases; terms and conditions; rules

Currentness

A. The state land department may dispose of common variety minerals at auction and may execute common variety mineral leases offered at auction for the severance, extraction or disposal of common variety minerals.

B. A lease shall be comprised of not more than one legal section of six hundred forty acres, more or less, or lot of the public land survey and shall provide for:

1. A term of not more than ten years unless the commissioner considers a longer term to be necessary, but in no event may the lease issue for a term longer than twenty years.

2. A rental based on a percentage of the appraised land value, payable before the commissioner executes the lease and at the beginning of each subsequent annual period.

3. The right of the lessee:

(a) To use as much of the surface of the premises as is reasonably necessary to extract, sever, temporarily store, remove and dispose of common variety minerals.

(b) To wash, screen, crush, sort or otherwise mechanically process.

(c) Of ingress to and egress from the premises across other state lands along designated routes approved by the department.

(d) To assign the lease, provided that such assignment shall not become effective until a copy of the lease is filed with the department and is approved by the commissioner as being in the best interests of the state.

4. Other terms and conditions as the department may deem for the best interests of the state and that are not in conflict with the enabling act, constitution and laws of this state.

C. The department shall establish in the lease the terms of the royalty to be paid for all common variety minerals severed or extracted from the leased land and disposed of by the lessee. The royalty rate shall be established by auction, but it shall be at

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least the minimum royalty established by the department based on the appraised value of the common variety minerals. The lease shall provide for:

1. Payment of a minimum annual royalty due and payable on the anniversary date of the lease. The minimum annual royalty shall be based on a minimum annual production rate and shall be applied as a credit to payment for common variety minerals extracted or severed from the land. Royalty for any common variety mineral extracted, severed or disposed of in excess of the minimum annual production is due and payable monthly, within thirty days after billing.

2. The application of minimum annual royalty payments as a credit for payment of common variety minerals for which payment must be made. Monies so advanced and not credited against payments for common variety minerals become the sole property of this state on termination or expiration of the agreement.

D. Common variety minerals are not subject to lease as provided by articles 3 and 4 of this chapter.[1]

E. The department shall adopt rules necessary for the administration of this article.

Credits

Added as § 27-271 by Laws 1967, Ch. 11, § 1, eff. March 1, 1967. Renumbered § 27-272 and amended by Laws 1998, Ch. 133, §§ 12, 14.

Footnotes

1 Sections 27-231 et seq. and 27-251 et seq.

A. R. S. § 27-272, AZ ST § 27-272

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A.R.S. § 27-273

§ 27-273. Performance and reclamation bonds

Currentness

A. The commissioner may require the lessee to post a cash deposit, a certificate of deposit, a surety bond or any other form of financial assurance acceptable to the commissioner to guarantee the payment of all monies due under the lease as royalty to the state.

B. The commissioner shall require the lessee to furnish a cash deposit, a certificate of deposit, a surety bond or any other form of financial assurance acceptable to the commissioner, in a reasonable amount to be fixed by the commissioner, conditioned that the lessee will guarantee reclamation of the surface of the land described in the lease to a reasonable condition in accordance with good mining practices.

C. The commissioner shall also require the lessee to file with the department a cash deposit, a certificate of deposit, a surety bond or any other form of financial assurance acceptable to the commissioner, conditioned upon prompt payment to the owner or lessee of the surface of the state land covered by the lease, or across which the lessee exercises the right of ingress, for any loss to such owner or lessee from damage or destruction caused by the lessee or the lessee's agents or employees to grasses, forage, crops and improvements upon such lands.

D. On default, the commissioner may use the proceeds of the cash deposit, certificate of deposit, surety bond or other financial assurance for the purposes described in subsection A, B or C.

Credits

Added by Laws 1967, Ch. 11, § 1, eff. March 1, 1967. Amended by Laws 1993, Ch. 169, § 2, eff. April 20, 1993; Laws 1998, Ch. 133, § 15.

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Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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A.R.S. § 27-552

§ 27-552. Rules and regulations

Currentness

The department may prescribe rules and regulations necessary and appropriate to carry out the purposes of this article.

A. R. S. § 27-552, AZ ST § 27-552
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A.R.S. § 27-556

§ 27-556. Lease of state lands located within known geological structure of producing oil or gas field; sealed bids; call for bids; publication; lease extension; provisions of lease; acreage limitation

Effective: September 26, 2008
Currentness

When state lands are located within a known geological structure of a producing oil or gas field, as determined pursuant to § 27-554, the lands shall be leased only by sealed bids, as follows:

1. Upon receipt of an application to lease any of such lands or whenever, in the opinion of the department, there is a demand for the purchase of leases of the lands, the department shall offer the tract or tracts for lease to the highest qualified bidder submitting a sealed bid, on the basis of a cash bonus.

2. The department shall publish a call for sealed bids twice in a newspaper of general circulation in the state, the last publication to be not less than fifteen days prior to the date fixed for opening the bids. All bids, together with a certified check in the amount of the bonus bid, shall be submitted to the department at the capitol, and opened at the office of the department at the time specified. On or before December 1 each year, the department shall designate by general order the newspaper in which the publications shall be made during the following calendar year. The successful bidder shall pay the cost of the publication and the reasonable expenses of the sale.

3. The publication shall contain a description of the land proposed to be leased, the time when the bids will be received and opened, the royalty to be demanded which the department shall fix prior to call for bids at not less than twelve and one-half per cent, and an annual rental to be demanded in the amount of one dollar per acre for each year.

4. The publication shall set forth the form of lease which the successful bidder will be required to execute. In lieu of publishing the form of lease in its entirety the publication may specify the form of lease by designating the form number of lease on file with the department, copies of which shall be furnished any person on request.

5. Royalties, including shut-in gas royalties, reserved to the state on production from any state lands leased pursuant to this article and committed to a unit plan of development by virtue of a unit agreement shall be paid only on that portion of production allocated to such state lands or any part of the state lands, pursuant to the terms and conditions of such unit agreement.

6. Each lease issued under this section shall be for a primary term of five years and as long thereafter as oil or gas is produced in paying quantities from the lands covered by the lease except that:

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(a) If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease, but the owner of the lease is diligently engaged in drilling, completion or reworking operations, the lease continues in force for a period of two years from the date on which the lease would have otherwise expired and as long thereafter as oil or gas is produced in paying quantities from the lands. If oil or gas is produced from any such well or any other well drilled during any two year extension, the lease shall continue in force after such two year extension as long as oil or gas is produced in paying quantities from the leased premises.

(b) Oil or gas that is produced from any part of a unit in which state lands are included by virtue of a unit agreement and that is allocated to all or any part of such state lands pursuant to the terms and conditions of the unit agreement is deemed to be produced from the state lands or that part of the state lands to which the production is allocated.

(c) If for any reason production of oil or gas from the leased lands ceases after the primary term or any extension, the lease shall not terminate if the lessee commences drilling, completion or reworking operations on the land within ninety days from cessation of production, and if drilling, completion or reworking operations are conducted with reasonable diligence, the lease shall remain in force as long thereafter as such drilling, completion or reworking operations are conducted or as long thereafter as oil or gas is produced in paying quantities from the leased lands, but in no event to extend beyond two years if production is not restored.

7. The lease may contain other terms and provisions not inconsistent with the provisions of this article or other laws of the state, as in the opinion of the department are for the best interests of the state.

8. Each lease shall provide that the state's royalties shall be computed after deducting any oil or gas reasonably used in operations on the lease.

9. Each lease shall provide that any combination, understanding or agreement entered into by the lessee, written, verbal or otherwise, for the purpose of delaying the discovery or development of oil or gas is an illegal practice, and that upon legal determination thereof shall constitute grounds for cancellation of the lease. In the event of such an illegal practice, appropriate proceedings may be instituted by the attorney general against the lessee in the county in which the land, or any part thereof, is located. A cooperative or unit plan entered into pursuant to this article or any other conservation statute of this state shall not be held to violate this paragraph or any other statute of this state prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce on account of operations conducted under such a plan.

10. The owner of any state oil and gas lease issued by the department and maintained in good standing according to the terms and conditions of the lease and all applicable statutes and regulations shall have the right to elect at any time to have such lease amended to contain the same term and extension provisions and the same provisions relating to unit operations and unit agreements which have been or may be approved by the state land commissioner as are provided by law for state oil and gas leases upon filing a written notice of such election with the department. Upon such written notice to the department the lease term and extension provisions and the provisions relating to unit operations and unit agreements shall be deemed amended. The lease as amended shall include all other provisions, except those providing for rents, contained in the original lease and shall bear the same commencement date as the original lease. The lease as amended shall require the payment in advance of an annual rental of one dollar and fifty cents per acre per year for each year of any extension of the lease beyond the primary term of the lease, except extensions of the primary term based upon the production of oil or gas.

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11. Before offering any state lands for lease under sealed bids the department shall determine the tract or tracts into which the lands shall be divided for leasing purposes. Each tract shall contain not less than one quarter section of land and not more than two sections of land, but a tract containing less than one quarter section of land may be leased if the tract is segregated from other state lands not then subject to oil and gas lease. All tracts shall be in reasonably compact form.

12. The department shall reserve the right to reject any and all bids on each offer for lease and to again offer the tract or tracts for lease if the bids received are not acceptable to the department.

13. Before acceptance of any bid for a lease under this section, the department shall establish to its satisfaction the responsibility of the bidder.

14. The department shall return all checks accompanying rejected bids.

Credits

Amended by Laws 1980, Ch. 80, § 4; Laws 2008, Ch. 239, § 3.

A. R. S. § 27-556, AZ ST § 27-556

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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A.R.S. § 27-557

§ 27-557. Unit operations; unit agreements

Currentness

A. Each lease issued under the provisions of this article shall provide that the lessee, insofar as its interest in the lease is affected, may join in cooperative or unit plans for the exploration, development and operation of oil and gas pools with the United States, its agencies and its or their lessees and permittees, or with private owners and persons holding oil and gas leases on private lands or on state lands.

B. Lessees under oil and gas leases issued by the department may, with the consent of the department, commit the state lands to unit, cooperative or other plans of exploration, development and operation with other state, federal, private or Indian lands.

C. The state land commissioner shall, not later than ten days after the date a proposed cooperative or unit plan for the exploration, development or operation of oil and gas pools is filed with the department, give notice in writing of such proposal to the oil and gas conservation commission, the bureau of geology and mineral technology and all holders of oil and gas leases on state lands to be included in the proposed cooperative or unit plan. Any interested person may, within ten days after the date of such notice, file a written protest with the department. Upon receipt of such a protest, the state land commissioner shall, not later than thirty days after receipt of the protest, hold a public hearing at the county seat of the county in which the state lands to be included in the proposed cooperative or unit plan are located. Notice of the public hearing shall be published three times in a newspaper of general circulation in the county, the last publication to be not less than ten days prior to the date of the hearing. The state land commissioner shall, not later than sixty days after the date the proposed cooperative or unit plan is filed with the department or, in the event of a protest and public hearing, not later than thirty days after the date of such public hearing, determine whether it is in the best interests of the state to commit state lands to the cooperative or unit plan as proposed or as modified. A proposed cooperative or unit plan may be modified in a manner agreeable to the state land commissioner and the proponent of the plan after such notice and public hearing as may be required by this subsection. Upon determination by the state land commissioner that it is in the best interests of the state to commit state lands to such cooperative or unit plan, the state land commissioner shall consent to and approve the cooperative or unit plan.

D. The execution by the authorized state officer of a cooperative plan or unit agreement is deemed to be an amendment of state leases committed to such plan or unit and has the effect of extending the term of the state leases included in the plan or agreement for the full period of time such plan or unit may remain in effect and of modifying such leases so as to conform the terms and conditions of the leases to the terms and conditions of the plan or unit but otherwise to remain in effect.

E. The agreements shall provide for the equitable division on an agreed basis of the oil and gas produced from the unit and for the extension of leases covering any part of the unit as long as drilling, completion or reworking operations are conducted anywhere on the unit or as long as oil or gas in paying quantities is produced from any part of the unit, but no such agreement shall relieve any operator from the obligation to develop reasonably the lands and leases as a whole committed thereto. When

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the agreements provide for returning gas to a formation underlying the unit, they may provide that no royalties are required to be paid on the gas returned.

F. Any lease issued under this article which is committed to a unit agreement embracing lands that are in part within and in part outside of the area covered by any such agreement shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization. Any such lease, as to the nonunitized portion, shall continue in force and effect for a period of time equal to the greater of the remainder of the original term of the lease or two years from the date of such segregation and as long thereafter as oil or gas is produced in paying quantities.

G. Any lease issued under this article which is in effect at the termination of any unit agreement to which such lease is committed, unless relinquished, shall continue in effect for a period of time equal to the greater of the remainder of the original term of the lease or two years from the termination of the unit agreement and as long thereafter as oil or gas is produced in paying quantities.

H. Notwithstanding any of the foregoing,[1] no lease issued or amended pursuant to this article shall be extended for any term longer than as provided in article X, § 3 of the Constitution of the state of Arizona.

Credits
Amended by Laws 1980, Ch. 80, § 5.

Footnotes
1 So in original. The unit of reference is unclear.

A. R. S. § 27-557, AZ ST § 27-557
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Arizona Revised Statutes Annotated
Title 27. Minerals, Oil and Gas
Chapter 4. Oil and Gas (Refs & Annos)
Article 2. Lease of State Lands for Oil and Gas (Refs & Annos)

A.R.S. § 27-562

§ 27-562. Surrender

Currentness

A lessee may surrender any part or all of the lands covered by the lease at any time upon payment to the department of all amounts then due as to the lands surrendered, but no refund of any part of the cash consideration or rental theretofore paid shall be made to the lessee upon such surrender.

A. R. S. § 27-562, AZ ST § 27-562
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Arizona Revised Statutes Annotated
Title 27. Minerals, Oil and Gas
Chapter 4. Oil and Gas (Refs & Annos)
Article 4. Geothermal Resources (Refs & Annos)

A.R.S. § 27-651

§ 27-651. Definitions

Currentness

In this article, unless the context otherwise requires:

1. “Commission” means the oil and gas conservation commission.

2. “Completion” or “completed well” means a well that has produced or is capable of producing geothermal resources or has been determined to be a dry hole, temporarily abandoned or plugged and abandoned, or has been readied for other phases of exploitation.

3. “Department” means the state land department.

4. “Environment” means the sum total of all the external conditions which may act upon an organism or community, to influence its development or existence.

5. “Geothermal area” means the same general surface area which is underlain or reasonably appears to be underlain by one or more formations containing geothermal resources.

6. “Geothermal resources” means:

(a) All products of geothermal processes embracing indigenous steam, hot water and hot brines.

(b) Steam and other gases, hot water and hot brines resulting from water, other fluids or gas artificially introduced into geothermal formations.

(c) Heat or other associated energy found in geothermal formations, including any artificial stimulation or induction thereof.

(d) Any mineral or minerals, exclusive of fossil fuels and helium gas, which may be present in solution or in association with geothermal steam, water or brines.

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7. “Lease” means a geothermal resources development lease issued for state lands pursuant to the provisions of this article.

8. “Lessee” means the holder of a lease or any assignee of an original lease or part thereof.

9. “Operator” means any person drilling, maintaining, operating, pumping or in control of any well, and includes the owner, when any well is or has been or is about to be operated or under the direction of the owner.

10. “Owner” means and includes the operator when any well is operated or has been operated or is about to be operated by any person other than the owner.

11. “Person” means and includes any individual, firm, association, corporation or any other group or combination acting as a unit.

12. “Waste” means any physical waste including, but not limited to, underground waste resulting from the inefficient, excessive or improper use or dissipation of reservoir energy or resulting from the location, spacing, drilling, equipping, operation or production of a geothermal resources well in such a manner that reduces or tends to reduce the ultimate economic recovery of the geothermal resources within a reservoir, and surface waste resulting from the inefficient storage or utilization of geothermal resources and the location, spacing, drilling, equipping, operation or production of a geothermal resources well in such a manner that causes or tends to cause the unnecessary or excessive surface loss or destruction of geothermal resources obtained or released from the reservoir.

13. “Well” means any well drilled in search of geothermal resources or any development well on lands in areas proved to be underlain by one or more formations containing geothermal resources or reasonably presumed to contain geothermal resources or any well drilled for information purposes, or any producing well or reentered abandoned well used for the injection of fluids into the geothermal formation or disposition of fluids into nongeothermal formations, or any well drilled for the purpose of stimulating the heat of a formation or for the creation of heat in a formation by nuclear or any other form of energy.

Credits

Added by Laws 1972, Ch. 152, § 2, eff. May 22, 1972. Amended by Laws 1977, Ch. 87, § 1, eff. May 23, 1977.

A. R. S. § 27-651, AZ ST § 27-651

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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A.R.S. § 27-652

§ 27-652. Supervision by commission

Currentness

A. The commission shall so supervise the drilling, operation, maintenance and abandonment of geothermal resource wells as to encourage the greatest ultimate economic recovery of geothermal resources, to prevent damage to and waste from underground geothermal reservoirs, to prevent damage to or contamination of any waters of the state or any formation productive or potentially productive of fossil fuels or helium gas, and to prevent the discharge of any fluids or gases or disposition of substances harmful to the environment by reason of drilling, operation, maintenance or abandonment of geothermal resource wells.

B. Any person engaged in the drilling of a well for geothermal resources underlying a usable groundwater aquifer shall case the bore hole in a watertight manner from the land surface to the geothermal producing zone or to a depth sufficient to prevent damage or contamination of the aquifer from the escape of geothermal resources from the bore hole. Materials and installation procedures for casing and sealing of the bore hole shall be in accordance with specifications and procedures approved by the commission.

C. Disposal of water or brines obtained from a geothermal well whether by ponding and evaporation, release to a watercourse or other means shall not damage or contaminate the underlying groundwater aquifer or pollute any stream, river or body of surface water. Construction and maintenance of all geothermal water and brine disposal systems and of the devices required to monitor quantity and quality of the waters and brines disposed of in each system shall be in accordance with specifications, procedures and regulations approved by the commission.

D. Whenever the commission finds that it would be in the interest of maintenance of the underground geothermal resource, prevention of subsidence of the land surface or maintenance of the quality of surface and other ground waters, the commission may require reinjection of the geothermal effluent or injection of other water supplies into the producing zones.

Credits
Added by Laws 1972, Ch. 152, § 2, eff. May 22, 1972.

A. R. S. § 27-652, AZ ST § 27-652
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Arizona Revised Statutes Annotated
Title 27. Minerals, Oil and Gas
Chapter 4. Oil and Gas (Refs & Annos)
Article 4. Geothermal Resources (Refs & Annos)

A.R.S. § 27-667

§ 27-667. Relationship of geothermal resources to water laws

Currentness

A. Geothermal resources and their development shall be exempt from the water laws of this state unless either:

1. Such resources are commingled with surface waters or groundwaters of this state.

2. Such development causes impairment of or damage to the groundwater supply.

B. In the development of geothermal resources, any well drilled to obtain and use groundwater, as defined in § 45-101, shall be subject to the water laws of this state.

C. An operator shall notify the director of water resources of any well which is drilled or abandoned. The director may prescribe rules and regulations relating to the disposition of abandoned wells.

Credits

Added by Laws 1977, Ch. 87, § 2, eff. May 23, 1977. Amended by Laws 1979, Ch. 139, § 1, eff. April 24, 1979; Laws 1980, 4th S.S., Ch. 1, § 7, eff. June 12, 1980; Laws 1987, Ch. 2, § 15, eff. Feb. 27, 1987.

A. R. S. § 27-667, AZ ST § 27-667
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Arizona Revised Statutes Annotated
Title 27. Minerals, Oil and Gas
Chapter 4. Oil and Gas (Refs & Annos)
Article 4. Geothermal Resources (Refs & Annos)

A.R.S. § 27-668

§ 27-668. Leasing state lands for development of geothermal resources

Currentness

A. The department may lease state lands for the development of geothermal resources and sell geothermal resource leases as provided in this article.

B. The department may prescribe rules and regulations necessary and appropriate to carry out the purposes of this section and to protect the environment and provide for multiple, dominant or single use in the best interest of the state.

Credits
Added by Laws 1977, Ch. 87, § 2, eff. May 23, 1977.

A. R. S. § 27-668, AZ ST § 27-668
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Arizona Revised Statutes Annotated
Title 27. Minerals, Oil and Gas
Chapter 4. Oil and Gas (Refs & Annos)
Article 4. Geothermal Resources (Refs & Annos)

A.R.S. § 27-669

§ 27-669. Designation of known geothermal resource areas

Currentness

The department may determine and designate the known geothermal resource areas. The determinations and designations shall be published twice in a newspaper of general circulation in this state, the last publication to be not less than five days from the first date of publication. The determinations and designations shall become effective from the date of first publication. Until such a determination and designation is made by the department, all state lands shall be deemed not located within any known geothermal resource area.

Credits

Added by Laws 1977, Ch. 87, § 2, eff. May 23, 1977.

A. R. S. § 27-669, AZ ST § 27-669
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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A.R.S. § 27-671

§ 27-671. Provisions of lease

Currentness

A. The leases shall provide for the payment by the lessee of a royalty of not less than twelve and one-half per cent of the gross value of the resource at the well head.

B. The leases shall provide for an annual rental of not less than one dollar per acre for each year that the lease is in effect.

C. The leases shall be for a primary term of ten years and as long thereafter as geothermal resources are procured and produced in paying quantities from the leased lands. The lease upon which drilling operations are being diligently prosecuted on the expiration date shall continue in effect for a period of two years and so long as geothermal resources are procured and produced in paying quantities from such lands.

D. The leases shall contain other terms and provisions, not inconsistent with the provisions of this article or other laws of this state, as in the opinion of the department are for the best interest of this state.

E. Not more than two thousand five hundred sixty acres of land shall be included in any one lease. The leased lands shall be in as compact a body as possible but may include noncontiguous land.

F. Each lease shall provide that any combination, understanding or agreement entered into by the lessee, written, verbal or otherwise, for the purpose of delaying discovery or development of geothermal resources is an illegal practice, and that upon legal determination of such practice shall constitute grounds for cancellation of the lease. Appropriate proceedings shall be instituted by the attorney general against the lessee in the county in which the land or any part of such land is located. The provisions of this section shall not apply to a unit plan or operation entered into under the provisions of this article or to any plan or operation authorized by any conservation law of this state.

Credits

Added by Laws 1977, Ch. 87, § 2, eff. May 23, 1977.

A. R. S. § 27-671, AZ ST § 27-671

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Arizona Revised Statutes Annotated
Title 27. Minerals, Oil and Gas
Chapter 4. Oil and Gas (Refs & Annos)
Article 4. Geothermal Resources (Refs & Annos)

A.R.S. § 27-672

§ 27-672. Unit operations; unit agreements

Currentness

A. Each lease issued under the provisions of this article shall provide that the lessee, insofar as its interest is affected, may join, with the department's prior written approval, in cooperative or unit plans for the development and operation of geothermal resource pools with the United States, its agencies and its or their lessees and permittees and with private owners and persons holding geothermal resource leases on private lands or on state lands.

B. Upon determination by the department that it is in the best interests of the state to commit state lands to a cooperative or unit plan for the development and operation of geothermal resource pools, the department may, insofar as the state royalties may be affected thereby, join in and consent to any such plan on behalf of the state. The agreements shall provide for the equitable division on an agreed basis of the geothermal resource produced from the unit and for the extension of leases covering any part of the unit so long as geothermal resources in paying quantities are produced from any part of the unit. No such agreement shall relieve any operator from the obligation to develop reasonably the lands and leases as a whole nor shall such agreement relieve the lessee of the obligation to pay to the department the royalty provided for in the lease.

Credits
Added by Laws 1977, Ch. 87, § 2, eff. May 23, 1977.

A. R. S. § 27-672, AZ ST § 27-672
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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A.R.S. § 27-673

§ 27-673. Surface use by lessee; liability for damages; bond; appraisal of damages; appeal

Currentness

The lessee shall have the right to use as much of the surface of the lands as reasonably necessary for its operations under the lease as determined by the department. The lessee shall be liable for damage caused by it to the state's interest in the surface and to the interest of the surface lessee, if any, and may be required by the department at any time to execute a bond in a reasonable principal amount to be released upon payment for all such damage and for reclamation of the surface. If the lessee and the surface lessee cannot agree on the amount of damage, it shall be appraised by the department or its agent. Appeal from the appraisal may be taken as provided in § 37-214[1].

Credits
Added by Laws 1977, Ch. 87, § 2, eff. May 23, 1977.

Footnotes
1 Section 37-214 was renumbered as § 37-215.

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Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 1. State Agencies and Officers (Refs & Annos)
Article 1. State Land Department (Refs & Annos)

A.R.S. § 37-101

§ 37-101. Definitions

Effective: August 2, 2012
Currentness

In this title, unless the context otherwise requires:

1. “Agricultural lands” means lands which are used or can be used principally for:

(a) Raising crops, fruits, grains and similar farm products.

(b) Algaculture. For the purposes of this subdivision “algaculture” means the controlled propagation, growth and harvest of algae.

2. “Amortized value” means the value for improvements established pursuant to § 37-281.02, subsection G.

3. “Commercial lands” means lands which can be used principally for business, institutional, religious, charitable, governmental or recreational purposes, or any general purpose other than agricultural, grazing, mining, oil, homesite or rights-of-way.

4. “Commissioner” means the state land commissioner.

5. “Community identity package” means a design theme including such elements as architecture, landscape, lighting, street furniture, walls and signage.

6. “Department” means the state land department.

7. “Grazing lands” means lands which can be used only for the ranging of livestock.

8. “Holding lease” means a commercial lease issued solely to grant a limited use leasehold interest in state land in anticipation of future development.

9. “Homesite lands” means lands which are suitable for residential purposes.

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10. “Improvements” means anything permanent in character which is the result of labor or capital expended by the lessee or his predecessors in interest on state land in its reclamation or development, and the appropriation of water thereon, and which has enhanced the value of the land.

11. “Infrastructure” means facilities or amenities, such as streets, utilities, landscaping and open space, which are constructed or located on state lands and which are intended to benefit more than the land on which they are immediately located by enhancing the development potential and value of the state lands impacted by the facility or amenities.

12. “Leapfrog development” means the development of lands in a manner requiring the extension of public facilities and services from their existing terminal point through intervening undeveloped areas that are scheduled for development at a later time, according to the plans of the local governing body having jurisdiction for the area and which is responsible for the provision of these facilities and services.

13. “Leased school or university land” means school or university land for which a lease has been issued by the state, or the territory of Arizona, under which the lessee retains rights.

14. “Master developer” means a person who assumes, as a condition of a land disposition, the responsibilities prescribed by the department for infrastructure or community identity package amenities, or both, or for implementing a development plan containing a master plan area.

15. “Participation contract” means a contract arising out of a sale together with other rights and obligations in trust lands whereby the department receives a share of the revenues generated by subsequent sales or leases.

16. “Section of land” means an area of land consisting of six hundred forty acres.

17. “State lands” means any land owned or held in trust, or otherwise, by the state, including leased school or university land.

18. “Sublease” means an agreement in which the lessee relinquishes control of the leased land to another party for the purposes authorized in the lease.

19. “Urban lands” means any state lands which are adjoining existing commercially or homesite developed lands and which are either:

(a) Within the corporate boundaries of a city or town.

(b) Adjacent to the corporate boundaries of a city or town.

(c) Lands for which the designation as urban lands is requested pursuant to § 37-331.01.

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20. “Urban sprawl” means the development of lands in a manner requiring the extension of public facilities and services on the periphery of an existing urbanized area where such extension is not provided for in the existing plans of the local governing body having the responsibility for the provision of these facilities and services to the lands in question.

Credits

Amended by Laws 1979, Ch. 207, § 1; Laws 1981, 1st S.S., Ch. 1, § 2; Laws 1982, Ch. 189, § 1, eff. April 22, 1982; Laws 1989, Ch. 229, § 1; Laws 1990, Ch. 24, § 1; Laws 1990, Ch. 25, § 2; Laws 1990, Ch. 77, § 2; Laws 1992, Ch. 73, § 1; Laws 1994, Ch. 171, § 1; Laws 1996, Ch. 121, § 1; Laws 1996, Ch. 133, § 1; Laws 1998, Ch. 184, § 1, eff. May 28, 1998; Laws 2012, Ch. 202, § 1.

A. R. S. § 37-101, AZ ST § 37-101

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 3. Sale of State Lands (Refs & Annos)

A.R.S. § 37-231

§ 37-231. State lands subject to sale; rights reserved in lands sold; state lands not subject to sale; development agreements

Currentness

A. All state lands, except as otherwise provided for in this title, including all improvements made or placed on or connected with state lands, shall be subject to appraisal and sale as provided in this title.

B. Any person over eighteen years of age is entitled to purchase any of the state lands.

C. All sales, grants, deeds or patents to any state lands sold between July 9, 1954 and March 18, 1968 shall be subject to and shall contain a reservation to the state of an undivided one-sixteenth of all oil, gases and other hydrocarbon substances, coal or stone, metals, minerals, fossils and fertilizer of every name and description, together with all uranium, all thorium, or any other material which is or may be determined by the laws of the state or the United States or decisions of courts to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, subject to the following:

1. For the purpose of promoting the sale of state lands and the more active cooperation of the owner of the soil, and to facilitate the development of its mineral resources, the state constitutes the purchaser of the land its agent for the purposes specified in this section, and in consideration hereof, relinquishes to and vests in the purchaser of the state land an undivided fifteen-sixteenths of all oil, gas and the value thereof which may be upon or within any state land purchased after July 9, 1954 and before March 18, 1968.

2. The purchaser of the soil may sell or lease to any person, firm or corporation the oil and gas and other minerals which may be on or in the land, upon terms and conditions the purchaser and the owner deem best, subject to the provisions and reservations of this section, but the lessee or purchaser shall pay to the state an undivided one-sixteenth of the mineral produced or the value of the mineral produced at the well or mine as determined by the state land department.

3. Upon discovery of oil and gas in paying quantities on land adjoining state lands purchased under the authority of this section, the purchaser or the purchaser's lessee shall drill and produce all wells necessary to protect the land so purchased from drainage by wells on lands in which the state has no royalty interest, or has a lesser royalty interest. If the purchaser or the purchaser's lessee fails to protect against such drainage, the state, acting through the state land department, may, three months after demand therefor in writing by the state land department to such purchaser and the purchaser's lessee, enter upon such lands and drill all wells necessary to protect the state against such drainage.

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4. The interest reserved by the state in any state lands sold may be committed to a drilling unit or cooperative or unit plans of development and operation of oil and gas pools with the United States, its agencies and its and their lessees and permittees, and with private owners and persons holding oil and gas leases on private lands or on state lands. The state land department may, insofar as the interest of the state may be affected thereby, join in and consent to any such plan on behalf of the state. Such agreements shall provide for the equitable division on an agreed basis of the oil and gas produced from the unit, but no such agreement shall relieve any operator from the obligation to develop reasonably the lands and leases as a whole committed thereto. The royalties to which the state is entitled on production from land purchased under this section shall be computed only on that part of the production allocated to such tract. When the agreements made under this section provide for the return of gas to a formation underlying the unit, they may provide that no royalties are required to be paid on the gas so returned.

D. State lands known to contain oil, gases and other hydrocarbon substances, geothermal resources, coal or stone, metals, minerals, fossils and fertilizer of every name and description, in paying quantities, or uranium, thorium or any other material which is or may be determined by the laws of the state the United States or decisions of court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, and state lands adjoining lands upon which there are producing oil, gas or geothermal wells or adjoining lands known to contain any of such substances in paying quantities, or uranium, thorium or any other material peculiarly essential to the production of fissionable materials, whether or not of commercial value, shall not be sold. The prohibition against sale shall not operate to prevent the sale of lands known to contain, in paying quantities, common variety minerals as defined in § 27-271 or to prevent the sale of lands where the state does not own such substances, minerals or metals in the lands sought to be sold. The provisions of this subsection shall not prohibit the sale of such lands located within the exterior boundaries of an incorporated city or town, in which case the commissioner may offer the land for sale, provided the land shall be used solely for a public purpose. Such land shall revert to the state if it is used other than for a public purpose.

E. Notwithstanding the provisions of subsection C of this section, all state lands sold after March 18, 1968 shall be sold with the reservation that all oil, gas, other hydrocarbon substances, helium or other substances of a gaseous nature, geothermal resources, coal, metals, minerals, fossils, fertilizer of every name and description, together with all uranium, all thorium or any other material which is or may be determined by the laws of the United States or of this state, or decisions of court, to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, and the exclusive right thereto, on, in, or under such land, shall be and remain and be reserved in and retained by the state, regardless of any sale under this section and the issuance of any certificate of purchase to any purchaser of state lands pursuant to this section, provided, that the reservation shall not include common variety minerals as defined in § 27-271, subject to the following:

1. The state land department shall adopt rules providing for the protection of the patentee or contract purchaser of state lands, or their successors in interest, and the state of Arizona, against damage to the lands, livestock, water, crops, or other tangible improvements on lands held by such patentee or contract purchaser, and suffered by reason of the use or occupation of such lands by lessees or permittees engaged in mining and oil, gas and geothermal resource exploration and development under leases or permits executed by the department. The state land department may, at any time, require each of its lessees or permittees to execute a bond in a reasonable principal amount conditioned upon payment for all such damages.

2. The mineral rights reserved to the state in the lands sold shall be closed to entry and location as a mineral claim or claims, but the department may issue, upon application, mineral exploration permits embracing the reserved mineral rights when such issuance is deemed in the best interest of the state, provided that the surface owner or owners shall have the first right of refusal to acquire such mineral exploration permits.

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Credits

Amended by Laws 1957, Ch. 86, § 1; Laws 1967, Ch. 27, § 1; Laws 1968, Ch. 112, § 1, eff. March 18, 1968; Laws 1976, Ch. 70, § 2; Laws 1977, Ch. 87, § 3, eff. May 23, 1977; Laws 1978, Ch. 129, § 2; Laws 1992, Ch. 107, § 2; Laws 1998, Ch. 133, § 18.

A. R. S. § 37-231, AZ ST § 37-231

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 3. Sale of State Lands (Refs & Annos)

A.R.S. § 37-237

§ 37-237. Notice required for sale of lands or lands and improvements; publication

Currentness

Notice of sales of state lands shall be by advertisement, stating the time, place and terms of the sale and a full description of the land. The notice shall be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state capital, and in a newspaper of like circulation regularly published nearest the location of the lands to be sold. If the notice is for the sale of lands and improvements, the advertisement shall also state the appraised value of the improvements, the name of the owner thereof and the terms upon which compensation therefor shall be made.

A. R. S. § 37-237, AZ ST § 37-237
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Article 3. Sale of State Lands (Refs & Annos)

A.R.S. § 37-238

§ 37-238. Procedure for sale; report of sale

Currentness

A. A representative of the state land department shall attend at the time and place fixed for the sale and proceed by first announcing information relevant to the sale sufficient, in the representative's judgment, to begin the bidding process, then calling for bids and selling the lands for the highest and best bid.

B. The department shall prepare a written report of the sale.

C. The sale may be adjourned from day to day, or the department may dissolve the sale and readvertise the lands.

Credits
Amended by Laws 2001, Ch. 276, § 5.

A. R. S. § 37-238, AZ ST § 37-238
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Arizona Revised Statutes Annotated
Title 37. Public Lands (Refs & Annos)
Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 11. Disposition of Products of State Lands

A.R.S. § 37-481

§ 37-481. Conservation and administration of products of state lands

Currentness

The state land department shall conserve, sell or otherwise administer the timber products, stone, gravel and other products and property upon lands belonging to the state under rules not in conflict with the enabling act and the constitution.

Credits

Amended by Laws 1999, Ch. 209, § 11.

A. R. S. § 37-481, AZ ST § 37-481
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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G-11.

STATE LAND DEPARTMENT
Title 12, Chapter 5, Article 25

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: July 15, 2024

SUBJECT: **STATE LAND DEPARTMENT**
Title 12, Chapter 5, Article 25

Summary

This Five-Year Review Report from the State Land Department (Department) relates to three (3) rules in Title 12, Chapter 5, Article 25 regarding Classifying Trust Lands as Suitable for Conservation Purposes. Specifically, these rules outline the information needed for a qualified entity to nominate eligible State Trust land to be considered as suitable for conservation, the criteria which may be considered in evaluating a petition to classify State Trust land as suitable for conservation purposes, and the minimum bond requirement for a petition to classify land for conservation and the criteria for increasing the bond amount above the minimum.

In the prior 5YRR for these rules originally due by January 2019, and which was approved by the Council in May 2019, the Department did not propose to amend any rules. As a reminder, the next report for these rules was to be completed by January 2024. However, at the June 6, 2023 Council Meeting, the Council voted pursuant to A.R.S. § 41-1056(D) to require the Department to conduct its review of Title 12, Chapter 5, Article 25 outside the 5YRR process and set the new deadline for the report for November 1, 2023. Subsequently, at the October 31, 2023 Study Session, the Council voted pursuant to A.R.S. § 41-1056(F) to grant the Department an extension to submit the report on Title 12, Chapter 5, Article 25 by April 30, 2024. The Department submitted a report for Title 12, Chapter 5, Article 25 on April 23, 2024, which is now before the Council.

Proposed Action

In the current report, the Department is not proposing to take any action regarding the rules.

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 states that in 2019, it was reported that any petitions to reclassify lands as suitable for conservation purposes subject to Article 25 would have no economic impact. The Department indicates that it continues to concur with this finding. Stakeholders include the Department and qualified entities wanting to nominate eligible State Trust land to be considered as suitable for conservation.

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 probable benefit of these rules outweighs any costs and burdens.

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 consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

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 there are no corresponding federal laws.

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 indicates the rules reviewed in this report were not adopted after July 29, 2010. As such, analysis of this factor is not required under A.R.S. § 41-1056(A)(11).

11. Conclusion

This 5YRR from the Department relates to three (3) rules in Title 12, Chapter 5, Article 25 regarding Classifying Trust Lands as Suitable for Conservation Purposes. Specifically, these rules outline the information needed for a qualified entity to nominate eligible State Trust land to be considered as suitable for conservation, the criteria which may be considered in evaluating a petition to classify State Trust land as suitable for conservation purposes, and the minimum bond requirement for a petition to classify land for conservation and the criteria for increasing the bond amount above the minimum.

The Department indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. As such, the Department does not propose to take any action regarding these rules.

Council staff recommends approval of this report.

Katie Hobbs
Governor

Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner

Arizona State Land Department
1110 West Washington Street, Phoenix, AZ 85007
(602) 542-4631

April 23, 2024

Jessica Klein, Chairperson
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

Re: Five-Year Rule Review Report for A.A.C. Title 12, Chapter 5, Article 25

Dear Chairperson Klein:

Enclosed, please find the Arizona State Land Department's ("Department") five-year rule review report for A.A.C. Title 12, Chapter 5, Article 25. The Department has reviewed all rules within Article 25. The Department does not intend for any rules to expire under A.R.S. § 41-1056(J). The Department certifies it is in compliance with A.R.S. § 41-1091.

Please contact Lynn Córdova at 602-542-2654 or via email at lcordova@azland.gov with any questions regarding this report.

Sincerely,

Simone Westbrook Hall
Deputy Commissioner

Arizona State Land Department

5 YEAR REVIEW REPORT

Title 12. Natural Resources

Chapter 5. State Land Department

Article 25. Classifying Trust Lands as Suitable for Conservation Purposes

April 23, 2024

1. **Authorization of the rule by existing statutes:**

A.R.S. § 37-132(A); A.R.S. Title 37, Chapter 2, Article 4.2

2. **The objective of each rule:**

Rule	Objective
R12-5-2501	This rule describes the information needed for a qualified entity to nominate eligible State Trust land to be considered as suitable for conservation.
R12-5-2502	This rule outlines the criteria which may be considered in evaluating a petition to classify State Trust land as suitable for conservation purposes.
R12-5-2503	This rule outlines the minimum bond requirement for a petition to classify land for conservation and the criteria for increasing the bond amount above the minimum.

3. **Are the rules effective in achieving their objectives?** **Yes** _x_ **No** __

The Department finds all rules within Article 25 are effective in achieving their objectives.

4. **Are the rules consistent with other rules and statutes?** **Yes** _x_ **No** __

The Department finds all rules within Article 25 are consistent with other rules and statutes.

5. **Are the rules enforced as written?** **Yes** _x_ **No** __

The Department finds all rules within Article 25 are enforced as written.

6. **Are the rules clear, concise, and understandable?** **Yes** _x_ **No** __

The Department finds all rules within Article 25 to be clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes** __ **No** _x_

The Department has not received any written criticisms of the rules within the last five years.

8. Economic, small business, and consumer impact comparison:

Relative to all rules within Article 25, the Department offers the following:

In 2019, it was reported that any petitions to reclassify lands as suitable for conservation purposes subject to Article 25 would have no economic impact. The Department continues to concur with this finding.

9. Has the agency received any business competitiveness analyses of the rules? **Yes __ No _x_**

The Department has not received any business competitiveness analyses of the rules within Article 25.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

In the previous five-year review report in 2019, the Department proposed to retain all rules and did not recommend any changes to rules within Article 25.

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:

Relative to all rules within Article 25, the Department offers the following:

The Department has determined the probable benefit of these rules outweighs any costs and burdens.

12. Are the rules more stringent than corresponding federal laws? **Yes __ No __ N/A x**

Relative to all rules within Article 25, the Department offers the following:

There are no corresponding federal laws applicable to this Article.

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:

Relative to all rules within Article 25, the Department offers the following:

The rules reviewed in this report were not adopted after July 29, 2010, therefore this factor does not apply.

14. Proposed course of action:

Rule	Proposed Course of Action
R12-5-2501	The Department plans to retain the rule as written.
R12-5-2502	The Department plans to retain this rule as written.
R12-5-2503	The Department plans to retain this rule as written.

(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

ARTICLE 25. CLASSIFYING TRUST LANDS AS SUITABLE FOR CONSERVATION PURPOSES

R12-5-2501. Petition

A. A petition to nominate trust land suitable for conservation purposes may be filed at the Arizona State Land Department during regular business hours. The petition shall be made on a form provided by the Department.

B. A petitioner shall nominate Trust lands in a manner consistent with and only for lands considered eligible under A.R.S. § 37-311, et seq.

C. A petitioner shall include the following information in a petition to nominate trust land suitable for conservation purposes:

1. A legal description of the land and a map that identifies the Township (T), Range (R), section, land description, acreage and county where the land is located. (Example: T1N, R3E, Section 17, SWNW, 40 acres, Maricopa County);
2. A statement of proposed conservation uses of the land;
3. A statement of why the land is suitable for conservation purposes with reference to the criteria identified in R12-5-2502(A);
4. A statement of the existing surface uses on the land and how each existing use is affected both physically and economically by the proposed conservation use;
5. An identification of the local jurisdiction in which the land is located;
6. A statement of the local governing authority's comprehensive plan designation and existing zoning for the land and how the proposed conservation use is or is not consistent with the comprehensive plan and zoning;
7. A statement of the positive and negative physical and economic impacts on the local community nearest the land;
8. A statement of who or what entity will likely manage the land if, after the land is reclassified as suitable for conservation purposes, the land is approved for lease or purchase for conservation purposes; and
9. A statement of any known mineral potential, including sand and gravel, of the lands.

Historical Note

Adopted effective March 5, 1998 (Supp. 98-1).

R12-5-2502. Reclassification

A. Criteria: Reclassification of state lands as suitable for conservation purposes shall be in the best interest of the Trust as determined by the Commissioner. The Commissioner and the Conservation Advisory Committee may consider any or all of the following criteria in evaluating whether the nominated land should be reclassified as suitable for conservation purposes:

1. Open space: Existence of substantially undisturbed open space values that make the land's conservation an asset to the community or to other adjacent developable state trust land;
2. Unique scenic beauty:
   a. Existence of a natural community landmark such as a significant mountain vista; or,
   b. Existence of a scenic vista on to or through the land under petition from nearby major roadways or pathways, in addition to the mere existence of undeveloped open space;
3. Wildlife and vegetation:
   a. Existence of significant vegetation or wildlife, both native to the region and worthy of protection due to the relative lushness, health and diversity of the vegetation or the number and diversity of the wildlife;
   b. Existence of endangered, threatened, or protected plants or endangered or threatened wildlife species as identified under federal or state laws;
   c. Existence of significant stands of a signature plant characteristic of the location;
4. Cultural resources:
   a. Existence of a prehistoric or historic archaeological site;
   b. Existence of a historic structure; or
   c. Comparative costs of mitigation, data recovery, or preservation compared to potential revenue production of the land;
5. Wildlife habitat:
   a. Existence of sufficient acreage and habitat quality to support populations of endangered, threatened, or other particular species;
   b. Interconnection between the land under petition and nearby public lands for wildlife movement;
   c. Diversity of plant communities or biodiversity of plant or animal species;
   d. Habitat condition, whether intact or degraded; or
   e. Distance from an existing or proposed roadway, utility line, or urban development;
6. Other:
   a. Geologic and topographic features:
      i. Existence of a significant wash, slope, or other topographic feature;
      ii. Existence of a unique rock outcropping, formation or other unusual geologic feature; and
      iii. Known soil conditions unsuitable for development purposes;
   b. Watershed integrity: Relationship of the land to maintenance of the integrity of one or more watersheds;
   c. Floodplain management: Impact of the 100-year floodplain on the land;
   d. Surface water and groundwater:
      i. Existence of a spring or other wetland;
      ii. Occurrence of perennial or intermittent stream flow; and
      iii. Potential for groundwater recharge.
   e. Long-term viability of the land for conservation management:
      i. Viability of the land based on its size, configuration, and location for successfully conserving the resources it seeks to protect; and
      ii. Relationship of conservation of the land to resolving wildland fire issues, particularly in the urban-wildland interface;
   f. Local, regional, or other planning considerations:
      i. Relationship between the proposed conservation designation and adopted local and regional plans and policies; and
      ii. Relationship of the land to other federal, state, local, or private land trust preserves, holdings, or plans;
   g. Recreation:
      i. Existence of or proposed trail-based or other low impact recreation opportunities; and
      ii. Existence of direct access to or from adjacent public or private lands used for recreational purposes;

h. Accessibility:
   i. Public accessibility and nature of that accessibility to the land; and
   ii. Impact of accessibility, based on the purpose of conservation of the land;
i. Scientific education:
   i. Historic use of the land for scientific research purposes; and
   ii. Opportunities for scientific education;
j. Types of multiple use:
   i. Multiple use potential of the land; and
   ii. Impact of specific multiple uses on the land;
k. Resource production preservation:
   i. Existence of grazing lands under petition that a conservation designation may help to protect;
   ii. Existence of prime agriculture areas under petition that a conservation designation may help to protect; and
   iii. Protection of the resource production component (such as grazing, agriculture, mining, and timber) of the local or regional economy;
l. Relationship to other state trust lands:
   i. Proximity to other state trust lands;
   ii. Development capability of adjacent state trust lands; and
   iii. Anticipated timing of development activity on adjacent state trust lands;
m. Preexisting protections: Existence of any federal, state, or local law requiring protection by existing lessee of proposed conservation values;
n. Tourism: Impact on local or regional tourism;
o. Benefit to the Trust: Whether and for what reason reclassification is in the best interest of the Trust;

B. Multiple Petitions: If multiple petitions are received and the Commissioner determines that reclassification is in the best interest of the Trust, the Commissioner may reclassify the land with the conservation purpose stated in one or more than one of the petitions, or the Commissioner may reclassify the land without stating a conservation purpose.

C. Management Plan: Upon reclassification, the Commissioner may require a party to submit a management plan to allow existing and conservation uses to be coordinated in a manner that will protect both existing uses and conservation and open space values.

Historical Note
Adopted effective March 5, 1998 (Supp. 98-1).

R12-5-2503. Bond

A. Under A.R.S. § 37-312(D), a petitioner shall submit a bond in an initial amount of $1,000 with a petition to nominate trust land suitable for conservation purposes. The bond shall be a surety bond or a cashier's check. The State Land Commissioner may require an additional bond amount under A.R.S. § 37-312 if the processing costs of the petition are estimated to exceed the initial bond amount based on the following factors:
1. Planning Costs: Planning involves review, consideration, and evaluation of:
   a. Evidence and testimony presented at public hearing;
   b. Physical and economic impact on other land owned or controlled by the current lessee or on the local community;
   c. Existing holding leases, existing planning permits, and development plans in progress;
   d. Input from local planning and zoning agencies and regional planning authorities;
   e. Mineral potential, including sand and gravel; and
   f. Consistency with the Enabling Act, the State Constitution, and Arizona Revised Statutes;
2. Notice: Development and mailing of a notice of intent to classify lands suitable for conservation purposes and a notice of public hearing to:
   a. Existing lessees;
   b. Local planning and zoning agencies and regional planning authorities;
   c. Owners of property within 300 feet of the land;
   d. Persons who have requested notice of classification of lands suitable for conservation under A.R.S. § 37-311, et seq., with the Department; and
   e. Affected state agencies;
3. Advertisement: Notice of public hearing for six publications in a newspaper of general circulation in the county where the land is located;
4. Public Hearing: Receipt and processing of oral and written testimony regarding the proposed reclassification including, but not limited to, review, consideration, and evaluation of testimony, as well as the costs of meeting facility and equipment rental.

B. Upon reclassification of all or a portion of the land as suitable for conservation purposes, the successful petitioner shall forfeit the initial and any additional bond amounts to the state under A.R.S. § 37-312(D).

Historical Note
Adopted effective March 5, 1998 (Supp. 98-1).

A.R.S. T. 37, Ch. 2, Art. 4.2, Refs & Annos
Currentness

A. R. S. T. 37, Ch. 2, Art. 4.2, Refs & Annos, AZ ST T. 37, Ch. 2, Art. 4.2, Refs & Annos
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Arizona Revised Statutes Annotated
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Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 4.2. Trust Lands Suitable for Conservation (Refs & Annos)

A.R.S. § 37-311

§ 37-311. Definitions

Currentness

In this article, unless the context otherwise requires:

1. “Conservation” means protection of the natural assets of state trust lands for the long-term benefit of the land, the trust beneficiaries, lessees, the public and the unique resources that each area contains, such as open space, scenic beauty, protected plants, wildlife, archaeology and multiple use values.

2. “Existing lessee” means any of the following:

(a) The lessee who is entitled to the use of state lands at the time the lands are considered for classification and are classified as trust lands suitable for conservation purposes.

(b) An existing lessee who continues to lease the trust lands after classification as trust lands suitable for conservation purposes.

3. “Open space” means land that is generally free of land uses that would jeopardize the conservation and open space values of the land or development that would obstruct the scenic beauty of the land.

4. “Trust land” means any land that is owned or held in trust by this state.

Credits
Added by Laws 1996, Ch. 347, § 4.

A. R. S. § 37-311, AZ ST § 37-311
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Chapter 2. Administration of State and Other Public Lands (Refs & Annos)
Article 4.2. Trust Lands Suitable for Conservation (Refs & Annos)

A.R.S. § 37-312

§ 37-312. Nominating and classifying trust land as suitable for conservation purposes

Effective: August 9, 2017
Currentness

A. On the commissioner's initiative, on petition as provided by subsection C of this section or as provided by § 37-332, the commissioner may nominate certain trust lands as being under consideration for classification as trust lands suitable for conservation purposes. The commissioner shall not nominate trust lands as being under consideration for classification as trust lands suitable for conservation purposes unless the trust lands are eligible for classification under this section and are located within:

1. One mile of the corporate boundaries of an incorporated city or town having a population of less than ten thousand persons.

2. Three miles of the corporate boundaries of an incorporated city or town having a population of ten thousand persons or more.

3. Ten miles of the boundaries that are established in paragraph 1 or 2 of this subsection and that are located within counties with a population greater than five hundred thousand persons and are adjacent to lands that are eligible for conservation and share with them a specific physical characteristic such as a reach of a river, a mountain slope or an archaeological feature.

B. In addition to the lands identified in subsection A, paragraphs 1 through 3 of this section, the following lands may be nominated for reclassification by the commissioner:

1. Those lands within the Tortolita mountain park in Pinal county located within T10S, R12E and T10S, R13E.

2. Those lands in the vicinity of the Superstition mountains in Pinal county located within T1N, R9E; T1N, R10E; T1S, R9E; and T1S, R10E.

3. Those lands in the vicinity of the San Tan mountains in Pinal county located within T3S, R7E, section 10, the northwest quarter of the southeast quarter and the south half of the southeast quarter; section 15, the north half and southeast quarter.

4. The following lands located in Coconino county:

(a) T19N, R5E, section 3.

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(b) T19N, R6E, sections 5 and 6.

(c) T20N, R5E, sections 2, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34 and 36.

(d) T20N, R6E, sections 4, 5, 6, 8, 10, 14, 17, 18, 20, 22, 26, 28, 30, 32 and 34.

(e) T21N, R6E, sections 21, 22, 28, 31, 32 and 33.

C. The commissioner shall receive a petition to nominate trust lands as being under consideration for classification as trust lands suitable for conservation purposes from:

1. A state agency that leases the land or intends to lease or purchase the land.

2. The board of supervisors of the county in which the land is located.

3. The governing body of a city or town if the land is located within:

(a) The corporate boundaries of the city or town.

(b) One mile outside the corporate boundaries and the city or town has a population of less than ten thousand persons.

(c) Three miles outside the corporate boundaries and the city or town has a population of ten thousand persons or more.

4. Ten or more private individuals who:

(a) Reside in the county in which the land is located.

(b) Have the financial capability to lease or purchase the land.

5. A nonprofit corporation or trust, the purpose or powers of which include conservation of natural, scenic, open space or other conservation values.

6. The current lessee of the land.

7. A business or corporation that is legally empowered to own or manage real property in this state and that intends to lease or purchase the land.

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D. A petitioner who requests the commissioner to reclassify the land pursuant to this article solely or partially on grounds that the land contains cultural resources worthy of conservation shall provide, on the commissioner's request, a report on the results of a cultural resources survey of the petitioned land for the commissioner's consideration before determining if the reclassification is in the best interest of the trust.

E. Unless the commissioner nominates the trust lands under § 37-332, a petitioner shall post a bond or other security sufficient to cover the costs of the planning, notice, advertisement and public hearing as required by this article and as determined by the commissioner. The bond or security is forfeit to this state if the commissioner reclassifies the land pursuant to this article.

F. The commissioner shall not nominate or classify trust land as suitable for conservation purposes if a development plan was approved for the land pursuant to article 5.1 of this chapter[1] before July 26, 1996. The commissioner may nominate and classify trust land as suitable for conservation purposes in an area within a development plan approved after July 26, 1996 if appropriate conservation purposes are incorporated within the development plan prepared for the commissioner's approval. In nominating and classifying trust land as suitable for conservation purposes under this subsection, the commissioner shall follow the procedures for requesting local government zoning pursuant to § 37-334, subsection E.

G. Unless the commissioner nominates the trust lands under § 37-332, after nominating the trust lands under subsection A or B of this section, the commissioner shall:

1. Mail notice of intent to classify the lands as trust lands suitable for conservation purposes to the beneficiary or beneficiaries for whom the lands are held in trust, existing lessees, local planning authorities, the appropriate regional planning authorities and owners of private land that consists of forty or more acres and that is located within three hundred feet of the trust land. The notice shall include the date, time and place of the public hearing to be held pursuant to subsection H of this section and a request for written comments on the proposed classification within thirty days after the date of notice.

2. Within thirty days after giving the notice under paragraph 1 of this subsection:

(a) Publish the notice stating a date, time and place of a public hearing for six publications in a newspaper of general circulation in the county in which the designated lands are located.

(b) Mail the notice to any person who has requested notice of any classification under this article.

(c) Mail the notice to the Arizona game and fish department, the Arizona department of agriculture, the Arizona state parks board, the Arizona department of transportation and any other affected state agency.

H. Within sixty days after the last date of publication of notice under subsection G of this section, the commissioner or the commissioner's designee shall conduct a public hearing in a location in this state as close as conveniently possible to the trust land to receive and record oral and written testimony concerning the proposed classification.

I. In determining whether reclassification is in the best interest of the trust, the commissioner shall:

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1. Consult with the governing body of each city or town in which the land proposed for reclassification is located or to which the land is contiguous, the county board of supervisors of each county in which the land is located if the land is not located within the boundaries of a city or town and the local planning and zoning authorities, including the affected regional planning authorities.

2. Consider all evidence and testimony that are submitted at the hearing that was held pursuant to:

(a) Subsection H of this section if the commissioner nominated the trust lands under this section.

(b) Section 37-332, subsections B, C and D if the commissioner nominated the trust lands under § 32-332.

3. Consider the physical and economic impacts that the reclassification would have on other lands owned or controlled by the current lessee and the physical and economic impacts on the local community.

4. Consider the existence of any holding lease on the lands.

5. Consider the existence of any planning permit issued by the commissioner for the lands pursuant to article 5.1 of this chapter.

6. Consider the amount of progress on any development plans being completed for the lands pursuant to article 5.1 of this chapter.

7. Evaluate the mineral potential of the land.

J. The commissioner shall determine whether the reclassification is in the best interest of the trust and, in making the determination, shall state in writing the reasons why the classification is or is not in the best interests of the trust.

K. If the commissioner reclassifies the trust land as suitable for conservation purposes, the commissioner shall adopt a plan to allow existing and conservation uses to be coordinated in a manner that will protect both existing uses and conservation and open space values. If the reclassified trust land is unleased or the petitioner is the lessee pursuant to subsection C, paragraph 6 of this section, the commissioner may require a plan from the petitioners describing how the property is to be managed. In adopting the plan, the commissioner shall consult with:

1. The governing body of the city or town if the land is located in a city or town.

2. The county board of supervisors if the land is not located in a city or town.

3. Existing lessees of the trust land, local and regional planning authorities and owners of private land who provided written comments pursuant to subsection G, paragraph 1 of this section.

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4. Any other person or entity that the commissioner considers to be necessary.

L. The classification of state land as suitable for conservation does not affect the designation or use of adjacent federal, state or private land.

M. A person who is adversely affected by the commissioner's decision to reclassify land as suitable for conservation purposes may appeal the decision to the board of appeals pursuant to § 37-215.

N. On classifying trust lands suitable for conservation purposes, existing leases shall not be canceled or modified as a result of any actions taken pursuant to this article, and renewals of existing leases shall be pursuant to § 37-291.

Credits

Added by Laws 1996, Ch. 347, § 4. Amended by Laws 1997, Ch. 261, § 1; Laws 1998, Ch. 163, § 1; Laws 1999, Ch. 270, § 3; Laws 2001, Ch. 276, § 9; Laws 2002, Ch. 336, § 10; Laws 2017, Ch. 315, § 8.

Footnotes

1 Section 37-331 et seq.

A. R. S. § 37-312, AZ ST § 37-312

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Arizona Revised Statutes Annotated
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Article 4.2. Trust Lands Suitable for Conservation (Refs & Annos)

A.R.S. § 37-312.01

§ 37-312.01. Access to and use and enjoyment of private lands

Effective: August 6, 2016
Currentness

Notwithstanding any other provision of this article, the reclassification of trust lands as suitable for conservation purposes shall not restrict or unreasonably limit access to or use or enjoyment of private lands. Any lease or sale of land pursuant to this article shall include a condition requiring that permanent access to and use and enjoyment of private lands be allowed.

Credits
Added by Laws 1997, Ch. 261, § 2. Amended by Laws 2016, Ch. 169, § 1.

A. R. S. § 37-312.01, AZ ST § 37-312.01
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Article 4.2. Trust Lands Suitable for Conservation (Refs & Annos)

A.R.S. § 37-313

§ 37-313. Conservation lease of trust lands suitable for conservation; definition

Effective: July 29, 2010
Currentness

A. The commissioner may sell leases of trust land for conservation purposes to a qualifying lessee when it is in the best interest of the trust. The conservation lease may authorize the lessee to protect the conservation and open space value of the land in cooperation with other lessees of the land, consistent with the plan adopted under § 37-312. The commissioner retains the right to authorize other compatible uses of the land.

B. The term of the lease may be for less than ten years or for at least ten but not more than fifty years. The sale of any lease shall be:

1. At public auction.

2. Based on one independent appraisal and one independent review appraisal, both of which may be reviewed by the department, of the fair market value of the interest in the trust land that is being offered, including mineral, sand and gravel and oil and gas value.

3. Consistent with the requirements of the Constitution of Arizona, applicable provisions of this title and rules adopted by the commissioner.

C. If an existing lease is not renewed as a result of any action taken pursuant to this article and the conservation lessee and the existing lessee cannot agree on compensation, the commissioner shall determine the amount of reasonable compensation for damages sustained by the existing lessee after considering the following factors:

1. The actual use of the leased land.

2. The rentals paid during the term of the lease.

3. The actual amount of economic damage to the production unit caused by the failure to renew. In determining the amount of economic damage to the production unit, the commissioner shall not limit the scope of review to only that portion of the lands involved in the reclassification but shall take into consideration the impact of the loss of these lands on the overall production

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unit, including situations in which other leased or private lands are necessary and have been leased by the existing lessee for operation as a production unit.

4. Other factors that the commissioner or the existing lessee determine to be relevant.

D. The conservation lessee shall make payments for reimbursement or compensation, or both, as established in this section to the existing lessee at the time the lease is not renewed. This section does not prevent the payment for reimbursement or compensation, or both, from being made in installments if the former lessee and conservation lessee agree to installment payments.

E. If trust lands that are leased pursuant to this section are subject to a current planning permit under article 5.1 of this chapter,[1] the succeeding lessee shall reimburse the holder of the permit as provided by § 37-338.

F. The department shall make application forms available for leases. The application form shall contain a statement under penalty of perjury that the person signing the application represents that the information in the application is complete and correct. A material false statement or omission of facts in the application is cause for canceling a conservation lease that was issued based on the application.

G. At the time of application the applicant shall post a bond pursuant to § 37-107. The bond is forfeit to this state if no bidder bids at the auction for the conservation lease.

H. The successful bidder shall pay the first year's annual rental and other costs pursuant to § 37-281.02, subsection D and § 37-107.

I. If the applicant did not bid at a previous auction where the applicant initiated the process, the department shall require the applicant to pay a deposit pursuant to § 37-281.02, subsection I.

J. A lessee under a conservation lease shall not:

1. Use the lands for any purpose other than that for which the lease was issued.

2. Sublease the lands except to another qualifying lessee and on approval by the commissioner.

3. Inhibit or interfere with other existing leases.

K. A state land trust beneficiary may lease trust land under this section but may not make payments on the lease from monies that were received from the state trust.

L. For purposes of this section “qualifying lessee” includes:

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1. The United States or an agency or instrumentality of the United States.

2. An agency of this state, including a state land trust beneficiary.

3. A county, city, town, school district, community college district or special taxing district or any of their agencies or instrumentalities.

4. An individual or a private organization or entity that is legally empowered to own or manage real property in this state.

Credits

Added by Laws 1996, Ch. 347, § 4. Amended by Laws 1999, Ch. 270, § 4; Laws 2010, Ch. 243, § 14.

Footnotes

1 Section 37-331 et seq.

A. R. S. § 37-313, AZ ST § 37-313

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Article 4.2. Trust Lands Suitable for Conservation (Refs & Annos)

A.R.S. § 37-314

§ 37-314. Conveyance of title to trust lands suitable for conservation purposes

Effective: July 29, 2010
Currentness

A. The commissioner may sell or otherwise transfer title to trust lands suitable for conservation purposes when it is in the best interest of the trust.

B. A sale of trust land under this section shall be:

1. At public auction.

2. Based on one independent appraisal and one independent review appraisal, both of which may be reviewed by the department, of the fair market value of the trust land that is being offered. The appraisal shall not take into consideration the conditions or covenants which may be imposed under subsection C of this section in order to reduce the appraised value.

3. Consistent with the requirements of the Constitution of Arizona, applicable provisions of this title and rules adopted by the commissioner.

C. The terms of the sale may include the condition that the conveyance of title is subject to a covenant that runs with the land and that the land shall be used only for purposes that are consistent with the conservation of specifically named resources or public values.

D. The commissioner shall include the applicable conditions under subsection C of this section in any public notices relating to the sale under this section.

E. If the trust land is sold subject to a lease and the lease is canceled or modified due to a sale of land under this section and the purchaser and the existing lessee cannot agree on compensation, the commissioner shall determine the amount of reasonable compensation for damages sustained by the existing lessee after considering the following factors:

1. The time remaining in the term of the lease at the time that the lease is canceled or modified.

2. The actual use of the leased land.

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3. The rentals paid during the term of the lease.

4. The actual amount of economic damage to the production unit caused by the cancellation or modification. In determining the amount of economic damage to the production unit, the commissioner shall not limit the scope of review to only that portion of the lands involved in the reclassification but shall take into consideration the impact of the loss of these lands on the overall production unit, including situations in which other leased or private lands are necessary and have been leased by the existing lessee for operation as a production unit.

5. Other factors that the commissioner or the existing lessee determines to be relevant.

F. The purchaser shall make payments for reimbursement or compensation, or both, as established in this section to the existing lessee at the time of sale. This section does not prevent the payment for reimbursement or compensation, or both, from being made in installments if the existing lessee and purchaser agree to installment payments.

G. If trust lands that are conveyed pursuant to this section are subject to a current planning permit under article 5.1 of this chapter,[1] the transferee shall reimburse the holder of the permit as provided by § 37-338.

H. At the time of application the applicant shall post a bond pursuant to § 37-107. The bond is forfeit to this state if no bidder bids at the auction for the sale of the land.

Credits
Added by Laws 1996, Ch. 347, § 4. Amended by Laws 1999, Ch. 270, § 5; Laws 2010, Ch. 243, § 15.

Footnotes
1 Section 37-331 et seq.

A. R. S. § 37-314, AZ ST § 37-314
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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A.R.S. § 37-315

§ 37-315. Withdrawing trust lands suitable for conservation purposes by department without lease or sale

Currentness

A. Notwithstanding any other law, when it is in the best interest of the trust, the commissioner may withdraw trust land suitable for conservation purposes from lease or sale for development purposes to allow qualifying lessees or buyers to complete the plans and arrangements necessary to accomplish the purposes of the classification and plan of the lands.

B. The commissioner shall prescribe a termination date, of at least three but not more than five years, after which the lease or sale may proceed. Within one year before the expiration of the withdrawal period the commissioner, after a public hearing, may extend the withdrawal period for not more than one additional three year period if significant progress is evident in the effort toward acquiring the land.

C. The commissioner's decision under this section is subject to appeal pursuant to § 37-214.

D. During a withdrawal period under this section:

1. The commissioner may allow existing lessees of the land to continue their normal and customary use of the land. The commissioner may renew existing leases pursuant to § 37-291.

2. The commissioner may authorize a new use of the land that is consistent with the classification.

E. If the commissioner withdraws trust lands from lease or sale pursuant to this section, or fails to lease or convey trust lands suitable for conservation purposes as provided by this article within three years after classification, and the trust lands are subject to a current planning permit under article 5.1 of this chapter,[1] the commissioner shall reimburse the holder of the permit pursuant to § 37-338.

Credits
Added by Laws 1996, Ch. 347, § 4.

Footnotes

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1 Section 37-331 et seq.

A. R. S. § 37-315, AZ ST § 37-315
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Article 4.2. Trust Lands Suitable for Conservation (Refs & Annos)

A.R.S. § 37-316

§ 37-316. Repealed by Laws 2017, Ch. 315, § 9.

Effective: August 9, 2017
Currentness

A. R. S. § 37-316, AZ ST § 37-316
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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Article 4.2. Trust Lands Suitable for Conservation (Refs & Annos)

A.R.S. § 37-317

§ 37-317. Subordination to constitution and enabling act

Currentness

This article shall not be construed to replace or supersede the responsibilities and obligations of the state land department and the state land commissioner under article X, Constitution of Arizona, and § 28 of the enabling act of June 20, 1910.

Credits

Added by Laws 1996, Ch. 347, § 4.

A. R. S. § 37-317, AZ ST § 37-317
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

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STATE LAND DEPARTMENT
Title 12, Chapter 5, Article 12

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: July 15, 2024

SUBJECT: **STATE LAND DEPARTMENT**
Title 12, Chapter 5, Article 12

Summary

This Five-Year Review Report from the State Land Department (Department) relates to one (1) rule in Title 12, Chapter 5, Article 12 regarding Fees. Specifically, this rule outlines fees associated with certain applications and document filings made with the Department.

In the prior 5YRR for these rules originally due by February 2020, and which was approved by the Council in June 2020, the Department did not propose to amend any rules. As a reminder, the next report for these rules was to be completed by February 2025. However, at the June 6, 2023 Council Meeting, the Council voted pursuant to A.R.S. § 41-1056(D) to require the Department to conduct its review of Title 12, Chapter 5, Article 12 outside the 5YRR process and set the new deadline for the report for November 1, 2023. Subsequently, at the October 31, 2023 Study Session, the Council voted pursuant to A.R.S. § 41-1056(F) to grant the Department an extension to submit the report on Title 12, Chapter 5, Article 12 by April 30, 2024. The Department submitted a report for Title 12, Chapter 5, Article 12 on April 23, 2024, which is now before the Council.

Proposed Action

In the current report, the Department is not proposing to take any action regarding the rules.

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 predicted that listing the fees in rule would allow customers to continue to calculate the cost of conducting business with the Department. The Department believes this rule continues to accomplish this purpose.

Stakeholders include the Department and its customers.

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 probable benefits of the rule outweigh their probable costs, and they impose the least burden and costs to persons regulated by the rule, while meeting their underlying objectives.

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 consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

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 there are no corresponding federal laws.

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 indicates the rules reviewed in this report were not adopted after July 29, 2010. As such, analysis of this factor is not required under A.R.S. § 41-1056(A)(11).

11. Conclusion

This 5YRR from the Department relates to one (1) rule in Title 12, Chapter 5, Article 12 regarding Fees. Specifically, this rule outlines fees associated with certain applications and document filings made with the Department. The Department indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. As such, the Department does not propose to take any action regarding these rules.

Council staff recommends approval of this report.

Katie Hobbs
Governor

Robyn Sahid
Cabinet Executive Officer
Executive Deputy Commissioner

Arizona State Land Department
1110 West Washington Street, Phoenix, AZ 85007
(602) 542-4631

April 23, 2024

Jessica Klein, Chairperson
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

Re: Five-Year Rule Review Report for A.A.C. Title 12, Chapter 5, Article 12

Dear Chairperson Klein:

Enclosed, please find the Arizona State Land Department's ("Department") five-year rule review report for A.A.C. Title 12, Chapter 5, Article 12. The Department has reviewed all rules within Article 12. The Department does not intend for any rules to expire under A.R.S. § 41-1056(J). The Department certifies it is in compliance with A.R.S. § 41-1091.

Please contact Lynn Córdova at 602-542-2654 or via email at lcordova@azland.gov with any questions regarding this report.

Sincerely,

Simone Westbrook Hall
Deputy Commissioner

Arizona State Land Department

5 YEAR REVIEW REPORT

Title 12. Natural Resources

Chapter 5. State Land Department

Article 12. Fees

April 23, 2024

1. **Authorization of the rule by existing statutes**
A.R.S. § 37-132; § 37-107

2. **The objective of each rule:**

Rule	Objective
R12-5-1201	This rule outlines fees associated with certain applications and document filings made with the Department.

3. **Are the rules effective in achieving their objectives?** **Yes** x **No** ___

4. **Are the rules consistent with other rules and statutes?** **Yes** x **No** ___

5. **Are the rules enforced as written?** **Yes** x **No** ___

6. **Are the rules clear, concise, and understandable?** **Yes** x **No** ___

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:**

In 2011, the Department predicted that listing the fees in rule would allow customers to continue to calculate the cost of conducting business with the Department. The Department believes this rule continues to accomplish this purpose.

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?**

In the previous five-year review report submitted in 2020, the Department did not recommend any changes to this rule.

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 probable benefits of the rule outweigh their probable costs, and they impose the least burden and costs to persons regulated by the rule, while meeting their underlying objectives.

12. Are the rules more stringent than corresponding federal laws? Yes __ No __ N/A x

There are no corresponding federal laws applicable to this rule.

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 reviewed in this report were not adopted after July 29, 2010, therefore this factor does not apply.

14. Proposed course of action:

The Department plans to retain the rule as written.

c. All advertising displays shall conform to the applicable state laws and local ordinances or regulations.

Historical Note
Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1101 renumbered from Section R12-5-241 (Supp. 93-3).

ARTICLE 12. FEES

R12-5-1201. Administrative Fees
The State Land Department shall charge the following fees for:

Application Type	Fee
Agricultural and Grazing – New (per section or fraction thereof)	$150
Agricultural and Grazing – Renew	$200
Commercial – New (10 years or less)	$1,000
Commercial – New - long-term (more than 10 years)	$2,000
Commercial – Renew (includes homesite)	$1,000
Appraisal for long-term leases and land sales	Actual cost
Complete Assignment to an entity 100% controlled by assignor or family member	$500
Partial assignment for long-term Commercial Lease only – (more than 10 years)	$2,500
All other assignments	$1,000
Application to Place Improvement	$150
Application to Place Improvement without Prior Approval	$200
Application for Land Treatment	$150
Special Land Use Permits – New or Renew	$300
Non-commercial Sovereign Land Boat Dock / Launch Ramp Permit	$100
Application to Amend General	$100
Sublease	$200
Amendments for Commercial Lease – 10 years or less	$500
Amendments for Commercial Lease – long-term (more than 10 years)	$1,000
Lease Reinstatement	$300
Replacement of lost documents	$50
Certified copy of documents	$10 + $1 per page
Returned check	$20
Miscellaneous filings: Power of Attorney, Probate Documents and Divorce Documents	$50
Mortgage, Deed of Trust	$50 per lease
Bond for conservation or purchase applications for conservation purposes	$1,000
Right of Way – New or Renew	$500
Right of Way – Amendment	$100
Temporary Right of Entry	$100
Application to Purchase	$2,000
Certificate of Purchase (Issuance)	$1,000
Patent (Issuance)	$200
Application for Partial Patent	$1,000
Natural Products – Commercial - Wood Products	$200
Natural Products – Incidental Use Permit	$200
Natural Products – Water	$500
Mineral Materials	$500
Minerals	$500
Mineral Exploration (New or Renew)	$500
Oil & Gas (New or Renew)	$500
Geothermal	$500
Recreational Annual Use - Individual	$15
Recreational Permits (Group) Less than 5 days, Less than 20 people	$15
Recreational Annual Use - Immediate Family Unit (Two adults and children under the age of 18)	$20
Urban Planning Classification	$1,000
Urban Planning Development	$1,000

Historical Note
Adopted as an emergency effective July 31, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Permanent rule adopted effective November 1, 1984 (Supp. 84-6). Section R12-5-301 repealed, new Section adopted by emergency action and filed September 26, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired, text of original Section placed back into effect December 27, 1990. Section R12-5-1201 renumbered from Section R12-5-301 (Supp. 93-3). R12-5-1201 repealed by summary action with an interim effective date of August 30, 1996; filed in the Office of the Secretary of State August 8, 1996 (Supp. 96-3). Adopted summary rules filed December 6, 1996; interim effective date of August 30, 1996 now the permanent effective date (Supp. 96-4). New Section made by exempt rulemaking at 17 A.A.R. 813, effective April 22, 2011 (Supp. 11-2).

ARTICLE 13. REPEALED

R12-5-1301. Repealed

Historical Note
Section R12-5-1301 renumbered from Section R12-5-501 (Supp. 93-3). R12-5-1301 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

R12-5-1302. Repealed

Historical Note
Original rule, Art. III, Ch. IV (Supp. 76-4). Section R12-5-1601 renumbered from Section R12-5-560 (Supp. 93-3). R12-5-1302 repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

ARTICLE 14. REPEALED

The heading for Article 14 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2). Adopted summary

A.R.S. § 37-132

§ 37-132. Powers and duties

Effective: September 24, 2022
Currentness

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and prescribe such rules as are necessary to discharge those duties.

2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to § 37-202.

3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.

4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.

5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10[1] and, except as provided in § 41-1092.08, subsection H, are subject to judicial review pursuant to title 12, chapter 7, article 6.[2]

6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by this state.

7. Have authority to lease for commercial purposes and sell all land owned or held in trust by this state, but any such lease for a term longer than ten years for commercial purposes or any such sale shall first be approved by the board of appeals.

8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.

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9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4[3] and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to § 38-611.

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

B. The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under § 37-107, subsection B, paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20[4] and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required may not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required may not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

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4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to § 37-107.

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to § 9-461.06 or 11-805.

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to § 37-312.

(ii) Sold or leased at auction for conservation purposes.

C. The commissioner or any deputy or employee of the department may not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

Credits

Amended by Laws 1970, Ch. 204, § 142; Laws 1971, Ch. 166, § 1; Laws 1972, Ch. 156, § 2; Laws 1981, 1st S.S., Ch. 1, § 5; Laws 1982, Ch. 121, § 1; Laws 1983, Ch. 288, § 1; Laws 1989, Ch. 171, § 1; Laws 1992, Ch. 190, § 1; Laws 1992, Ch. 357, § 1; Laws 1993, Ch. 169, § 3, eff. April 20, 1993; Laws 1994, Ch. 177, § 3; Laws 1997, Ch. 221, § 167; Laws 1997, Ch. 249, § 1; Laws 1999, Ch. 209, § 1; Laws 2000, Ch. 10, § 1; Laws 2000, Ch. 113, § 158; Laws 2002, Ch. 336, § 2; Laws 2003, Ch. 69, § 2; Laws 2010, Ch. 243, § 6; Laws 2010, Ch. 244, § 27, eff. Oct. 1, 2011; Laws 2011, Ch. 238, § 34, eff. Oct. 1, 2011; Laws 2012, Ch. 321, § 86, eff. Sept. 29, 2012; Laws 2022, Ch. 14, § 2.

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Footnotes

1 Section 41-1092 et seq.

2 Section 12-901 et seq.

3 Section 41-741 et seq.

4 Section 32-2101 et seq.

A. R. S. § 37-132, AZ ST § 37-132

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

End of Document

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A.R.S. § 37-132

§ 37-132. Powers and duties

Effective: September 24, 2022
Currentness

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and prescribe such rules as are necessary to discharge those duties.

2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to § 37-202.

3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.

4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.

5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10[1] and, except as provided in § 41-1092.08, subsection H, are subject to judicial review pursuant to title 12, chapter 7, article 6.[2]

6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by this state.

7. Have authority to lease for commercial purposes and sell all land owned or held in trust by this state, but any such lease for a term longer than ten years for commercial purposes or any such sale shall first be approved by the board of appeals.

8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.

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9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4[3] and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to § 38-611.

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

B. The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under § 37-107, subsection B, paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20[4] and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required may not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required may not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

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4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to § 37-107.

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to § 9-461.06 or 11-805.

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to § 37-312.

(ii) Sold or leased at auction for conservation purposes.

C. The commissioner or any deputy or employee of the department may not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

Credits

Amended by Laws 1970, Ch. 204, § 142; Laws 1971, Ch. 166, § 1; Laws 1972, Ch. 156, § 2; Laws 1981, 1st S.S., Ch. 1, § 5; Laws 1982, Ch. 121, § 1; Laws 1983, Ch. 288, § 1; Laws 1989, Ch. 171, § 1; Laws 1992, Ch. 190, § 1; Laws 1992, Ch. 357, § 1; Laws 1993, Ch. 169, § 3, eff. April 20, 1993; Laws 1994, Ch. 177, § 3; Laws 1997, Ch. 221, § 167; Laws 1997, Ch. 249, § 1; Laws 1999, Ch. 209, § 1; Laws 2000, Ch. 10, § 1; Laws 2000, Ch. 113, § 158; Laws 2002, Ch. 336, § 2; Laws 2003, Ch. 69, § 2; Laws 2010, Ch. 243, § 6; Laws 2010, Ch. 244, § 27, eff. Oct. 1, 2011; Laws 2011, Ch. 238, § 34, eff. Oct. 1, 2011; Laws 2012, Ch. 321, § 86, eff. Sept. 29, 2012; Laws 2022, Ch. 14, § 2.

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Footnotes

1 Section 41-1092 et seq.

2 Section 12-901 et seq.

3 Section 41-741 et seq.

4 Section 32-2101 et seq.

A. R. S. § 37-132, AZ ST § 37-132

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 25, 2024.

End of Document

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H.

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION OF PETITION AND RESPONSE RELATED TO BOARD OF PHYSICIAN'S ASSISTANTS RULES IN TITLE 4, CHAPTER 17, RULE 402 REGARDING SUPERVISION AGREEMENTS SUBMITTED PURSUANT TO A.R.S. § 41-1033(F)

I.

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION OF PETITION AND RESPONSE RELATED TO BOARD OF PHYSICIAN'S ASSISTANTS RULES IN TITLE 4, CHAPTER 17, RULE 402 REGARDING SUPERVISION AGREEMENTS SUBMITTED PURSUANT TO A.R.S. § 41-1033(G)

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: July 2, 2024

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

FROM: Council Staff

DATE: June 18, 2024

SUBJECT: **A.R.S. § 41-1033(F) and (G) Petition Related to Arizona Regulatory Board of Physician Assistants rules R4-17-401 and R4-17-402**

Background

As described in Council staff's memorandum dated April 22, 2024, on March 8, 2024, Council staff received a petition ("Petition") from attorney Craig Morgan on behalf of the Arizona State Association of Physician Assistants ("Petitioner") challenging the Arizona Regulatory Board of Physician Assistants' ("Board") rules R4-17-401 and R4-17-402. Specifically, Petitioner alleges these rules "exceed the Board's statutory authority, are unduly burdensome, conflict with the statute, and are unnecessary to specifically fulfill a public health, safety, or welfare concern" and requests the Council "declare the rules invalid." *See* Petition at 1. As such, the Petitioner has brought this petition under A.R.S. § 41-1033(F) and (G).

On April 1, 2024, the Board submitted a preliminary response to the Petition stating that R4-17-402(B)-(G) are consistent with statute, the rules are procedurally valid, and the rules are not unduly burdensome.

At the May 7, 2024 Council Meeting, pursuant to A.R.S. § 41-1033(H), at least three (3) Council Members voted to hear this Petition at a future meeting. On May 17, 2024, Council staff sent correspondences to both the Petitioner and the Board pursuant to A.R.S. § 41-1033(H)(2) advising them of the Council's vote. Council staff also requested the Board provide a formal response to the Petition pursuant to A.R.S. § 41-1033(H)(3) no later than June 16, 2024. Council staff received the Board's formal response on June 14, 2024.

Procedure

After considering the Petition, the Board's response, and the supporting materials submitted, the Council must decide whether the Board's rules meets the requirements prescribed in A.R.S. § 41-1030 and whether the rules exceed the Board's statutory authority, are not specifically authorized by statute, or meet the guidelines prescribed in A.R.S. § 41-1033(G). *See* A.R.S. § 41-1033(H)(1)(b) and (c). Pursuant to A.R.S. § 41-1033(H)(1), the Council must make its decision within 90 days after receipt of the third Council Member's request to hear this petition at a hearing, which occurred at the May 7, 2024 Council Meeting. As such, the Council has until August 5, 2024 to make a decision. Any decision by the Council must be made by a majority of the council members who are present and voting on the issue. *See* A.R.S. § 41-1033(L).

Pursuant to A.R.S. § 41-1033(K), if the Council determines that the Board's rules do not meet the requirements prescribed in A.R.S. § 41-1030, the rules shall be void. Additionally, if the Council determines that the Board's rules are unduly burdensome or not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the Council shall modify, revise or declare void any such rule. *Id.*

Conclusion

This Petition is properly before the Council and both parties have submitted materials consistent with the requirements in statute as indicated above. Council staff advises the Council to consider the materials submitted and to question both parties as to whether the requirements of rules R4-17-401 and R4-17-402 violate A.R.S. § 41-1033(F) and (G).

As a reminder A.R.S. § 41-1033(F) allows a person to "petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030." A.R.S. § 41-1030(A) states, "[a] rule is invalid unless it is consistent with the statute, reasonably necessary to carry out the purpose of the statute and is made and approved in substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law." Furthemore, A.R.S. § 41-1030(D) states an agency shall not "[m]ake a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule", "[m]ake a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority", or "[m]ake a rule that is not specifically authorized by statute."

A.R.S. § 41-1033(G) allows a person to "petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern." On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section."

Council staff has included the following materials for the Council's reference:

- R4-17-401 and R4-17-402;
- A.R.S. § 41-1033 and A.R.S. § 41-1030;
- Council staff's April 22, 2024 memorandum;
- Petition and supporting documents;
- Board's preliminary response and supporting documents; and
- Board's formal response pursuant to A.R.S. § 41-1033(H)(3) and supporting documents.

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: April 22, 2024

SUBJECT: **A.R.S. 41-1033(F) and (G) Petition Related to Arizona Regulatory Board of Physician Assistants rules R4-17-401 and R4-17-402**

Summary

On March 8, 2024, Council staff received a petition ("Petition") from attorney Craig Morgan on behalf of the Arizona State Association of Physician Assistants ("Petitioner") challenging the Arizona Regulatory Board of Physician Assistants' ("Board") rules R4-17-401 and R4-17-402. Specifically, Petitioner alleges these rules "exceed the Board's statutory authority, are unduly burdensome, conflict with the statute, and are unnecessary to specifically fulfill a public health, safety, or welfare concern" and requests the Council "declare the rules invalid." *See* Petition at 1.

Petitioner's Arguments

In April 2023, the Governor signed HB2043 into law. Petitioner alleges this legislation removed the requirement that all Physician Assistants ("PAs") must practice under a written Supervision Agreement. The Petitioner alleges, now, PAs with at least 8,000 hours of Board-certified clinical practice ("Experienced PAs") do not need a written Supervision Agreement or specific Supervising Physician. *See* A.R.S. § 32-2531(B). Furthermore, the Petitioner claims an Experienced PA may provide "any legal medical service" that the PA is competent to perform based on "education, training, and experience" in "collaboration" with a Physician or Entity. *See* A.R.S. § 32-2531(A), (B). The Petitioner states a Physician or Entity need only designate "one or more physicians by name or position who is responsible for oversight of the [PA]." *See* A.R.S. § 32-2501(6). The Petitioner alleges this frees Experienced

PAs from a tether to a single supervisor under a rigid written agreement so the PA can more effectively provide healthcare to patients.

Rule R4-17-402(B)-(G) is Inconsistent with Statute

Relying on exempt rulemaking authority in HB2043, the Board implemented amendments to rules R4-17-401 and R4-17-402. Petitioner alleges these amendments are inconsistent with statutory changes implemented by HB2043. Specifically, rule R4-17-402(B) states that "[a]s required under A.R.S. § 32-2531(B), a collaborating physician or entity shall develop written policies regarding collaboration for each physician assistant employed under [A.A.C. R4-17-402(A)]." However, Petitioner alleges A.R.S. § 32-2531(B) does not say the "policies" must be in writing and states HB2043 expressly repealed the requirement that every PA have a Supervising Physician who keeps "a written agreement."

Furthermore, the Petitioner states under rule R4-17-402(B)–(C), Experienced PAs and "the physician providing oversight" must execute written policies that specify the (1) PA's name, license, and contact information; (2) name or position of the Physician "responsible for providing oversight" of the PA; (3) level of collaboration required between the PA and Physician "providing oversight" with that Physician's contact information; (4) PA's practice setting; (5) PA's specialty; and (6) PA's practice limits. The Petitioner alleges these Rules require a "physician providing oversight" despite HB2043 expressly allowing Experienced PAs to collaborate with a Physician or Entity and not mandating Physician collaboration.

Finally, the Petitioner states the rules require a collaborating Physician or Entity to review the written policies at least annually, "make necessary changes[,]" and execute a revised writing (R4-17-402(D)), there must be written policies for each relationship between a PA and Physician or Entity if there are multiple (R4-17-402(F)), and these written policies must be available to the Board on request (R4-17-402(G)). The Petitioner alleges all these requirements mimic the mandatory Supervision Agreements that HB2043 expressly repealed for Experienced PAs.

For the foregoing reasons, the Petitioner alleges the Board's rule R4-17-402(B)–(G) is inconsistent with statute.

Rule Amendments are Procedurally Invalid

The Petitioner further alleges that the Board's exempt rulemaking to amend rules R4-17-401 and R4-17-402 was procedurally invalid. First, the Petitioner alleges the Board did not receive an exception from the rulemaking moratorium from the Governor's Office to engage in the exempt rulemaking pursuant to A.R.S. § 41-1039(A). Second, the Petitioner alleges HB2043's one-time grant of exempt rulemaking to the Board "for purposes of the act" did not give the Board authority to engage in exempt rulemaking under its general authority to promulgate amendments to rules R4-17-401 and R4-17-402.

Rule R4-17-402(B)-(G) are Invalid Occupational Regulations

Petitioner cites to A.R.S. § 41-1093.01 and A.R.S. § 41-1093.03(B) alleging "[a]n agency shall limit all occupational regulations to regulations that are demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern," and an agency must "prove by a preponderance of the evidence that the challenged occupational regulation is demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern," respectively. However, these statutory provisions relate to petitions filed directly with the agency in question or actions filed in a court of general jurisdiction to challenge an occupational regulation. While the Council may review a final rule or regulatory licensing requirement that the petitioner alleges is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern pursuant to A.R.S. § 41-1033(G), the Council has no authority to review occupational regulations under the standards outlined A.R.S. § 41-1093.01 or A.R.S. § 41-1093.03(B).

Board's Informal Response

In response to the Petition, the Board addresses the complaints in an informal response, stating that R4-17-402(B)-(G) are consistent with A.R.S § 41-1033(A), the rules are procedurally valid, and the rules are not unduly burdensome.

R4-17-402(B)-(G) Are Consistent with A.R.S § 41-1033(A)

The Board states the rules are both consistent with statute and reasonably necessary for the Board to carry out their purpose. The Board states A.R.S. § 32-2536(B) requires the Board to develop rules that ensure that collaborating physician assistants who become employed in an area of practice that is not substantially similar to previous practice areas are safe to practice in their newly chosen field. The Board determined that this requirement was best accomplished at the practice level, rather than through more restrictive alternatives, such as having the Board dictate continuing education/supervision requirements through an affirmative application and review process. In order to make these determinations, collaborating physicians and entities would need to have sufficient and objective data for review. For that reason, R4-17-402(B)-(D) and (F) requires collaborating physicians and entities to have written and annually reviewed policies articulating the collaborating physician's scope of practice. These written policies could be used by any prospective collaborating physician or entity to determine whether additional training or supervision is necessary at the initiation of the collaborative relationship as required by A.R.S. § 32-2536(B).

For the foregoing reasons, the Board alleges R4-17-402(B)-(G) are consistent with A.R.S § 41-1033(A).

The Rules are Procedurally Valid

The Board states they obtained the approval of the Governor's Office prior to promulgating the rules (Approval obtained from the Governor's Office December 19, 2023).

For the foregoing reasons, the Board alleges R4-17-402(B)-(G) are procedurally valid.

The Rules are Not Unduly Burdensome

The Board states that they carefully considered the intent of the statute, the language within the statute, and the input it received from physician assistant members of the board, stakeholders and from Ms. Kathy Busby, the lobbyist, who was involved in the legislative process. The Board also discussed and weighed its obligation to protect the public and therefore does not find it unreasonable or contrary to statute to have a written business record articulating the relationship between a collaborating physician assistant and their respective collaborating physician or entity. The Board states the rule requirements do not limit the designation to a single physician, nor do they "tether" the collaborating physician assistant to a specific physician like a supervisory agreement would. The requirements were left flexible to allow for the possibility that the collaboration agreement would designate a physician collaborator by role or department within an entity. However, while the rules do not "tether" a collaborating physician assistant to a specific physician, neither the statute nor the rule contains language that would lead to a complete "untethering" of the relationship between the collaborating physician and the collaborating physician assistant as there remains the statutory obligation for "oversight." The statute indicates that the level of collaboration would be made at the practice level, and determined by the policies of the practice setting at which the physician assistant is employed. The Board continues, stating, the written policies referenced in R4-17-402 call for a plan individualized for the collaborating physician assistant's education, experience, and competencies. While collaboration is not defined in statute, the distinction between supervision and collaboration is a matter of degree, as made evident by language in A.R.S. § 32-2531(B) requiring a collaborating physician assistant to "continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the physician assistant's education, experience and competencies."

For the foregoing reasons, the Board alleges the rules are not unduly burdensome.

Relevant Statutes

A.R.S. § 41-1033(F) allows a person to "petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030." A.R.S. § 41-1030(A) states, "[a] rule is invalid unless it is consistent with the statute, reasonably necessary to carry out the purpose of the statute and is made and approved in substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law." Furthemore, A.R.S. § 41-1030(D) states an agency shall not "[m]ake a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule", "[m]ake a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority", or "[m]ake a rule that is not specifically authorized by statute."

A.R.S. § 41-1033(G) allows a person to "petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to

specifically fulfill a public health, safety or welfare concern." On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section."

If the Council receives information pursuant to A.R.S. § 41-1033(F) or (G), and at least three Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the third council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the third council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement not more than five double-spaced pages to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

See A.R.S. § 41-1033(H).

Analysis and Conclusion

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

In Council staff's view, the petition raises legitimate concerns about whether the Board's amendments to R4-17-402 are consistent with statute given recent changes enacted by HB2043, whether the rules are unduly burdensome on physician assistants, and whether the rule is necessary to specifically fulfill a public health, safety or welfare concern. *See* A.R.S. § 41-1033(F) and (G). However, Council staff does not believe the Council may review these rules pursuant to A.R.S. § 41-1093.01 and A.R.S. § 41-1093.03(B) as these statutes relate to petitions filed directly with the agencies or actions filed in a court of general jurisdiction to challenge an occupational regulation and are outside the scope of the Council's statutory

authority. It is Council staff's recommendation that the Council request of the Chair that this petition be heard at a future Council Meeting.

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BEFORE THE GOVERNOR'S REGULATORY REVIEW COUNCIL

AGENCY/BOARD:	**PETITION FOR REVIEW OF A.A.C. R4-17-401 & A.A.C. R4-17-402**
Arizona Regulatory Board of Physician Assistants	

Pursuant to A.R.S. § 41-1033(F), (G) and A.A.C. R1-6-402, the Arizona State Association of Physician Assistants ("Petitioner") asks the Governor's Regulatory Review Council to (1) review A.A.C. R4-17-401 and -402 (the "Rules") promulgated by the Arizona Regulatory Board of Physician Assistants (the "Board") because the Rules exceed the Board's statutory authority, are unduly burdensome, conflict with the statute, and are unnecessary to specifically fulfill a public health, safety, or welfare concern; and (2) declare the Rules invalid. **Ex. A** (the Rules).

I. FACTUAL BACKGROUND

In April 2023, Governor Hobbs signed HB 2043 into law. **Ex. B**. HB 2043 repealed the requirement that all Physician Assistants ("PAs") must practice under a written Supervision Agreement. Now, PAs with at least 8,000 hours of Board-certified clinical practice ("Experienced PAs") do not need a written Supervision Agreement or specific Supervising Physician. *Id.* at A.R.S. § 32-2531(B). An Experienced PA may provide "any legal medical service" that the PA is competent to perform based on "education, training, and experience" in "collaboration" with a Physician *or Entity*. *Id.* at A.R.S. § 32-2531(A), (B). The Physician *or Entity* need only designate "one or more physicians by name or position who is responsible for oversight of the [PA]." *Id.* at A.R.S. § 32-2501(6) (emphasis added). This frees Experienced PAs from a tether to a single supervisor under a rigid written agreement so the PA can more effectively provide healthcare to patients. **Ex. C** (articles that discuss harms caused by the "tether").

HB 2043 became effective on December 31, 2023. Between April and December 2023, the Board

made public comments about potential rules that would contradict HB 2043. **Ex. D** (Final Minutes for August 17, 2023 Meeting). The Board's Executive Director, by email, informed licensed PAs and Physicians that, under the proposed rules, "[a] Supervision Agreement that describes the [PA]'s scope of practice and prescribing authority is nonetheless required prior to performing health care tasks." **Ex. E**. And the Board's FAQ webpage for HB 2043 falsely asserts that "[a]s required under A.R.S. § 32-2531(B), a collaborating physician or entity shall develop written policies regarding collaboration for each [PA] employed under subsection (A)." *See* **Ex. F**; *see also* **Ex. B** at A.R.S. § 32-2531(B) (*no* writing requirement for Experienced PAs). Such rules ignore HB 2043's repeal of mandatory written Supervision Agreements for Experienced PAs. **Ex. B** at A.R.S. §§ 32-2501(6) (Experienced PAs do not need "a supervision agreement"), -2531(B) (same). Petitioner warned the Board such rules would contradict HB 2043. **Ex. G** (August 29, 2023 Letter). The Board promulgated its rules. **Ex. A** at A.A.C. R4-17-402(B)–(G) (even Experienced PAs must execute written policies nearly identical to the Supervision Agreements that HB 2043 states are not required). The Rules conflict with HB 2043.

Representative Selina Bliss, the Legislator who sponsored HB 2043, agrees with Petitioner that the Board's Rules conflict with HB 2043. **Exhibit H**. Representative Bliss noted, like Petitioner, that HB 2043 "does not require an *agreement* between a named physician or physicians." *Id.* And her "major concern is that the rules promulgated by the Board require a written policy SIGNED by a physician and PA, which is tantamount to an agreement, which is not required, contemplated, or intended by the legislation." *Id.* The Board appears steadfast in its position. *Id.* Accordingly, Petitioner seeks the Council's review to ensure that HB 2043 is correctly implemented for PAs, Physicians, and their patients.

II. THE COUNCIL SHOULD INVALIDATE THE RULES

A. A.A.C. R4-17-402(B)–(G) ARE SUBSTANTIVELY INVALID

"A rule is invalid unless it is consistent with the statute," *and* "reasonably necessary to carry out the purpose of the statute" A.R.S. § 41-1030(A). Here, A.A.C. R4-17-402(B) falsely states that "*[a]s required under A.R.S. § 32-2531(B)*, a collaborating physician or entity shall develop *written* policies regarding collaboration for each physician assistant employed under [A.A.C. R4-17-402(A)]." ***But A.R.S. § 32-2531(B) does not say the "policies" must be in writing***. HB 2043 expressly repealed the requirement that every PA have a Supervising Physician who keeps "a *written* agreement" updated annually. **Ex. I** (A.R.S. §

32-2531(H) (West 2022) (emphasis added)); **Ex. B** at A.R.S. § 32-2531 (HB 2043 removed § 32-2531(H) in its entirety). The Legislature could have required a writing as evidenced by such requirements appearing in other statutes. *See, e.g.*, **Ex. B** at A.R.S. §§ 32-2501(19) ("Supervision agreement" means "a ***written*** or electronic signed agreement . . . ." (emphasis added)), (20) ("Unprofessional conduct" includes "knowingly making any *written* or oral false or fraudulent statement . . . ." (emphasis added)), -2532(E) ("A prescription by a [PA] for a schedule III controlled substance that is an opioid or benzodiazepine is not refillable without the *written* consent of a physician." (emphasis added)). Yet A.R.S. § 32-2531(B) lacks such a requirement. We "will not read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself . . . ." *Roberts v. State*, 253 Ariz. 259, 266, ¶ 20 (2022) (cleaned up).

Under A.A.C. R4-17-402(B)–(C), Experienced PAs and "the physician providing oversight" must execute *written* policies that specify the (1) PA's name, license, and contact information; (2) name or position of the Physician "responsible for providing oversight" of the PA; (3) level of collaboration required between the PA and Physician "providing oversight" with that Physician's contact information; (4) PA's practice setting; (5) PA's specialty; and (6) PA's practice limits. These Rules require a "physician providing oversight" despite HB 2043 expressly allowing Experienced PAs to collaborate with a Physician *or Entity* and *not* mandating *Physician* collaboration. *Id.*; **Ex. B** at A.R.S. §§ 32-2501(6), -2531(B). Under HB 2043, only PAs with less than 8,000 Board-certified clinical practice hours need a Physician who provides oversight. **Ex. B** at A.R.S. §§ 32-2501(6), (17), (19)(b). HB 2043 eliminates such requirements for Experienced PAs. *Id.* at A.R.S. § 32-2501(6). But the Rules reinstate those requirements and effectively nullify HB 2043 by forcing Experienced PAs to collaborate with a Physician instead of choosing an Entity.

In addition to the writing requirements in A.A.C. R4-17-402(B)–(C), paragraph (D) requires a collaborating Physician or Entity to review the written policies at least annually, "make necessary changes[,]" and execute a revised writing. While an Experienced PA "may be employed and practice collaboratively with multiple" Physicians or Entities, there must be written policies for each relationship. **Ex. A** at A.A.C. R4-17-402(F). Which means there must be a "physician providing oversight" for each set of written policies. *See id.* at A.A.C. R4-17-402(B)(2)–(3), (C). And these written policies must be available to the Board on request. *Id.* at A.A.C. R4-17-402(G). All these requirements mimic the mandatory Supervision Agreements that HB 2043 *expressly repealed* for Experienced PAs. **Ex. I** at A.R.S. § 32-

2531(H)(4) (prior statute provided that a Supervising Physician must "[m]aintain a written agreement with" any PA). Those Agreements had to (1) say the Physician will supervise the PA and retain responsibility for any care rendered by the PA; (2) be executed by the Supervising Physician and PA; (3) updated at least annually; and (4) made available to the Board on request. *Id.* So, the Rules effectively revived the requirement that all PAs have a Supervision Agreement with a specific supervisor. *Compare* **Ex. A** at A.A.C. R4-17-402(B)–(G), *with* **Ex. I** at A.R.S. § 32-2531(H).

The Legislature made it clear: Experienced PAs are "*not required to practice pursuant to a supervision agreement* but shall continue to collaborate with, consult with or refer to the appropriate health care professional . . . ." **Ex. B** at A.R.S. § 32-2531(B) (emphasis added). A "Collaborating Physician or Entity" is one who collaborates with an Experienced PA who, again, "*does not require a supervision agreement* . . . ." *Id.* at A.R.S. § 32-2501(6) (emphasis added). A "Supervision Agreement" is "a *written* or electronic signed agreement that, in part, "[d]escribes the scope of practice for a [PA] who has less than 8,000 hours of clinical practice." *Id.* at A.R.S. § 32-2501(19) (emphasis added). To be sure, under A.R.S. § 32-2531(C), a PA with less than 8,000 Board-certified clinical practice hours "shall work in accordance with a supervision agreement that describes the [PA's] scope of practice." But "[o]n receipt of board certification of the [PA's] completion of at least [8,000] hours of clinical practice, *a [PA] is no longer subject to the requirements of [A.R.S. § 32-2531(C)]*." *Id.* (emphasis added). Because A.A.C. R4-17-402(B)–(G) ignore these statutory requirements, and in fact controvert them, those Rules are substantively invalid.

B. THE RULES IN THEIR ENTIRETY ARE PROCEDURALLY INVALID

The Board relied on its exempt rulemaking authority in HB 2043 to promulgate the Rules. **Ex. B** at Sec. 11 ("Notwithstanding any other law, for purposes of this act, the [Board] is exempt from the rulemaking requirements of title 41, chapter 6[] . . . for one year after" December 31, 2023). But this exemption only applies to the "rulemaking requirements" in title 41, chapter 6, rather than the entirety of chapter 6. *See id.* And that exemption only applies "*for purposes of*" HB 2043. *Id.* (emphasis added).

"*Notwithstanding any other law*, a state agency may not conduct any rulemaking *including* . . . *exempt rulemaking*, without prior written approval of the governor." A.R.S. § 41-1039(A) (emphasis added). HB 2043's grant of one-time exempt rulemaking falls under this procedure. Upon information and belief, the Governor did not give prior written approval for the Rules because approval was never sought. So, the

Rules are procedurally invalid. Even if there was written approval from the Governor, the Board still lacked authority to promulgate A.A.C. R4-17-402(B)–(G) through exempt rulemaking. There are only four rulemaking grants in HB 2043. None apply to A.A.C. R4-17-402(B)–(G). *See* A.R.S. §§ 32-2531(G) (rulemaking for civil penalties), -2536(A)(1) (rulemaking for how to decide whether PA is an Experienced PA), (A)(2) (more rulemaking for certification standards for Experienced PAs), (B) (rulemaking for certification standards for Experienced PAs who seek employment for position "not substantially similar to" the PA's practice setting where certified).

Moreover, the Board cannot use exempt rulemaking under its general authority to "make and adopt rules necessary or proper for the administration of [title 32, chapter 25]." A.R.S. § 32-2504(C). This general authority is not part of the "act" (*i.e.,* HB 2043). *See* **Ex. B** (HB 2043 made no changes to A.R.S. § 32-2504(C)). Therefore, HB 2043's one-time grant of exempt rulemaking "for purposes of the act" does not give the Board authority to engage in exempt rulemaking under its general authority. The Board's Executive Director appeared to rely on the Board's general authority to justify the Rules to Representative Bliss. **Ex. H**. It is undisputed that the Board did not comply with the rulemaking requirements in title 41, chapter 6 for the Rules. Hence, to the extent the Rules were promulgated under the Board's general authority, the Rules are procedurally invalid.

C. A.A.C. R4-17-402(B)–(G) ARE INVALID OCCUPATIONAL REGULATIONS

"An agency shall limit all occupational regulations to regulations that are demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern." A.R.S. § 41-1093.01. An agency must "prove by a preponderance of the evidence that the challenged occupational regulation is demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern." A.R.S. § 41-1093.03(B).

As explained above, A.A.C. R4-17-402(B)–(G) reintroduced an administrative hurdle on the PA profession. Namely, subjecting Experienced PAs to written policies under a specific Physician despite such requirements being eliminated by HB 2043. This, however, is an invalid occupation regulation. Thus, the Council should review these Rules and determine they are unnecessary to specifically fulfill a public health, safety, or welfare concern. Petitioner and the PA profession writ large recognize the Rules to be both unnecessary and harmful to the goal of providing quality affordable medical care to all Arizonans. *See* **Exs. C**–**D**, **I**.

RESPECTFULLY SUBMITTED: March 8, 2024.

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EXHIBIT A

ARTICLE 4. COLLABORATIVE PRACTICE; REGULATION

R4-17-401. Application for Certification of Clinical Practice Hours; Waiver of Documentation

A. As required under A.R.S. § 32-2536(A), a physician assistant who is licensed by the Board and in good standing may apply to the Board for certification of the clinical practice hours required to practice collaboratively with a physician or entity.

1. For the purpose of this rule, good standing shall mean not be currently under investigation, or the subject of a public or confidential probation.

B. To be eligible to practice collaboratively with a physician or entity, a physician assistant shall have at least 8,000 hours of clinical practice, as described in subsection (E), obtained:

1. In the five years before the date of the application submitted under subsection (C), or
2. In the ten years before the date of the application submitted under subsection (C) if:
   a. At least 2,000 hours of clinical practice were obtained in the three years before the date of application submitted under subsection (C); and
   b. The physician assistant is currently certified by the National Commission on Certification of Physician Assistants.

C. To apply for certification of clinical practice hours, a physician assistant shall submit to the Board an application form, which is available on the Board's website.

D. In addition to complying with subsection (C), a physician assistant applying for certification of clinical practice hours shall have submitted directly to the Board by the document custodian or an individual with direct knowledge, documentation of hours of clinical practice performed by the physician assistant. Documentation may be submitted by multiple persons.

E. Clinical practice includes:

1. Performing medical services related directly to patient care;
2. Providing instruction to physician assistants at an institution accredited by the Accreditation Review Commission on Education for the Physician Assistant. Time spent preparing to provide instruction or preforming administrative tasks related to providing instruction is not clinical practice.

F. The Board may waive the documentation requirement specified under subsection (D). To obtain a waiver of the documentation requirement, the physician assistant shall submit to the Board a written request that includes the following information:

1. The physician assistant's name and license number;
2. Date on the request for waiver;

3. Identification and an estimate of the number of clinical hours for which documentation has not been submitted under subsection (D);
4. Description of the physician assistant's efforts to have the documentation submitted as required under subsection (D);
5. Explanation of why the documentation cannot be submitted;
6. If applicable, evidence that supports the request for waiver; and
7. The physician assistant's affirmation that the physician assistant has performed the required hours of clinical practice even though documentation has not been submitted.

G. The Board shall waive the documentation requirement if the Board determines the documentation is unavailable for a reason beyond the control of the physician assistant requesting the waiver. In making this determination, the Board shall consider:

1. The sufficiency of the physician assistant's effort to have the documentation submitted;
2. Evidence it is not possible to have the documentation submitted because:
   a. The required document does not exist;
   b. The individual or entity responsible for maintaining and submitting the documentation is unable to do so; or
   c. Another reason beyond the control of the physician assistant; and
3. Whether the Board is able to obtain the required documentation from another source.

H. The Board shall document the Board's decision regarding a request for waiver submitted under subsection (F) in the official record regarding the application submitted under subsection (C). The Board's decision regarding a request for waiver is not subject to review or appeal.

I. The Board shall maintain on the Board's website a list of physician assistants who have at least 8,000 hours of clinical practice certified by the Board and are eligible to practice in collaboration with a physician, physician group practice, or health care institution.

R4-17-402. Policies Regarding Collaboration with a Physician Assistant

A. Before employing and practicing collaboratively with a physician assistant, the collaborating physician or entity shall verify that the physician assistant is qualified under A.R.S. § 32-2536 and R4-17-401 to practice collaboratively. The collaborating physician or entity shall maintain evidence of the verification in the employment file of the physician assistant as long as the physician assistant is employed by the collaborating physician or entity.

B. As required under A.R.S. § 32-2531(B), a collaborating physician or entity shall develop written policies regarding collaboration for each physician assistant employed under subsection (A). The

policies, which shall be individualized for the physician assistant's education, experience, and competencies, shall specify:

1. The physician assistant's name, license number, and contact information;
2. The name or position of the physician responsible for providing oversight of the physician assistant;
3. Description of the level of collaboration required between the physician assistant and the physician providing oversight including specific information to enable the physician assistant to contact the physician providing oversight;
4. Description of the practice setting in which the physician assistant will work;
5. Description of the practice specialty in which the physician assistant will work; and
6. Description of practice limitations, if any, applicable to the physician assistant.

C. Both the physician providing oversight and the physician assistant shall sign and date the policies developed under subsection (B). The collaborating physician or entity shall provide a copy of the signed policies to the physician assistant and put a copy in the employment file of the physician assistant.

D. The collaborating physician or entity shall review the policies developed under subsection (B) at least annually and make necessary changes. The collaborating physician or entity shall sign and date the policies as evidence the required review was performed. If changes are made to the policies, the collaborating physician or entity shall ensure the requirements of subsection (C) are performed.

E. If a change made under subsection (D) involves a practice setting or specialty in which the physician assistant has not previously practiced collaboratively, the collaborating physician or entity shall ensure the physician assistant is provided additional training and oversight until the physician assistant acquires the necessary education, experience, and competence.

1. If the collaborating physician or entity determines it is in the best interest of public health and safety, the collaborating physician or entity shall require the physician assistant to enter a supervision agreement, as defined at A.R.S. § 32-2501, until the physician assistant acquires the education, experience, and competence necessary to practice in the practice setting or specialty in which the physician assistant had not previously practiced collaboratively.
2. The collaborating physician or entity shall ensure that all actions taken under this subsection, including additional training and oversight, entering a supervision agreement, and terminating a supervision agreement, are noted in the employment file of the physician assistant.

F. A physician assistant may be employed by and practice collaboratively with multiple collaborating physicians or entities. Each collaborating physician or entity shall comply with this Section.

G. When requested by the Board, a collaborating physician or entity shall provide a copy of the policies required under this Section to the Board.

EXHIBIT B

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

CHAPTER 54

HOUSE BILL 2043

AN ACT

AMENDING SECTIONS 32-2501, 32-2502, 32-2531, 32-2532 AND 32-2533, ARIZONA REVISED STATUTES; REPEALING SECTION 32-2534, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 25, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 32-2534; AMENDING SECTION 32-2535, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 25, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2536; AMENDING SECTION 32-2551, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-2501, Arizona Revised Statutes, is amended to read:

32-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a regular license issued pursuant to this chapter.

2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

3. "Advisory letter" means a nondisciplinary letter to notify a physician assistant that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved program" means a physician assistant educational program accredited by the accreditation review commission on education for physician assistants, or one of its predecessor agencies, the committee on allied health education and accreditation or the commission on the accreditation of allied health educational programs.

5. "Board" means the Arizona regulatory board of physician assistants.

6. "COLLABORATING PHYSICIAN OR ENTITY" MEANS A PHYSICIAN, PHYSICIAN GROUP PRACTICE, PHYSICIAN PRIVATE PRACTICE OR LICENSED HEALTH CARE INSTITUTION THAT EMPLOYS OR COLLABORATES WITH A PHYSICIAN ASSISTANT WHO HAS AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE AS CERTIFIED BY THE BOARD PURSUANT TO SECTION 32-2536 AND DOES NOT REQUIRE A SUPERVISION AGREEMENT AND THAT DESIGNATES ONE OR MORE PHYSICIANS BY NAME OR POSITION WHO IS RESPONSIBLE FOR THE OVERSIGHT OF THE PHYSICIAN ASSISTANT.

~~6.~~ 7. "Completed application" means an application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

~~7.~~ 8. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician assistant and the natural or adopted children, father, mother, brothers and sisters of the physician assistant's spouse.

~~8.~~ 9. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician assistant that the physician assistant's conduct violates state or federal law and may require the board to monitor the physician assistant.

~~9.~~ 10. "Limit" means a nondisciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be mentally or physically unable to safely engage in health care tasks.

~~10.~~ 11. "Medically incompetent" means that a physician assistant lacks sufficient medical knowledge or skills, or both, in performing delegated health care tasks to a degree likely to endanger the health or safety of patients.

~~11.~~ 12. "Minor surgery":

(a) Means those invasive procedures that may be ~~delegated to~~ PERFORMED BY a physician assistant ~~by a supervising physician~~, that are consistent with the training and experience of the physician assistant, that are normally taught in courses of training approved by the board, ~~and~~ that have been approved by the board as falling within ~~a~~ THE scope of practice of a physician assistant AND THAT ARE CONSISTENT WITH THE PRACTICE SETTING REQUIREMENTS OF THE PHYSICIAN ASSISTANT. ~~Minor surgery~~

(b) Does not include a surgical abortion.

~~12.~~ 13. "Physician" means a physician who is licensed pursuant to chapter 13 or 17 of this title.

~~13.~~ 14. "Physician assistant" means a person who is licensed pursuant to this chapter ~~and who practices medicine with physician supervision~~.

~~14.~~ 15. "Regular license" means a valid and existing license that is issued pursuant to section 32-2521 to perform health care tasks.

~~15.~~ 16. "Restrict" means a disciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be medically incompetent or guilty of unprofessional conduct.

~~16.~~ 17. "Supervising physician" means a physician who holds a current unrestricted license, who supervises a physician assistant WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE and who assumes legal responsibility for health care tasks performed by the physician assistant.

~~17.~~ 18. "Supervision" means a physician's opportunity or ability to provide or exercise direction and control over the services of a physician assistant. Supervision does not require a physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.

19. "SUPERVISION AGREEMENT" MEANS A WRITTEN OR ELECTRONIC SIGNED AGREEMENT THAT BOTH:

(a) DESCRIBES THE SCOPE OF PRACTICE FOR A PHYSICIAN ASSISTANT WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE.

(b) IS BETWEEN THE PHYSICIAN ASSISTANT AND A PHYSICIAN OR THE PHYSICIAN ASSISTANT'S EMPLOYER THAT EMPLOYS OR HAS ON MEDICAL STAFF AT LEAST ONE PHYSICIAN WHO MAY PROVIDE OVERSIGHT, AS APPLICABLE, AND WHO HOLDS A CURRENT UNRESTRICTED LICENSE. FOR THE PURPOSES OF THIS SUBDIVISION, "EMPLOYER" MEANS A PHYSICIAN, PHYSICIAN GROUP PRACTICE, PHYSICIAN PRIVATE PRACTICE OR LICENSED HEALTH CARE INSTITUTION.

~~18.~~ 20. "Unprofessional conduct" includes the following acts by a physician assistant that occur in this state or elsewhere:

(a) Violating any federal or state law or rule that applies to the performance of health care tasks as a physician assistant. Conviction in any court of competent jurisdiction is conclusive evidence of a violation.

(b) Claiming to be a physician or knowingly ~~permitting~~ ALLOWING another person to represent that person as a physician.

(c) Performing health care tasks that ~~have not been delegated by the supervising physician~~ DO NOT MEET THE SUPERVISION OR COLLABORATION REQUIREMENTS, AS APPLICABLE, PURSUANT TO SECTION 32-2531.

(d) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while performing health care tasks or to the extent that judgment may be impaired and the ability to perform health care tasks detrimentally affected.

(e) Signing a blank, undated or predated prescription form.

(f) Committing gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(g) Representing that a manifestly incurable disease or infirmity can be permanently cured or that a disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(h) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in ~~the treatment of~~ TREATING a disease, injury, ailment or infirmity.

(i) Prescribing or dispensing controlled substances or prescription-only drugs for which the physician assistant is not approved or in excess of the amount authorized pursuant to this chapter.

(j) Committing any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(k) Violating a formal order, probation or stipulation issued by the board.

(l) Failing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment.

(m) Failing to use and affix the initials "P.A." or "P.A.-C." after the physician assistant's name or signature on charts, prescriptions or professional correspondence.

(n) Procuring or attempting to procure a physician assistant license by fraud, misrepresentation or knowingly taking advantage of the mistake of another.

(o) Having professional connection with or lending the physician assistant's name to an illegal practitioner of any of the healing arts.

(p) Failing or refusing to maintain adequate records ~~on~~ FOR a patient.

(q) Using controlled substances that have not been prescribed by a physician, physician assistant, dentist or nurse practitioner for use during a prescribed course of treatment.

(r) Prescribing or dispensing controlled substances to members of the physician assistant's immediate family.

(s) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(t) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-2532.

(u) Knowingly making any written or oral false or fraudulent statement in connection with the performance of health care tasks or when applying for privileges or renewing an application for privileges at a health care institution.

(v) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(w) Having a certification or license refused, revoked, suspended, limited or restricted by any other licensing jurisdiction for the inability to safely and skillfully perform health care tasks or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this paragraph.

(x) Having sanctions including restriction, suspension or removal from practice imposed by an agency of the federal government.

(y) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.

(z) Using the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or ~~an~~ osteopathic physician in this state.

(aa) Failing to furnish legally requested information to the board or its investigator in a timely manner.

(bb) Failing to allow properly authorized board personnel to examine on demand documents, reports and records of any kind relating to the physician assistant's performance of health care tasks.

(cc) Knowingly making a false or misleading statement on a form required by the board or in written correspondence or attachments furnished to the board.

(dd) Failing to submit to a body fluid examination and other examinations known to detect the presence of alcohol or other drugs pursuant to an agreement with the board or an order of the board.

(ee) Violating a formal order, probation agreement or stipulation issued or entered into by the board or its executive director.

(ff) Except as otherwise required by law, intentionally betraying a professional secret or intentionally violating a privileged communication.

(gg) Allowing the use of the licensee's name in any way to enhance or ~~permit~~ ALLOW the continuance of the activities of, or maintaining a professional connection with, an illegal practitioner of medicine or the performance of health care tasks by a person who is not licensed pursuant to this chapter.

(hh) Committing false, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative.

(ii) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the licensee has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and ~~if~~ WHETHER the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one physician assistant to another physician assistant or to a doctor of medicine or a doctor of osteopathic medicine within a group working together.

(jj) With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent or without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee, or without approval by the United States food and drug administration or its successor agency.

(kk) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes.

(ll) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a professional relationship with the person. This subdivision does not apply to:

(i) A physician assistant who provides temporary patient care on behalf of the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician assistant.

(mm) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the professional relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a patient.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(nn) Performing health care tasks under a false or assumed name in this state.

Sec. 2. Section 32-2502, Arizona Revised Statutes, is amended to read:

32-2502. Arizona regulatory board of physician assistants; membership; appointment; terms; immunity

A. The Arizona regulatory board of physician assistants is established consisting of the following members:

1. Five physician assistants who hold a current regular license pursuant to this chapter. The governor may appoint these members from a list of qualified candidates submitted by the Arizona state association of physician assistants. The governor may seek additional input and nominations before the governor makes the physician assistant appointments.

2. Two public members who are appointed by the governor.

3. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 17 of this title, one of whom supervises OR COLLABORATES WITH a physician assistant at the time of appointment, and who are appointed by the governor.

4. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 13 of this title, one of whom supervises OR COLLABORATES WITH a physician assistant at the time of appointment, and who are appointed by the governor.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The term of office of members of the board is four years to begin and end on July 1.

D. Each board member is eligible for appointment to not more than two full terms, except that the term of office for a member appointed to fill a vacancy that is not caused by the expiration of a full term is for the unexpired portion of that term and the governor may reappoint that member to not more than two additional full terms. Each board member may continue to hold office until the appointment and qualification of that member's successor. ~~However,~~ The governor may remove a member after notice and a hearing~~,~~ on a finding of continued neglect of duty, incompetence or unprofessional or dishonorable conduct. That member's term ends when the finding is made.

E. A board member's term automatically ends:

1. On written resignation submitted to the board chairperson or to the governor.

2. If the member is absent from this state for more than six months during a one-year period.

3. If the member fails to attend three consecutive regular board meetings.

4. Five years after retirement from active practice.

F. Board members are immune from civil liability for all good faith actions they take pursuant to this chapter.

Sec. 3. Section 32-2531, Arizona Revised Statutes, is amended to read:

32-2531. Physician assistant scope of practice; health care tasks; supervision agreements; supervising physician duties; civil penalty

~~A. A supervising physician may delegate health care tasks to a physician assistant.~~

A. EXCEPT AS PROHIBITED IN SUBSECTION E OF THIS SECTION, A PHYSICIAN ASSISTANT MAY PROVIDE ANY LEGAL MEDICAL SERVICE FOR WHICH THE PHYSICIAN ASSISTANT HAS BEEN PREPARED BY EDUCATION, TRAINING AND EXPERIENCE AND THAT THE PHYSICIAN ASSISTANT IS COMPETENT TO PERFORM, INCLUDING:

1. OBTAINING COMPREHENSIVE HEALTH HISTORIES AND PERFORMING PHYSICAL EXAMINATIONS.

2. EVALUATING AND DIAGNOSING PATIENTS AND MANAGING AND PROVIDING MEDICAL TREATMENT AND THERAPEUTIC INTERVENTIONS.

3. ORDERING, PERFORMING AND INTERPRETING DIAGNOSTIC STUDIES AND THERAPEUTIC PROCEDURES.

4. EDUCATING PATIENTS ON HEALTH PROMOTION AND DISEASE PREVENTION AND PROVIDING COUNSELING AND EDUCATION TO MEET PATIENT NEEDS.

5. PROVIDING CONSULTATION ON REQUEST.

6. WRITING MEDICAL ORDERS.

7. OBTAINING INFORMED CONSENT.

8. ASSISTING IN SURGERY.

9. DELEGATING AND ASSIGNING THERAPEUTIC AND DIAGNOSTIC MEASURES TO AND SUPERVISING LICENSED OR UNLICENSED PERSONNEL.

10. MAKING APPROPRIATE REFERRALS.

11. ORDERING, PRESCRIBING, DISPENSING AND ADMINISTERING DRUGS AND MEDICAL DEVICES.

12. PRESCRIBING PRESCRIPTION-ONLY MEDICATIONS.

13. PRESCRIBING SCHEDULE IV OR SCHEDULE V CONTROLLED SUBSTANCES AS DEFINED IN THE CONTROLLED SUBSTANCES ACT (P.L. 91-513; 84 STAT. 1242; 21 UNITED STATES CODE SECTION 802).

14. PRESCRIBING SCHEDULE II AND SCHEDULE III CONTROLLED SUBSTANCES AS DEFINED IN THE CONTROLLED SUBSTANCES ACT.

15. PERFORMING MINOR SURGERY.

16. PERFORMING NONSURGICAL HEALTH CARE TASKS THAT ARE NORMALLY TAUGHT IN COURSES OF TRAINING APPROVED BY THE BOARD AND THAT ARE CONSISTENT WITH THE PHYSICIAN ASSISTANT'S EDUCATION, TRAINING AND EXPERIENCE.

17. CERTIFYING THE HEALTH OR DISABILITY OF A PATIENT AS REQUIRED BY ANY LOCAL, STATE OR FEDERAL PROGRAM.

18. ORDERING HOME HEALTH SERVICES.

B. PURSUANT TO THE REQUIREMENTS OF THIS CHAPTER AND THE STANDARD OF CARE, A PHYSICIAN ASSISTANT WHO HAS AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE CERTIFIED BY THE BOARD PURSUANT TO SECTION 32-2536 IS NOT REQUIRED TO PRACTICE PURSUANT TO A SUPERVISION AGREEMENT BUT SHALL CONTINUE TO COLLABORATE WITH, CONSULT WITH OR REFER TO THE APPROPRIATE HEALTH CARE PROFESSIONAL AS INDICATED BY THE PATIENT'S CONDITION AND BY THE PHYSICIAN ASSISTANT'S EDUCATION, EXPERIENCE AND COMPETENCIES. THE LEVEL OF COLLABORATION REQUIRED BY THIS SUBSECTION IS DETERMINED BY THE POLICIES OF THE PRACTICE SETTING AT WHICH THE PHYSICIAN ASSISTANT IS EMPLOYED, INCLUDING A PHYSICIAN EMPLOYER, PHYSICIAN GROUP PRACTICE OR HEALTH CARE INSTITUTION. COLLABORATION, CONSULTATION OR A REFERRAL PURSUANT TO THIS SUBSECTION MAY OCCUR THROUGH ELECTRONIC MEANS AND DOES NOT REQUIRE THE PHYSICAL PRESENCE OF THE APPROPRIATE HEALTH CARE PROFESSIONAL AT THE TIME OR PLACE THE PHYSICIAN ASSISTANT PROVIDES MEDICAL

SERVICES. THIS SUBSECTION DOES NOT PROHIBIT A PHYSICIAN ASSISTANT WHO HAS AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE CERTIFIED BY THE BOARD PURSUANT TO SECTION 32-2536 FROM PRACTICING PURSUANT TO A SUPERVISION AGREEMENT.

C. A PHYSICIAN ASSISTANT WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE CERTIFIED BY THE BOARD SHALL WORK IN ACCORDANCE WITH A SUPERVISION AGREEMENT THAT DESCRIBES THE PHYSICIAN ASSISTANT'S SCOPE OF PRACTICE. A PHYSICIAN ASSISTANT MAY NOT PERFORM HEALTH CARE TASKS UNTIL THE PHYSICIAN ASSISTANT HAS COMPLETED AND SIGNED A SUPERVISION AGREEMENT. UNDER A SUPERVISION AGREEMENT, SUPERVISION MAY OCCUR THROUGH ELECTRONIC MEANS AND DOES NOT REQUIRE THE PHYSICAL PRESENCE OF THE SUPERVISING PHYSICIAN AT THE TIME OR PLACE THE PHYSICIAN ASSISTANT PROVIDES MEDICAL SERVICES. THE SUPERVISION AGREEMENT MUST BE KEPT ON FILE AT THE MAIN LOCATION OF THE PHYSICIAN ASSISTANT'S PRACTICE AND, ON REQUEST, BE MADE AVAILABLE TO THE BOARD OR THE BOARD'S REPRESENTATIVE. ON RECEIPT OF BOARD CERTIFICATION OF THE PHYSICIAN ASSISTANT'S COMPLETION OF AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE, A PHYSICIAN ASSISTANT IS NO LONGER SUBJECT TO THE REQUIREMENTS OF THIS SUBSECTION. THE BOARD MAY COUNT PRACTICE HOURS EARNED IN ANOTHER JURISDICTION TOWARD THE HOURS OF CLINICAL PRACTICE REQUIRED BY THIS SUBSECTION.

D. A PHYSICIAN ASSISTANT WHO DOES NOT PRACTICE PURSUANT TO A SUPERVISION AGREEMENT IS LEGALLY RESPONSIBLE FOR THE HEALTH CARE SERVICES PERFORMED BY THE PHYSICIAN ASSISTANT.

~~B.~~ E. A physician assistant shall not perform surgical abortions as defined in section 36-2151.

~~C. The physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing and administration of drugs and medical devices, that are delegated by the supervising physician.~~

~~D. The physician assistant may provide any medical service that is delegated by the supervising physician if the service is within the physician assistant's skills, is within the physician's scope of practice and is supervised by the physician.~~

~~E.~~ F. ~~The~~ A physician assistant may pronounce death and~~, if delegated,~~ may authenticate, by the physician assistant's signature, CERTIFICATION, STAMP, VERIFICATION, AFFIDAVIT OR ENDORSEMENT, any form that may be authenticated by a physician's signature, CERTIFICATION, STAMP, VERIFICATION, AFFIDAVIT OR ENDORSEMENT.

~~F. The physician assistant is the agent of the physician assistant's supervising physician in the performance of all practice related activities, including the ordering of diagnostic, therapeutic and other medical services.~~

~~G. The physician assistant may perform health care tasks in any setting authorized by the supervising physician, including physician offices, clinics, hospitals, ambulatory surgical centers, patient homes,~~

~~nursing homes and other health care institutions. These tasks may include:~~

~~1. Obtaining patient histories.~~

~~2. Performing physical examinations.~~

~~3. Ordering and performing diagnostic and therapeutic procedures.~~

~~4. Formulating a diagnostic impression.~~

~~5. Developing and implementing a treatment plan.~~

~~6. Monitoring the effectiveness of therapeutic interventions.~~

~~7. Assisting in surgery.~~

~~8. Offering counseling and education to meet patient needs.~~

~~9. Making appropriate referrals.~~

~~10. Prescribing schedule IV or V controlled substances as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) and prescription-only medications.~~

~~11. Prescribing schedule II and III controlled substances as defined in the federal controlled substances act of 1970.~~

~~12. Performing minor surgery as defined in section 32-2501.~~

~~13. Performing other nonsurgical health care tasks that are normally taught in courses of training approved by the board, that are consistent with the training and experience of the physician assistant and that have been properly delegated by the supervising physician.~~

~~H. The supervising physician shall:~~

~~1. Meet the requirements established by the board for supervising a physician assistant.~~

~~2. Accept responsibility for all tasks and duties the physician delegates to a physician assistant.~~

~~3. Notify the board and the physician assistant in writing if the physician assistant exceeds the scope of the delegated health care tasks.~~

~~4. Maintain a written agreement with the physician assistant. The agreement must state that the physician will exercise supervision over the physician assistant and retains professional and legal responsibility for the care rendered by the physician assistant. The agreement must be signed by the supervising physician and the physician assistant and updated annually. The agreement must be kept on file at the practice site and made available to the board on request. Each year the board shall randomly audit at least five per cent of these agreements for compliance.~~

~~I. A physician's ability to supervise a physician assistant is not affected by restrictions imposed by the board on a physician assistant pursuant to disciplinary action taken by the board.~~

~~J. Supervision must be continuous but does not require the personal presence of the physician at the place where health care tasks are performed if the physician assistant is in contact with the supervising physician by telecommunication. If the physician assistant practices in a location where a supervising physician is not routinely present, the physician assistant must meet in person or by telecommunication with a~~

~~supervising physician at least once each week to ensure ongoing direction and oversight of the physician assistant's work. The board by order may require the personal presence of a supervising physician when designated health care tasks are performed.~~

~~K. At all times while a physician assistant is on duty, the physician assistant shall wear a name tag with the designation "physician assistant" on it.~~

~~L.~~ G. The board by rule may prescribe a civil penalty for a violation of this article. The penalty shall not exceed ~~fifty dollars~~ $50 for each violation. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it receives from this penalty in the state general fund. A physician assistant and the supervising PHYSICIAN OR COLLABORATING physician OR ENTITY may contest the imposition of this penalty pursuant to board rule. The imposition of a civil penalty is public information, and the board may use this information in any future disciplinary actions.

Sec. 4. Section 32-2532, Arizona Revised Statutes, is amended to read:

32-2532. Prescribing, administering and dispensing drugs; limits and requirements; notice

A. Except as provided in subsection ~~F~~ G of this section, a physician assistant shall not prescribe, dispense or administer:

1. A schedule II or schedule III controlled substance as defined in the ~~federal~~ controlled substances act ~~of 1970~~ (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) without ~~delegation by the supervising physician,~~ board approval and United States drug enforcement administration registration. IF THE PHYSICIAN ASSISTANT HAS LESS THAN EIGHT THOUSAND CLINICAL PRACTICE HOURS, THE SUPERVISION AGREEMENT SHALL SPECIFY THE PHYSICIAN ASSISTANT'S ABILITY TO PRESCRIBE, DISPENSE OR ADMINISTER A SCHEDULE II OR SCHEDULE III CONTROLLED SUBSTANCE.

2. A schedule IV or schedule V controlled substance as defined in the ~~federal~~ controlled substances act ~~of 1970~~ without United States drug enforcement administration registration ~~and delegation by the supervising physician~~. IF THE PHYSICIAN ASSISTANT HAS LESS THAN EIGHT THOUSAND CLINICAL PRACTICE HOURS, THE SUPERVISION AGREEMENT SHALL SPECIFY THE PHYSICIAN ASSISTANT'S ABILITY TO PRESCRIBE, DISPENSE OR ADMINISTER A SCHEDULE IV OR SCHEDULE V CONTROLLED SUBSTANCE.

~~3. Prescription-only medication without delegation by the supervising physician.~~

~~4.~~ 3. Prescription medication intended to perform or induce an abortion.

B. IF THE PHYSICIAN ASSISTANT HAS LESS THAN EIGHT THOUSAND CLINICAL PRACTICE HOURS, THE SUPERVISION AGREEMENT SHALL SPECIFY THE PHYSICIAN ASSISTANT'S ABILITY TO PRESCRIBE, DISPENSE OR ADMINISTER PRESCRIPTION-ONLY MEDICATION.

~~B.~~ C. All prescription orders issued by a physician assistant shall contain the name, address and telephone number of the physician assistant. A physician assistant shall issue prescription orders for controlled substances under the physician assistant's own United States drug enforcement administration registration number.

~~C.~~ D. If THE PHYSICIAN ASSISTANT IS certified for prescription privileges pursuant to section 32-2504, subsection A, initial prescriptions BY THE PHYSICIAN ASSISTANT for schedule II controlled substances that are opioids are subject to the limits prescribed in sections 32-3248 and 32-3248.01 ~~if the physician assistant has been delegated to prescribe schedule II controlled substances by the supervising physician pursuant to this section~~. For each schedule IV or schedule V controlled substance, the physician assistant may not prescribe the controlled substance more than five times in a six-month period for each patient.

~~D.~~ E. A prescription BY A PHYSICIAN ASSISTANT for a schedule III controlled substance that is an opioid or benzodiazepine is not refillable without the written consent of ~~the supervising~~ A physician.

~~E.~~ F. A PHYSICIAN ASSISTANT MAY NOT DISPENSE, PRESCRIBE OR REFILL prescription-only drugs ~~shall not be dispensed, prescribed or refillable~~ for a period exceeding one year FOR EACH PATIENT.

~~F.~~ G. Except in an emergency, a physician assistant may dispense schedule II or schedule III controlled substances for a period of use of not to exceed seventy-two hours with board approval or any other controlled substance for a period of use of not to exceed ninety days and may administer controlled substances without board approval if it is medically indicated in an emergency dealing with potential loss of life or limb or major acute traumatic pain. Notwithstanding the authority granted in this subsection, a physician assistant may not dispense a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders.

~~G.~~ H. Except for samples provided by manufacturers, all drugs dispensed by a physician assistant shall be labeled to show the name of the physician assistant.

~~H.~~ I. A physician assistant shall not obtain a drug from any source other than ~~the supervising~~ A physician or a pharmacist. A physician assistant may receive manufacturers' samples ~~if delegated to do so by the supervising physician~~.

~~I.~~ J. If a physician assistant is approved by the board to prescribe, administer or dispense schedule II and schedule III controlled substances, the physician assistant shall maintain an up-to-date and complete log of all schedule II and schedule III controlled substances the physician assistant administers or dispenses. The board may not grant a physician assistant the authority to dispense schedule II controlled

substances that are opioids, except for implantable devices or opioids that are for medication-assisted treatment for substance use disorders.

~~J.~~ K. The ARIZONA REGULATORY board OF PHYSICIAN ASSISTANTS shall advise the Arizona state board of pharmacy and the United States drug enforcement administration of all physician assistants who are authorized to prescribe or dispense drugs and any modification of their authority.

~~K.~~ L. The Arizona state board of pharmacy shall notify all pharmacies at least quarterly of physician assistants who are authorized to prescribe or dispense drugs.

Sec. 5. Section 32-2533, Arizona Revised Statutes, is amended to read:

32-2533. Supervising physicians; responsibilities

A. A supervising physician is responsible for all aspects of the performance of a physician assistant WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE, whether or not the supervising physician actually pays the physician assistant a salary. The supervising physician is responsible for supervising the physician assistant and ensuring that the health care tasks performed by a physician assistant are within the physician assistant's scope of training and experience and have been properly delegated by the supervising physician.

B. Each physician-physician assistant team must ensure that:

1. The physician assistant's scope of practice is identified.

2. The delegation of medical tasks is appropriate to the physician assistant's level of competence.

3. The relationship of, and access to, the supervising physician is defined.

4. A process for evaluating the physician assistant's performance is established.

C. A supervising physician shall not supervise more than six physician assistants who work at the same time.

D. A supervising physician shall develop a system for recording and reviewing all instances in which the physician assistant prescribes schedule II or schedule III controlled substances.

Sec. 6. Repeal

Section 32-2534, Arizona Revised Statutes, is repealed.

Sec. 7. Title 32, chapter 25, article 3, Arizona Revised Statutes, is amended by adding a new section 32-2534, to read:

32-2534. Billing; direct payment

A PHYSICIAN ASSISTANT MAY BILL AND RECEIVE DIRECT PAYMENT FOR THE PROFESSIONAL SERVICES PROVIDED BY THE PHYSICIAN ASSISTANT.

Sec. 8. Section 32-2535, Arizona Revised Statutes, is amended to read:

32-2535. Emergency medical care

A. Notwithstanding the requirements of this article, in response to a natural disaster, accident or other emergency, a physician assistant who

is licensed pursuant to this chapter, licensed or certified by another regulatory jurisdiction in the United States or credentialed as a physician assistant by a federal employer may provide medical care at any location, and ~~with or without supervision.~~ THE PHYSICIAN ASSISTANT IS NOT REQUIRED TO HAVE COMPLETED EIGHT THOUSAND CLINICAL PRACTICE HOURS PURSUANT TO SECTION 32-2531.

B. A physician who supervises a physician assistant who is providing medical care pursuant to this section is not required to comply with the requirements of this article relating to supervising physicians.

Sec. 9. Title 32, chapter 25, article 3, Arizona Revised Statutes, is amended by adding section 32-2536, to read:

32-2536. Physician assistants; documentation; certification; rules

A. A PHYSICIAN ASSISTANT WHO IS LICENSED PURSUANT TO THIS CHAPTER, WHO IS IN GOOD STANDING, WHO HAS GRADUATED FROM AN ACCREDITED PHYSICIAN ASSISTANT PROGRAM IN THE UNITED STATES AND WHO HAS AT LEAST EIGHT THOUSAND CLINICAL PRACTICE HOURS WITHIN THE PREVIOUS FIVE YEARS IN THIS STATE OR ANOTHER JURISDICTION SHALL PROVIDE THE BOARD WITH DOCUMENTATION OF HAVING COMPLETED AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE IN ORDER TO MEET THE REQUIREMENTS OF SECTION 32-2531, SUBSECTION B. THE BOARD SHALL DEVELOP:

1. A POLICY THAT SETS FORTH THE PROCESS OF ATTESTATION OR DOCUMENTATION REQUIRED AS PROOF OF COMPLETION OF AT LEAST EIGHT THOUSAND CLINICAL PRACTICE HOURS AND ISSUANCE OF CERTIFICATION OF COMPLETION OF THE EIGHT THOUSAND CLINICAL PRACTICE HOURS.

2. AN ALTERNATIVE COMPARABLE STANDARD FOR CERTIFICATION OF EIGHT THOUSAND HOURS OF CLINICAL PRACTICE FOR PHYSICIAN ASSISTANTS WHO HAVE BEEN ACTIVELY PRACTICING FOR MORE THAN FIVE YEARS.

B. THE BOARD SHALL ADOPT RULES ESTABLISHING ADDITIONAL CERTIFICATION STANDARDS OR REQUIREMENTS FOR PHYSICIAN ASSISTANTS WHO PREVIOUSLY COMPLETED EIGHT THOUSAND CLINICAL PRACTICE HOURS CERTIFIED BY THE BOARD AND WHO ARE SEEKING EMPLOYMENT WITH A COLLABORATING PHYSICIAN OR ENTITY FOR A POSITION THAT IS NOT SUBSTANTIALLY SIMILAR TO THE PRACTICE SETTING OR SPECIALTY IN WHICH THE PHYSICIAN ASSISTANT WAS PREVIOUSLY CERTIFIED. THE CERTIFICATION STANDARDS OR REQUIREMENTS SHALL ENSURE APPROPRIATE TRAINING AND OVERSIGHT, INCLUDING A SUPERVISION AGREEMENT IF WARRANTED, FOR THE PHYSICIAN ASSISTANT'S NEW PRACTICE SETTING OR SPECIALTY.

Sec. 10. Section 32-2551, Arizona Revised Statutes, is amended to read:

32-2551. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice; civil penalty

A. The board on its own motion may investigate any evidence that appears to show that a physician assistant is or may be medically

incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. Any physician, physician assistant or health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the physician, physician assistant, health care institution or other person has that appears to show that a physician assistant is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. If the board begins an investigation pursuant to this section, it may require the physician assistant to promptly provide the name and address of the ~~physician assistant's~~ supervising physician or ~~physicians~~ COLLABORATING PHYSICIAN OR ENTITY, AS APPLICABLE. The board or the executive director shall notify the physician assistant ~~and the supervising physician~~ of the content of the reported information in writing within one hundred twenty days ~~of its~~ AFTER THE BOARD'S receipt of the information. Any physician, physician assistant, health care institution or other person that reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting or providing information, and, if requested, the name of the reporter shall not be disclosed unless the information is essential to proceedings conducted pursuant to this section.

B. The board or, if delegated by the board, the executive director may require a mental, physical or medical competency examination or any combination of those examinations or may make investigations, including investigational interviews, between representatives of the board and the physician assistant and the supervising physician, THE COLLABORATING PHYSICIAN OR A PHYSICIAN REPRESENTATIVE OF THE COLLABORATING ENTITY, AS APPLICABLE, as ~~it~~ THE BOARD deems necessary to fully inform itself with respect to any information reported pursuant to subsection A of this section. These examinations may include biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the physician assistant, at the physician assistant's expense, to undergo assessment by a ~~board approved~~ BOARD-APPROVED rehabilitative, retraining or assessment program.

C. If the board finds, based on the information it receives under subsections A and B of this section, that the public safety imperatively requires emergency action~~,~~ and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the physician assistant shall also be served with a written notice of complaint and formal hearing, setting forth the charges, and is entitled to a formal hearing before the board or an administrative law judge on the charges within sixty days pursuant to title 41, chapter 6, article 10.

D. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the physician assistant's license, ~~it~~ THE BOARD may take the following actions:

1. Dismiss if, in the opinion of the board, the complaint is without merit.

2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

3. Require the licensee to complete designated continuing medical education courses.

E. If the board finds that it can take rehabilitative or disciplinary action without the presence of the physician assistant at a formal interview it may enter into a consent agreement with the physician assistant to limit or restrict the physician assistant's practice or to rehabilitate the physician assistant, protect the public and ensure the physician assistant's ability to safely practice. The board may also require the physician assistant to successfully complete a ~~board approved~~ BOARD-APPROVED rehabilitative, retraining or assessment program at the physician assistant's own expense.

F. The board shall not disclose the name of the person who provided the information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

G. If, after completing its investigation, the board believes that the information is or may be true and that the information may be of sufficient seriousness to merit direct action against the physician assistant's license, it may request a formal interview with the physician assistant and the supervising physician, THE COLLABORATING PHYSICIAN OR A PHYSICIAN REPRESENTATIVE OF THE COLLABORATING ENTITY, AS APPLICABLE. If the physician assistant refuses the invitation for a formal interview, the board may issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. The board shall notify the physician assistant in writing of the time, date and place of the formal interview at least twenty days before the interview. The notice shall include the right to be represented by counsel and shall fully set forth the conduct or matters to be discussed.

H. After the formal interview, the board may take the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.

2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

3. Enter into a stipulation with the physician assistant to restrict or limit the physician assistant's practice or medical activities or to rehabilitate, retrain or assess the physician assistant, in order to protect the public and ensure the physician assistant's ability to safely perform health care tasks. The board may also require the physician assistant to successfully complete a ~~board approved~~ BOARD-APPROVED rehabilitative, retraining or assessment program at the physician assistant's own expense as prescribed in subsection E of this section.

4. File a letter of reprimand.

5. Issue a decree of censure. A decree of censure is a disciplinary action against the physician assistant's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.

6. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the physician assistant. Failure to comply with any terms of probation is cause for initiating formal proceedings pursuant to title 41, chapter 6, article 10. Probation may include:

(a) Restrictions on the health care tasks the physician assistant may perform.

(b) Temporary suspension for not ~~to exceed~~ MORE THAN twelve months.

(c) Restitution of patient fees.

(d) Education or rehabilitation at the licensee's own expense.

7. Require the licensee to complete designated continuing medical education courses.

I. If the board finds that the information provided pursuant to subsection A of this section warrants suspension or revocation of a physician assistant's license, ~~it~~ THE BOARD shall immediately initiate formal proceedings ~~for the suspension~~ TO SUSPEND or ~~revocation of~~ REVOKE the license as provided in title 41, chapter 6, article 10. The notice of complaint and hearing is fully effective by mailing a true copy of the notice of complaint and hearing by certified mail addressed to the physician assistant's last known address of record in the board's files. The notice of complaint and hearing is complete at the time of its deposit in the mail.

J. A physician assistant who after a formal hearing pursuant to title 41, chapter 6, article 10 is found to be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely carry out the physician assistant's approved health care tasks, or any combination of these, is subject to censure, probation, suspension or revocation, or any combination of these, for a period of time or permanently and under conditions the board deems appropriate ~~for the protection of~~ TO PROTECT the public health and safety.

K. In a formal interview pursuant to subsection G of this section or in a hearing pursuant to subsection I of this section, the board in

addition to any other action may impose a civil penalty in the amount of ~~not less than three hundred dollars nor~~ AT LEAST $300 BUT NOT more than ~~ten thousand dollars~~ $10,000 for each violation of this chapter or a rule adopted under this chapter.

L. An advisory letter is a public document and may be used in future disciplinary actions against a physician assistant.

M. The board may charge the costs of a formal hearing to the licensee if it finds the licensee in violation of this chapter.

N. If the board acts to modify a physician assistant's prescription writing privileges, the Arizona regulatory board of physician assistants shall immediately notify the Arizona state board of pharmacy and the United States drug enforcement administration of this modification.

O. If during the course of an investigation the ~~Arizona regulatory~~ board ~~of physician assistants~~ determines that a criminal violation may have occurred involving the PHYSICIAN ASSISTANT'S performance of health care tasks, ~~it~~ THE BOARD shall provide evidence of the violation to the appropriate criminal justice agency.

P. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of medicine.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

Q. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

Sec. 11. Rulemaking; exemption

Notwithstanding any other law, for the purposes of this act, the Arizona regulatory board of physician assistants is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 12. Effective date

This act is effective from and after December 31, 2023.

APPROVED BY THE GOVERNOR APRIL 17, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2023.

EXHIBIT C

Optimal Team Practice

What Is Optimal Team Practice?

Optimal Team Practice occurs when PAs, physicians, and other healthcare professionals work together to provide quality care without burdensome administrative constraints.

To support Optimal Team Practice, states should: eliminate the legal requirement for a specific relationship between a PA, physician, or any other healthcare provider in order for a PA to practice to the full extent of their education, training and experience; create a separate majority-PA board to regulate PAs or add PAs and physicians who work with PAs to medical or healing arts boards; and authorize PAs to be eligible for direct payment by all public and private insurers.

Want more resources on Optimal Team Practice? Join AAPA today!

Do you want to help advance the profession in your state? AAPA members can access additional Tools for State Advocates related to Optimal Team Practice. If you're not a member, join now!

Optimal Team Practice FAQ

Read the FAQ below to learn more about Optimal Team Practice. Don't see your question here? Email us!

What exactly is Optimal Team Practice?

Optimal Team Practice occurs when PAs, physicians, and other healthcare professionals work together to provide quality care without burdensome administrative constraints.

To support Optimal Team Practice, states should: eliminate the legal requirement for a specific relationship between a PA, physician or any other healthcare provider in order for a PA to practice to the full extent of their education, training and experience; create a separate majority-PA board to regulate PAs or add PAs and physicians who work with PAs to medical or healing arts boards; and authorize PAs to be eligible for direct payment by all public and private insurers.

Like every clinical provider, PAs are responsible for the care they provide. Nothing in the law should require or imply that a physician is responsible or liable for care provided by a PA, unless the PA is acting on the specific instructions of the physician.

Why do PAs want to practice without a specific relationship with a physician or any other healthcare provider?

The current legal requirement in nearly all states for a PA to have a specific relationship with a physician doesn't align with current PA practice — or how healthcare is delivered to patients. "Specific relationship" represents a legal tether, which may come in the form of a practice agreement with a physician, or another type of arrangement, like the requirement for PAs to complete a form that designates a specific physician with whom they work. Regardless, any type of legal tether between a PA and another provider can be incredibly burdensome, not only for the provider but also on the health system or facility.

How would removing the requirement for PAs to have a specific relationship with a physician improve healthcare for patients?

When a PA isn't legally tethered to a physician, PA employers (health systems, hospitals, and group practices) can be more flexible in determining healthcare teams. This will allow them to more effectively meet patient needs. It will also make it easier for PAs to practice in medically underserved communities where there are not enough physicians (and, in some cases, no physicians) to care for patients. PAs would also be able to provide volunteer medical services and respond to disasters and emergencies —situations in which physicians might not be available or willing to enter into specific relationships with PAs, but immediate care is needed.

Why do PAs want to be eligible for direct payment from Medicare and insurers?

Allowing PAs to be eligible for direct payment will eliminate an important disparity between PAs and other providers, particularly nurse practitioners (NPs). Unlike physicians and advanced practice registered nurses (APRNs), which include NPs, PAs are not eligible for direct payment from Medicare and nearly all commercial insurance payers. Most payers require that payment be made to a PA's employer, which can unintentionally limit PA employment opportunities with staffing companies and in certain practice arrangements, such as when hospitals contract with a group practice to provide services.

As the healthcare system continues its rapid transformation toward more innovative care models, PAs must have the same reimbursement flexibility enjoyed by other healthcare professionals, so they are not disadvantaged in the marketplace. Read more.

Why do PAs want changes to the boards that regulate PA practice?

Today, physicians are regulated by state medical boards composed of physicians. Nurses are regulated by boards made up of nurses. Only PAs are regulated by boards that often have no members actively working in their own profession. This means the boards that regulate PA practice may lack knowledge of current PA practice or how rules and regulations may affect PA practice. This dearth of insight can lead to unnecessary restrictions and administrative burdens for PAs, physicians, and employers.

PAs deserve what physicians and nurses already have: regulatory boards with current knowledge about their profession. States can determine whether this is best accomplished by creating separate PA boards or by adding PAs and physicians who work with PAs to medical or healing arts boards. Read more.

Why are these changes good for patients?

Numerous studies have shown that PAs provide high-quality patient care and bring value to patients and PA employers. Currently, the retirement or sudden relocation, disability, or death of a physician with whom a PA has a legal relationship can mean the PA can no longer provide healthcare services to patients, even if the PA has been their primary care provider. Ultimately, when state laws and regulations remove the legal requirement for PAs to have a specific relationship with a physician, patients will have greater access to care, especially for medically underserved populations and patients in rural areas.

Why are these changes good for healthcare employers?

When a PA isn't required to have a specific relationship with a physician, their employer can be more flexible in creating healthcare teams, allowing them to more effectively meet patient needs and reduce provider burnout. Ending this requirement also removes physician liability for the care that PAs provide when physicians are not involved and reduces physician and employer risk of disciplinary action for administrative reasons. Also, allowing PAs to receive payments directly will expand the number of available providers through the use of healthcare staffing companies and other business arrangements that require PAs to reassign insurance payments.

Why are these changes good for physicians?

Physicians will benefit from these changes in many ways. First, when PAs are not required to have a specific relationship with a physician, physicians will no longer be responsible for care provided by the PA when the physician is not involved. This could substantially reduce physician exposure to liability.

Second, healthcare teams could be determined on a case-by-case basis at the practice level, allowing physicians to work with different PAs on different cases. Third, it would allow physicians to work with PAs more easily when they are employed in hospitals, health systems, and other corporate structures that use staffing companies. Currently, PAs are often prevented from participating in these staffing arrangements since, unlike NPs, they are not eligible for direct payment, and, therefore, cannot reassign their insurance reimbursements to the staffing company.

Are PAs ready to practice without a specific relationship with a physician?

Absolutely. PA practice has been extensively studied and evaluated, and PAs have been found to provide high-quality patient care. Even under existing administratively burdensome laws and regulations, many — if not most — PAs have their own panels of patients and often serve as a patient's primary healthcare provider. State laws and regulations have simply not kept pace with the changes in the healthcare marketplace or the changing needs of patients and PA employers.

Whether a PA is highly experienced, a new graduate, or changing the specialty area in which they work, they would continue to practice in teams with physicians, and their scope of practice would be determined at the practice level. If a patient's condition falls outside of a PA's training, education, and experience, a PA will still consult with other healthcare providers and make referrals when appropriate. If they don't, that PA will be subject to disciplinary action by the state medical board, just as any other medical provider would be.

Under Optimal Team Practice, a newly licensed PA would, at their place of employment, be able to report to or be supervised by a physician, a senior PA, or a chief PA rather than having a specific relationship with a physician. Every PA and PA employer will continue to be responsible for assuring that there is adequate access to consultation and back-up. Removing the requirement for a specific relationship between a PA and a physician does not diminish those responsibilities.

Is Optimal Team Practice the same as independent practice?

The reality is that, in today's healthcare environment, there is no such thing as "independent practice." Gone are the days of the solo practitioner, working completely alone. Just like physicians, PAs will continue to collaborate with, consult with, and refer patients to other healthcare providers whenever the patient's condition falls outside of their education, training, and experience. The PA profession's commitment to team practice is powerful. The PA and physician who work together get to keep all the benefits of the team without the legal risks and administrative burdens that agreements entail. In addition, employers will have access to a wider range of providers and won't have to file unnecessary administrative burden. Everyone wins.

Will federal laws and regulations also require changes?

Medicare policy says: "State law or regulation governing a PA's scope of practice in the State where the services are performed applies." However, the Current Medicare statute uses the word "supervision" to describe how physicians work with PAs. Medicare rules must also change as state laws describing team practice continue to evolve, moving away from the word and concept of "supervision." AAPA has been advocating for this change. In the proposed 2020 Medicare Physician Fee Schedule, CMS proposes language that would modify Medicare's existing physician supervision requirement to defer to state law regarding how PAs practice with physicians and other members of the healthcare team.

How OTP Can Improve Healthcare

Convenient Care Association Voices Support for Eliminating Barriers to Employing PAs

The Convenient Care Association (CCA), the national trade association of companies and healthcare systems that provide consumers with healthcare in retail-based locations, recently voiced its support for eliminating the requirement for a specific relationship between a PA and a physician.

Healthcare Access Stalled at Red Cliff Reservation

PA Khou Xiong's patients experienced an interruption in care when the health center she works for unexpectedly lost its physician medical director. Read how modernizing PA-practice laws could improve the status quo for PA Xiong and PAs in similar situations across the country.

Miles to go for Quality Healthcare, Frontier Nevada Residents Rely on PA Miles

Ann Miles, PA-C, achieved one of her life-long goals of opening a rural healthcare clinic in Frontier Nevada. Learn more about her journey and some of the challenges she still faces due to outdated PA-practice laws in the state.

1.
2.
3.

Resources

Guidelines for State Regulation of PAs

Updated in May 2017, this document provides recommendations for state governmental control of PA practice.

DOWNLOAD NOW

OTP Infographic

1.
2.
3.

DOWNLOAD NOW

What OTP Means for Healthcare

Strengthen the PA voice on important issues like this one. Become an AAPA member today!

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Got it!

AAPA Response to AMA's #StopScopeCreep Campaign

November 2, 2020

Susan R. Bailey, MD
President

James L. Madara, MD
Chief Executive Officer & Executive Vice President

American Medical Association
AMA Plaza
330 N. Wabash Ave., Suite 39300
Chicago, IL 60611-5885

Dear Drs. Bailey and Madara,

On behalf of the more than 140,000 PAs across this country who work alongside physicians in every medical setting and specialty, we ask that the American Medical Association (AMA) cease advancing the false and offensive narrative in your #StopScopeCreep campaign, which suggests PA care is not safe and jeopardizes patient safety.

While this misleading narrative from AMA is not new, we are writing today with a renewed sense of urgency. Over the weekend, AMA posted particularly ill-timed social media messages that have since been deleted. These messages denigrated the PA profession and misled the public.

The COVID-19 pandemic has made this year especially challenging for all medical providers. Three out of five PAs have tested, treated, and diagnosed COVID-19 patients. Like physicians, PAs have experienced furloughs, layoffs, reduced hours—and have contracted and died from the virus. So, AMA's whimsical graphic with the PA profession represented on Scrabble tiles with the message "because patient safety isn't a game" was unconscionable.

Most egregious is AMA's tone-deaf attempt to instill more fear and uncertainty in the public at a time of already heightened anxiety. As we have seen across the country, patients continue to delay life-saving care due to COVID-19. Using scare tactics to disincentivize patients from accessing healthcare during a pandemic is disconcerting and reckless to public health.

[Please consider becoming an AAPA member today. Join now!]

Our professional organizations should work together to find solutions to current healthcare challenges, for example, increasing acceptance and delivery of vaccines. We should focus on combatting misinformation, such as the recent suggestions that physicians and other clinicians are falsely attributing deaths to COVID-19. We should build public confidence in our nation's healthcare workforce. Instead, your organization is attempting to divide rather than unite by attacking other healthcare providers.

Your assertion that a patient's safety is at risk if they see a PA is simply false and AMA's continued efforts to suggest otherwise are deceitful. Study after study confirms that PAs provide high-quality care.[1-2] In fact, additional studies find that PAs have similar health outcomes as physicians.[1,3-5]

We would also like to address the AMA's antiquated concept of "physician-led patient care and training." This is not only contrary to what evidence shows is best for patients but is also out of touch with how medicine is practiced today. The most up-to-date practice laws allow healthcare teams to decide at the practice level how they will collaborate to best meet the needs of patients. Evidence demonstrates the most successful clinical teams are those that utilize the skills and abilities of each team member most fully, and a team approach supports efficient patient-centered healthcare.[6-8] The keyword is "team."

PAs, like physicians, seek to reduce unnecessary and outdated administrative burdens that limit patient care. Removing the legal tether, such as a practice agreement between a PA and another specific healthcare provider, allows healthcare teams to be more flexible in meeting patient care needs. This was most recently evidenced during the pandemic when the governors of eight states removed supervision requirements for PAs and another 13 did so through previous legislation specific to PA practice during a public health emergency. PAs did what they were trained to do: go where they are needed most.

Whether during a pandemic or not, PAs will continue to collaborate with, consult with, and refer patients to other healthcare providers whenever the patient's condition falls outside of their education, training, and experience.

It is also worth noting that removing this legal tether has many benefits to physicians, something which AMA should explain to its members. These benefits include removing physician liability for the care that PAs provide when physicians are not involved and reducing physician and employer risk of disciplinary action for administrative reasons.

PAs have great respect for the breadth and depth of physician training and are proud to practice medicine alongside physicians every day. We ask for mutual respect and for AMA to not hide behind inflammatory social media messages.

We would like to meet with AMA leaders to clear up any misperceptions and to begin working together toward improving and expanding access to high-quality care for patients. We look forward to the opportunity to further this conversation.

Beth R. Smolko, DMSc, MMS, PA-C
President and Chair of the Board
American Academy of PAs

Lisa M. Gables, CPA
CEO
American Academy of PAs

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SUNRISE REPORT

PROPOSED ESTABLISHMENT OF THE OPTIMAL TEAM PRACTICE MODEL IN THE PHYSICIAN ASSITANT PRACTICE ACT AND ITS IMPACT ON THE CURRENT USE OF FLUROSCOPY BY PHYSICIAN ASSISTANTS

Submitted by:

November 1, 2021

ASAPA
THE ARIZONA STATE ASSOCIATION OF PHYSICIAN ASSISTANTS

November 1, 2021

The Honorable Karen Fann
The Honorable Rusty Bowers
Arizona Legislature
1700 West Washington
Phoenix, Arizona 85007

RE: Sunrise Application for Optimal Team Practice within the Physician Assistants Practice Act

Dear President Fann and Speaker Bowers:

Out of an abundance of caution, on behalf of the Arizona State Association of Physician Assistants, this Sunrise Application is being submitted in support of the proposed modernization of the Physician Assistants Practice Act through the proposed enactment of the Optimal Team Practice model.

Briefly, Optimal Team Practice occurs when physician assistants, physicians and other healthcare professionals work together to provide quality care without burdensome administrative constraints. While Optimal Team Practice does not eliminate oversight, the practice model allows physician assistants to maximize their education, training and experience within the limitation of the clinical setting in which they practice.

Under existing Arizona statutes, a physician assistant is required to secure a delegation agreement from a specific supervising physician to practice in Arizona. In contrast, under Optimal Team Practice, qualified physician assistants with a minimum of 4,000 hours of clinical practice experience may work within the constraints established by the clinical setting in which they practice, as opposed to being tethered to a specific supervising physician.

It is critical to appreciate that Optimal Team Practice does not eliminate the current oversight of a physician assistant, nor does the practice model allow for independent practice. Nevertheless, Optimal Team Practice replaces the current administrative burdens with a more efficient oversight mechanism that reflects the present relationship between healthcare professionals in a clinical setting.

Under the existing Practice Act, the scope of practice for a licensed physician assistant is determined by each physician assistant's education, training and experience and is limited by provisions contained in the delegation agreement established by the supervising physician. Physician assistants provide medical services within the scope of their delegation agreement, which requires an annual update.

Similarly, under the proposed Optimal Team Practice model, the limitations on what medical services a physician assistant can provide will be determined by their respective education, training and experience as well as the limitations established by the clinical setting in which they practice.

Accordingly, based on the above overview of Optimal Team Practice, the Arizona State Association of Physician Assistants respectfully asserts that there is no increase in the scope of practice that results from the proposed legislation, as physician assistants will continue to be subject to regulatory oversight and limitations on their scope of work in a manner consistent with their respective education, training and experiences and within the limitations established by the clinical setting in which they practice.

On a narrow focus, the proposed legislation does contain clarifying provisions relating to a qualified physician assistant's ability to perform fluoroscopy. Under existing statutes, physician assistants provide fluoroscopic guided procedures under the authority of the delegation agreement.

The proposed Optimal Team Practice legislation contains specific training requirements for physician assistants to provide fluoroscopy within the constraints of the clinical practice setting. We believe adding a specific training requirement enhances the current standard in which a qualified physician assistant provides fluoroscopic guided procedures to patients. In essence, the specific training requirements are intended to enhance public safety and do not suggest that this is an increase in the scope of practice.

A similar discussion about specific training requirements for physician assistants providing fluoroscopy occurred in 2016 between the Arizona Medical Association and the Arizona State Association of Physician Assistants. Ultimately, at the time, the Arizona Regulatory Board of Physician Assistants opted to maintain the current practice of requiring the delegation agreement, as opposed to specific training requirements.

From the perspective of the Arizona State Association of Physician Assistants, under the proposed Optimal Team Practice legislation there is no increase in the scope of practice of a physician assistant providing fluoroscopic guided procedures, as qualified physician assistants are presently providing such services under existing Arizona law. Nevertheless, as expressed above, the attached Sunrise Application is being submitted out of the abundance of caution in order to meet any procedural challenges during the legislative discussion on Optimal Team Practice.

Thank you in advance for your consideration.

Sincerely,

Sarah Bolander, PA-C
President, Arizona State Association of Physician Assistants

The Arizona State Association of Physician Assistants (ASAPA) is seeking a clarification in the statutes that regulate physician assistants regarding fluoroscopy to ensure there are no interruptions in patient care should Optimal Team Practice be enacted in Arizona. From the perspective of ASAPA, there is no increase in the scope of practice of a physician assistant from that clarification; however, we are submitting the attached Sunrise Application out of an abundance of caution and in order to proactively address any procedural challenges during the legislative discussion on Optimal Team Practice.

1. **Why an increased scope of practice is beneficial, including the extent to which health care consumers need and will benefit from safe, quality care from practitioners with this scope of practice.**

Physician assistants (PAs) practice in nearly all specialties of medicine, providing safe and efficient health care to patients across Arizona. Physician assistants practice has been well received by the public and is an established part of the health care team, with collaboration between supervising physicians and physician assistants expanding access to care.

As part of a health care team, physician assistants practice in major radiology departments, performing health care tasks delegated by supervising physicians, often radiologists. As part of these health care tasks, fluoroscopic guided procedures performed by physician assistants extend the care of both interventional and diagnostic radiologists. In addition to radiology, physician assistants also practice in other clinical settings that commonly employ radiology as a part of patient care, including but not limited to general surgery, subsurgical specialties, emergency medicine, and orthopedics.

Physician assistants have been performing diagnostic and interventional procedures that use ionizing radiation since the early days of the profession. Under existing law, fluoroscopy is currently within a physician assistant's scope of practice if they have the proper training, experience, and education and the procedure has been delegated to the physician assistant as part of their delegation agreement.

In addition, ARS 30-672, which regulates ionizing radiation, states physician assistants, along with other occupations, are governed by their own licensing acts and the Arizona Department of Health Services cannot require them to obtain any other license to use a diagnostic x-ray machine.

This sunrise application seeks to ensure there is no disruption in patient care related to fluoroscopy should Optimal Team Practice be enacted in Arizona.

2. **Whether those health professionals seeking an increased scope of practice currently have or will be required to have didactic and clinical education from accredited professional schools or training from recognized programs that prepare them to perform the proposed scope of practice, and details on what that education or training includes for that proposed scope of practice.**

Under existing Arizona statutes, a physician assistant is required to secure a delegation agreement from a specific supervising physician to practice in Arizona. In contrast, under Optimal Team Practice, qualified physician assistants with a minimum of 4,000 hours of clinical practice experience may work within the constraints established by the clinical setting in which they practice, as opposed to being tethered to a specific supervising physician.

As part of the Optimal Team Practice legislation that ASAPA is pursuing, a Physician Assistant with over 4,000 hours of practice under a delegation agreement (renamed collaboration agreement) documented to the Arizona Regulatory Board of Physician Assistants, will be required to collaborate with, consult with or refer to the appropriate member of the health care team as indicated by the patient's condition and as indicated by the physician assistant's education, experience and competencies. The level of collaboration required will be determined by their practice setting, not the collaboration agreement.

To ensure adequate training, ASAPA is seeking to require that a physician assistant has at least 16 hours of documented training in radiation safety to operate a fluoroscopy machine.

3. Whether the subject matter of the proposed increased scope of practice is currently tested by nationally recognized and accepted examinations for applicants for professional licensure and the details of the examination relating to the increased scope of practice.

Physician assistants are educated at the master's degree level. There are more than 277 physician assistant programs in the country and admission is highly competitive, requiring a bachelor's degree and completion of courses in basic and behavioral sciences as prerequisites. Incoming physician assistant students bring with them an average of more than 3,000 hours of direct patient contact experience, having worked as paramedics, athletic trainers, or medical assistants, for example. Physician assistant programs are approximately 27 months (three academic years) and include classroom instruction and more than 2,000 hours of clinical rotations. Specifically:

Prerequisites:

- Bachelor's degree with courses in basic and behavioral sciences (typically 2 years of coursework in these areas)
    - Majority of programs have the following prerequisites: chemistry, physiology, anatomy, microbiology, biology
- Clinical experience (average is 3,000 hours of direct patient contact experience)
    - Common types of experience: medical assistant, EMT, paramedic, medic/medical corpsman, Peace Corps volunteer, lab assistant/phlebotomist, R.N., emergency room technician, surgical tech, CNA
- Standardized tests: varies, about half of programs require the GRE, few require the MCAT, few have no requirement, few are starting to adopt the PA-CAT

Program length: The typical length is 27 continuous months (equivalent to approximately 3 academic years), but ranges from 24-36 months

Curriculum:

Didactic phase: Basic medical sciences (anatomy, physiology, etc.), pharmacology, physical diagnosis, behavioral sciences, medical ethics, clinical medicine

On average, PA students take:

- 75 hrs pharmacology
- 175 hrs behavioral sciences
- 400 hrs basic sciences
- 580 hrs clinical medicine

Clinical phase: rotations in medical and surgical disciplines (family medicine, internal medicine, general surgery, pediatrics, OB/GYN, emergency medicine, psychiatry)

On average, by graduation PA students will have completed at least 2,000 hours of supervised clinical practice

Degree awarded: Master's degree (entry-level and terminal degree for profession)

Practice Requirements

- Pass the Physician Assistant National Certifying Examination (PANCE) developed by the National Commission on Certification of Physician Assistants
    - To maintain certification, physician assistants must log 100 hours of continuing education (50 hours must be category 1) every 2 years and pass the Physician Assistant National Recertification Exam (PANRE) every 10 years
- Obtain a license issued by the applicable state regulatory jurisdiction, in the case of Arizona, the Arizona Regulatory Board of Physician Assistants

4. The extent to which the proposed increased scope of practice will impact the practice of those who are currently licensed in this state or the entry into practice of those individuals who have relocated from other states with substantially equivalent requirements for registration, certification, or licensure as this state.

The proposal will not have a negative impact on those currently licensed as physician assistants. The goal of this change is to ensure that physician assistants who currently practice fluoroscopy will have the ability to continue doing so should the Optimal Team Practice model be enacted in Arizona.

For individuals that relocate to Arizona, it will be dependent on the scope of practice that they had in the jurisdiction they practiced in. If the individual has the education/experience and can document that to the Arizona Regulatory Board of Physician Assistants, they will still be able to practice fluoroscopy, assuming their delegation agreement (collaboration agreement) or practice setting allows for that. If they do not have the education/experience, they will be able to gain that education/experience in Arizona assuming their delegation agreement (collaboration agreement) or practice setting allows for fluoroscopy.

5. The extent to which implementing the proposed increased scope of practice may result in savings or a cost to this state and to the public.

There will not be a cost to the state or the public since physician assistants already perform fluoroscopy.

There will be a continued cost savings to the state by having a physician assistant available to perform fluoroscopy for AHCCCS members.

6. The relevant health profession licensure laws, if any, in this or other states.

Physician assistants are regulated in every state throughout the U.S. From an Arizona perspective, the current Physician Assistant Practice Act is contained in Title 32, Chapter 25

7. Recommendations, if any, from the applicable regulatory entity or entities, from the department of health services and from accredited educational or training programs.

None.

EXHIBIT D

Arizona Regulatory Board of Physician Assistants
1740 W. Adams St, Suite 4000, Phoenix, AZ 85007
Telephone: 480-551-2700 • Fax: 480-551-2705 • www.azpa.gov

FINAL MINUTES FOR MEETING OF JOINT LEGISLATION AND RULES COMMITTEE TELECONFERENCE MEETING Held on Thursday, August 17, 2023 1740 W. Adams St., Board Room 4100, Phoenix, AZ 85007

Committee Members
Susan Reina, P.A.-C., Chair
David J. Bennett, D.O.
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
John J. Shaff, PA-C, DFAAPA

A. CALL TO ORDER

Chairwoman Reina called the meeting to order a 5:04 p.m.

B. ROLL CALL

The following Committee Members participated via Zoom: Dr. Bennet, Dr. Dang and PA DiBaise.

The following Committee Member was present in the room: PA Reina and PA Shaff.

ALSO PRESENT
The following Board staff participated in the meeting: Patricia McSorley, Executive Director; Kristina Jensen, Deputy Director; Michelle Robles, Board Operations Manager. Also present: Carrie Smith, Assistant Attorney General ("AAG").

C. CALL TO THE PUBLIC

Sarah Bolander, Amanda Shelley and Melanie Lyon from ASAPA addressed the Committee during the Call to the Public.

D. APPROVAL OF MINUTES

- June 23, 2023 Joint Legislation and Rules Committee Teleconference

  MOTION: PA Shaff moved to approve the June 23, 2023 Joint Legislation and Rules Committee Teleconference.
  SECOND: PA DiBaise.
  The following Committee Members voted in favor of the motion: Dr. Dang, PA DiBaise, PA Reina and PA Shaff. The following Committee Member was absent: Dr. Bennet.
  VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
  MOTION PASSED.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS

Ms. McSorley noted the definition of collaborating physician or entity on page 1 which is regarding designating one or more physicians by name or position, who is responsible for the oversight of the physician assistant. Ms. McSorley also noted the language in section 32 2536 on page 14 which is the nuts and bolts of regarding the documentation and certification for collaborative practice. Ms. McSorley provided the Committee with the rules. The first step is the process would be certification of the physician assistant for collaborative practice. This will be done at the staff level and will provide the

application to the PA, who is in good standing. The PA is going to provide the application with proof of the 8,000 clinical hours within the previous five years. Ms. McSorley read for the record the definition of a "clinical hour". The idea is that the PA will gather the documentation necessary, and we'll have an attestation from a previous employer confirming the hours. If the PA satisfactorily meets all of the requirements for collaborative physician assistant staff will certify them and maintain a list on the Board's website. Ms. McSorley noted that this is the only piece that Board staff will be involved in. The next part goes to the certification for an area of practice, and that's going to be completely dealt with at the practice level. Ms. McSorley noted that the next rule is regarding the requirements for collaborative practice agreement and certification to practice in a specified area. This is being done to comply with the rule regarding what collaborative practice is and that there needs to be a position, name, or position from the entity that is going to be responsible for oversight of the physician assistant. Ms. McSorley noted that oversight and supervision are different. Oversight is to have a mechanism in place should the PA need to collaborate or refer with somebody. Ms. McSorley also noted that if an investigation is required, the Board is going to have to look to the collaborating physician and interview that person, so the Board needs a record of it. The agreement and any addendums would need to be maintained by both the practice and the PA. If a collaborating physician considers certifying a PA for an area practice that is not substantially similar to an area practice for which the PA was previously certified, certification should only take place at the time and there needs to be a record of it. Ms. McSorley stated that the collaborative agreement addresses the need for certification, which is set forth in the statute. Ms. McSorley reiterated that this is all done at the practice level and is through a discussion between the PA and the collaborating physician. There is also language in the rules regarding if the PA requires supervision. Regarding supervision prior to acting in a collaborative manner, the length of supervision shall be determined by the physician accepting responsibility for the training and supervision of the PA. The terms of the supervision shall be documented in the collaboration agreement. Ms. McSorley noted that section J's language is to create a communication chain and to create a mechanism to be able to refer to the collaborator.

PA DiBaise opine that the Board does not need to create the collaborating agreement since the supervising agreement is at the practice level. PA DiBaise opined that these proposed rules are stringent compared to supervision.

Ms. McSorley noted that these collaborating agreements are not required to be submitted to the Board unless there is an investigation.

PA Reina commented that the proposed form is to be used as a universal template. PA Shaff opined that having a template would make the process easier and more uniform. PA Shaff noted that since it is decided and kept at the practice level it is not more restrictive.

PA DiBaise expressed concern that this is codifying more terminology and rules for a collaborative PA that what is required for supervising. PA DiBaise opined that the onus is on the practice and the PA to have everything in order.

PA Reina noted that the bill specifically states you must designate a physician by name or position.

PA DiBaise expressed concern regarding naming a collaborative physician by name when it can just state the position.

Committee members discussed if there is an investigation or a change in practice what that would look like if only a position was listed on the collaborative agreement instead of a physician by name.

Ms. Smith clarified that the statute states "the Board shall adopt rules establishing additional certification, standards, or requirements. Physician or physician assistants who previously completed the 8,000 hours and were seeking employment with a collaborating physician or entity for a position

that is not substantially similar to the practice setting or specialty in which the PA was previously certified.". This requires the Board to establish some rules for when a PA changes practice.

Regarding a change in practice or supervisory agreement, PA DiBaise opined that this should be decided at the practice level.

PA Shaff confirmed that the rule states if they change to a field that is substantially different or not, it is decided at the practice level whether they need to go to a supervisory position until they are able to go to a collaborating position or they can sign off to collaborate in a substantially different role. This is determined between the PA and their practice.

PA DiBaise expressed concern that the draft language reads as if it gets turned into the Board.

PA Reina confirmed that there is no language that states it needs to be turned into the Board. It only needs to be submitted if there is an investigation.

PA Shaff noted that the application and documents for certification get turned into the Board, everything else is at the practice level.

PA DiBaise noted the language in Point B and suggested using the language certify a collaborative "scope of practice" instead of "area of practice".

Ms. McSorley noted that she used the term "certification" to be in line with the statute.

PA Shaff noted that the Board is doing the initial certification. The collaborative agreement is saying this is the area that I'm working in and here are my collaborating physicians. PA Shaff suggested replacing the word "certify" with "state" as it may be more appeasing.

Ms. Smith informed the Committee that it is a policy decision.

Ms. McSorley agreed that certification is a strong word but that is the language in the statute. Ms. McSorley explained that she is trying to get the Committee to agree on the concepts and a process. A professional rule writer will get the language in the right form for public comment and then to turn it into GIRC. Once the Committee agrees on the concepts, Ms. McSorley suggested that a FAQ should be sent out to the community.

Regarding Point B, PA DiBiase opined that only the person who's agreed to have oversight needs to be listed and not have a list of everyone you could potentially work with.

PA Reina commented that the understanding is that one physician or position is needed but multiple can be added. PA Reina noted that this language was proposed by the ASAPA lobbyist.

PA DiBaise requested that staff touch base with ASAPA's lobbyist to clarify the intent of what's stated in Point B.

PA Shaff agreed that the language can be cleaned up but it is just asking for the collaborating physician's information.

PA DiBaise agreed with alternate pathway regarding the 8,000 hours within five year for certification but expressed concern regarding section four that requires the PA to get a signed attestation. PA DiBaise opined that this seems superfluous and inquired what would happen if there is an issue obtaining the attestation.

PA Shaff agreed that point four seems redundant.

PA DiBaise commented that claiming didactic hours may require an attestation but it may not be needed if the PA has the required documentation.

Ms. McSorley stated that the Committee can determine if just documentation of the hours is sufficient or if an attestation is needed as well.

PA DiBaise commented that the attestation can be another form of documentation.

Committee members suggested adding language that an attestation from a previous employer, clinical practice, credentialing department or supervising physician for the 8,000 clinical hours should be added as an option in Section 3 and remove Point 4.

Ms. Smith encouraged the Committee to provide Board staff with the tools necessary to address those who aren't utilizing the process in good faith and complying with the law. There should be some way for Board staff to be authorized to communicate with these prior employers in order to give the Board the investigatory functionality in the instance where there is a concern that the information being presented to the Board is not truthful.

Ms. McSorley commented, in the context of looking at these clinical hours, if staff has a question perhaps the Committee can add some language that staff may contact previous employers to confirm the number of hours.

Committee members agreed that is reasonable.

Ms. McSorley also suggested as an alternative, the attestation from the employer can be primary source and sent directly from the employer to the Board.

PA DiBaise inquired about what would occur if the attestation cannot be obtain due to some catastrophic reason.

Ms. Smith noted that the MD Board has language regarding waiver requests in its application rules and suggested that the Committee can be provided with something translated from that for consideration.

PA DiBaise agreed with having a waiver of some form to address those situations where an attestation cannot be obtained.

PA Reina inquired about language regarding a substantial lapse in employment.

PA Shaff commented that if they have kept their license active do we ask if they have been clinically working.

Ms. McSorley noted that if the PA kept an active license they would be keeping up to date with their CME and would have maintained licensure and education requirements.

PA DiBiase noted that the PA would be evaluated at the practice level.

PA Reina clarified that this is for the initial application.

PA Shaff noted that this is addressed in the language, if the physician assistant can provide proof of 8,000 hours within 10 years of the date of the application.

Ms. McSorley noted that this is a situation or question that can also be added to the FAQs.

PA Reina requested that this topic be added to the full Board's meeting and if needed a specialty meeting can be held.

F. DISCUSSION OF DATES AND TOPICS FOR UPCOMING COMMITTEE MEETING

G. ADJOURNMENT

MOTION: PA DiBaise moved to adjourn the meeting.
SECOND: PA Shaff.
The following Committee Members voted in favor of the motion: Dr. Dang, PA DiBaise, PA Reina and PA Shaff. The following Committee Member was absent: Dr. Bennet.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The meeting adjourned at 6:29 p.m.

Patricia E. McSorley, Executive Director

EXHIBIT E

Changes to the Physician Assistant Practice Act after enactment of HB 2043, effective December 31,2023

Dear Licensed Arizona Physician Assistants,

This email is being sent to update you and provide you with information regarding some important changes to the Physician Assistant Practice Act after the enactment of HB 2043 and effective December 31,2023. HB 2043, is attached.

The new legislation allows for collaborative practice for licensed Arizona physician assistants who have worked at least 8,000 clinical hours, and who are certified by the Board to work without supervision. The anticipated requirements for certification for collaborative practice are set forth in the attached frequently asked questions and the recently adopted rules for collaborative practice. The application will be available on the ARBoPA website later in December.

In addition, the new legislation changes the requirements needed in Supervision Agreements between the physician assistant and the supervising physician or the physician's employer. Previously, the law mandated a physician assistant could only perform the health care tasks delegated by a supervising physician, the new legislation allows for a physician assistant to provide “any legal medical service for which the physician assistant has been prepared by education, training and experience and that the physician assistant is competent to perform” including the tasks previously identified in the statute. Health care tasks are no longer required to be specifically delegated by a supervising physician. A Supervision Agreement that describes the physician assistant’s scope of practice and prescribing authority is nonetheless required prior to performing health care tasks.

Please take the time to familiarize yourself with the changes that will become effective on December 31, 2023. If you have any questions for regarding HB 2043, please send an email to: licensingreport@azmd.gov and Board Staff will respond.

Patricia McSorley
Executive Director

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

Resources:

HB2043 (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101233_f5d09a29c484488587e0b75fa95dcff6.pdf?sv=2

Amendments to the Physician Assistant Practice Act (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101233_9d

FAQs for a Collaborative Practice (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101234_bbbb9e715b7944b9a

Article 4. Collaborative Practice; Regulation (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101235_a525e055eb

Contact Us (/Misc/ContactUS)

Address: 1740 W Adams, Suite 4000
Phoenix, AZ 85007
Hours: 8am - 5pm Mon - Fri
Phone: (480) 551-2700
Toll Free: (877) 255-2212
Fax: (480) 551-2702
Email: Contact the Board (/Misc/ContactUSEmail?board=PA&contactType=0)

Right to Petition Governor's Regulatory Review Council

Arizona Revised Statute (ARS) § 41-1033 provides that a person may petition Governor's Regulatory Review Council (GRRC) to request a review of a final rule... (/Resource/Resource/pa-grrc)

Occupational Regulation

You have the right to petition this agency to repeal or modify the occupational regulation or bring an action in a court of general jurisdiction to challenge the occupational regulation and to ensure compliance with section 41-1093.01, Arizona Revised Statutes. (/Resource/Resource/pa-occupational-reg)

The Ombudsman-Citizens Aide

Helps citizens to resolve ongoing issues with state agencies... (https://www.azoca.gov/)

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Accessibility Policy (/Misc/AccessibilityPolicy)
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Please take the time to familiarize yourself with the changes that will become effective on December 31, 2023. If you have any questions for regarding HB 2043, please send an email to: questions-noreply@azmd.gov and Board Staff will respond.

Patricia McSorley
Executive Director

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Arizona Medical Board

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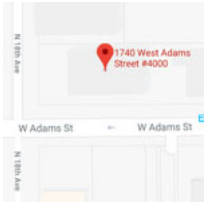

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EXHIBIT F

FAQs for Collaborative PA Practice in Arizona (HB2043)

In 2023, the Arizona Legislature passed HB 2043 to allow Physician Assistants (PAs) with significant experience to practice collaboratively with a physician or collaborating entity, rather than with a Supervising Physician pursuant to a Delegation Agreement. The Arizona Regulatory Board of Physician Assistants will continue to regulate both supervised and collaborating PAs to ensure patient safety.

1. What is collaborative practice?

Collaborative practice allows a PA to provide medical services without a Supervising Agreement, after applying and receiving certification by the Board to practice as a Collaborating PA.

After the Board certifies the PA for collaborative practice, the PAs area of practice, shall be determined and documented at the practice level by the PA and their collaborating physician or entity after taking into consideration the PAs prior education, training, and experience.

A collaborating PA shall continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition as well as the PAs training, experience, and competencies. The level of collaboration should be determined at the practice level and setting. Collaboration can occur electronically, telephonically or in-person.

2. How does a PA receive certification to practice as a collaborating PA?

In order receive certification to practice as a collaborating PA, the PA must submit an application on a form provided by the Board and comply with the statutory requirements of A.R.S. § 32-2563(A): be licensed as a PA in Arizona, have graduated from an accredited physician assistant program and **not currently be under investigation, or subject to a public or confidential probation.**

In addition, an applicant for collaborative practice shall provide proof of completing at least 8,000 clinical practice hours within the previous five years submitted by the applicant's employer(s) directly to the Board. The submission shall contain an attestation that indicates the number of clinical hours obtained during the period of employment and shall be submitted by the employer's custodian of records, clinical practice manager, credentialing department, or supervising physician. A template for the attestation will be available on the Board's website.

Alternatively, a PA who has been actively practicing for more than five years and who has completed 8,000 hours of clinical practice in the last 10 years may qualify for certification to practice collaboratively if the PA has completed 2,000 hours of clinical practice within the last three years, and at the time of submitting the application for certification for collaborative practice holds current NCCPA certification.

The Board will maintain a list on its website indicating the PAs who have been certified for

collaborative practice.

3. What is considered a clinical hour to obtain certification as a collaborating PA?

A clinical practice hour is any hour spent performing medical services directly related to patient care, including but not limited to patient call backs, chart review, diagnostic reviews, and referrals.

For those physician assistants applying for certification for collaborative practice who are or who have been engaged in the education of physician assistants at an ARC-PA accredited institution, actual hours spent in didactic instruction shall be counted towards the required 8,000 hours. The performance of administrative tasks associated with education, training and supervision will not be considered when calculating the required 8,000 hours of clinical practice.

Alternatively, a PA who has been actively practicing for more than five years and has been engaged in the education of physician assistants at an ARC-PA accredited institution, may count the actual hours spent in didactic instruction towards the required 8,000 hours. However, the 8,000 hours of didactic instruction or clinical practice in the last 10 years may qualify for certification to practice collaboratively if the PA has completed 2,000 hours of clinical practice or didact instruction within the least three years, and at the time of submitting the application for certification for collaborative practice holds current NCCPA certification.

4. What documentation is required for collaborative practice?

Before employing or practicing collaboratively with a PA , the collaborating physician or entity shall verify that the PA is qualified under A.R.S. § 32-2536 and R4-17-401 to practice collaboratively, the collaborating physician entity shall maintain evidence of the verification in the employment of the PA as long as the PA is employed by a collaborative physician entity .

5. What other documentation is need for the establishment of a collaborative practice

As required under A.R.S. § 32-2531(B), a collaborating physician or entity shall develop written policies regarding collaboration for each physician assistant employed under subsection (A). The policies, which shall be individualized for the physician assistant's education, experience, and competencies, shall specify:

a. The physician assistant's name, license number, practice name and address, email, and business phone number.

b. The physician designee(s) (by name or position) responsible for the oversight of the physician assistant.

c. The date the agreement will commence.

d. The area of practice in which the physician assistant may practice collaboratively.

e. A statement regarding whether the collaborative physician or entity determines that the area of practice is substantially similar to the PA's previous setting or specialty. If it is not substantially similar, a description of the additional training, oversight and education that will be provided to the PA in order to ensure that the PA can safely practice in the new setting/specialty. This shall include documentation regarding any supervision agreement that the collaborating entity/physician determines may be warranted (for more information see the answer to question 6, below)

f. The signature of a collaborating physician, or physician designated by the entity to provide oversight and the PA.

6. What is required when a collaborative PA seeks to practice in an area of medicine that is not substantially similar to a practice setting or specialty for which PA previously practiced collaboratively?

Prior to engaging in a practice that is not substantially similar to the areas of practice in which the physician assistant has previously practiced collaboratively, the collaborating physician or entity shall ensure that the physician assistant is provided with any additional training or oversight necessary to ensure that the physician assistant can safely practice in the new practice setting or specialty.

The collaborating agreement shall describe the additional training or oversight that will be provided to the physician assistant. If the collaborating physician or entity determines that a supervision agreement is warranted, the expected duration of the supervision agreement shall also be identified, and a separate supervision agreement that meets the requirements of A.R.S. §§ 32-2501 *et. seq*. shall be executed prior to the physician assistant's initiation of practice.

Once the collaborating physician or entity determines that supervision is no longer needed, the separate supervision agreement may be terminated, and the physician assistant may practice collaboratively.

Completion of the additional training or oversight and, if applicable, termination of the supervision agreement shall be noted in an addendum to the individualized policy maintained by the collaborating physician or entity.

The individualized policy or any addendums shall be maintained as a business record at the practice and by the physician assistant. The individualized policy governing collaborative practice shall be produced immediately upon request by the Board.

7. May a collaborative PA bill directly for the performance of medical services?

A collaborative PA may bill and receive direct payment for the professional services provided.

8. Are there any additional responsibilities imposed on a collaborative PA?
Yes. A collaborative PA may provide medical services that the collaborative PA is competent to perform, and those services are listed in ARS 32-2531(A). The medical services that may be provided by a collaborative PA includes "delegating and assigning therapeutic and diagnostic measures to and supervising licensed or unlicensed personnel. " ARS 32-2531(A)(9).

According to statute a PA who does not practice pursuant to a supervision agreement is legally responsible for the health care services performed by the physician assistant." ARS 32-2531(D). Therefore , a collaborative PA is legally responsible for any therapeutic and diagnostic measures delegated or assigned to licensed or unlicensed personnel. In addition, the collaborative PA is responsible for supervising licensed or unlicensed personnel to whom the collaborative PA delegates or assigns medical tasks.

9. What if I am unable to obtain all the required documentation to show that I have 8.000 hours of clinical practice required for certification as a collaborative PA?

The Board has a waiver policy set forth in R4-17-401 (F) that allows the PA to make a request to the Board to waive the requirement to produce the documentation. The request must identify and estimate the number of clinical hours for which documentation cannot be obtained and where those clinical hours were performed. In addition, any request for waiver must include the steps that the PA has taken in an effort to obtain the documentation .

In determining whether to issue a waiver the Board will consider the following:

1. The sufficiency of the physician assistant's effort to have the documentation submitted;
2. Evidence it is not possible to have the documentation submitted because:
a. The required document does not exist;
b. The individual or entity responsible for maintaining and submitting the documentation is unable to do so; or
c. Another reason beyond the control of the physician assistant; and
3. Whether the Board is able to obtain the required documentation from another source.

EXHIBIT G

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Craig A. Morgan
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August 29, 2023

Sent Via Mail & E-Mail

Arizona Regulatory Board of Physician Assistants
c/o Patricia McSorley, Executive Director
1740 W. Adams, Suite 4000
Phoenix, AZ 85007
Email: patricia.mcsorley@azmd.gov

RE: THE ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS' (THE "BOARD") RULEMAKING WITH REGARD TO HB2043 (THE "NEW LAW")

Dear Ms. McSorley:

My name is Craig Morgan. I am an attorney with Sherman & Howard, LLC. We represent The Arizona Association of Physician Assistants (the "Association").

I write because the Association has serious concerns that the Board plans to pass and implement rules and procedures inconsistent with the New Law which would render superfluous its core purpose – to remove the tether and associated restrictions of a Supervision Agreement so that those Arizonans most in need can have affordable access to critical basic healthcare services.

The purpose of this letter is to outline the Association's concerns so that the Board can act with fidelity to the New Law and avoid the necessity for future proceedings that will only frustrate the timely and lawful implementation of the New Law as intended. ***Please note that we have copied the Governor's Office so that they, too, can be aware of the Association's concerns, proactively participate in their resolution, and review and approve the Board's rulemaking as the law requires***. *See* A.R.S. § 41-1039 (requiring the Governor's written approval of any rules as stated therein).

I.
AFTER CAREFUL AND COLLABORATIVE NEGOTIATION, ARIZONA PASSES THE NEW LAW SO PHYSICIAN ASSISTANTS CAN PROVIDE ARIZONANS THE CRITICAL MEDICAL SERVICES THEY NEED

Earlier this year, Governor Hobbs signed HB2043 into law. The New Law's purpose is to address community shortages in, and access to, "routine, preventative and necessary medical care." **Exhibit 1** (AZ News Rel. H.R. Rep. Apr. 18, 2023). To that end, the New Law expands the autonomy of a qualified Physician Assistant's practice by, among other things:

- Expanding a Physician Assistant's autonomy in practice from health care tasks delegated by a supervising physician to any legal medical service for which the Physician Assistant has been prepared by education, training and experience and that the Physician Assistant is competent to perform, and several new medical services that a Physician Assistant may provide;

- Exempting a Physician Assistant who has at least 8,000 hours of Board-certified clinical practice from the requirement to practice pursuant to a Supervision Agreement and requires the Physician Assistant to continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the Physician Assistant's education, experience and competencies;

- Specifying that the authority for a Physician Assistant who has 8,000 hours of Board-certified clinical practice to practice without a Supervision Agreement does not prohibit the Physician Assistant from practicing pursuant to a Supervision Agreement;

- Requiring a licensed Physician Assistant who is in good standing, who has graduated from an accredited United States-based Physician Assistant program and who has at least 8,000 hours of clinical practice within the previous five years in Arizona or another jurisdiction to provide the Board with documentation of having completed at least 8,000 hours of clinical practice;

- Requiring a Physician Assistant who has less than 8,000 hours of Board-certified clinical practice to work in accordance with a Supervision Agreement that describes the Physician Assistant's practice and prohibits the Physician Assistant from performing health care tasks until the Physician Assistant has completed and signed a Supervision Agreement;

- Exempting a Physician Assistant from the Supervision Agreement requirements on receipt of AZPA-certification of the Physician Assistant's completion of at least 8,000 hours of clinical practice;

- Requiring the Board to develop an alternative comparable standard for certification of 8,000 hours of clinical practice for Physician Assistants who have been actively practicing for more than five years; and

- Requiring the Board to adopt rules establishing additional certification standards or requirements for Physician Assistants who previously completed 8,000 hours of Board-certified clinical practice and who are seeking employment with a collaborating physician

or entity for a position that is not substantially similar to the practice setting or specialty in which the Physician Assistant was previously certified.

See **Exhibits 2** (Ariz. State Senate Fact Sheet for H.B. 2043); **3** (AZ H.R. B. Summ., 2023 Reg. Sess. H.B. 2043); *see also* A.R.S. §§ 32-2501, *et seq*. In short, the necessary, critical medical care a Physician Assistant can provide for all Arizonans has expanded, and those Physician Assistants with 8,000 or more hours of Board-certified clinical practice are no longer required to be tethered to a single physician by a Supervision Agreement.

The Association has several concerns with how the Board intends to regulate the New Law. We will outline the applicable law, and the Association's concerns, in turn.

II.
THE BOARD MUST ACT WITH FIDELITY TO THE NEW LAW AND CANNOT NULLIFY OR REWRITE IT THROUGH THE EXERCISE OF REGULATORY OR RULEMAKING AUTHORITY

Arizona's courts presume that the Legislature did not intend to do a futile act by including a statutory provision that is inoperative, inert, or trivial. *See Patterson v. Maricopa Cnty. Sheriff's Office*, 177 Ariz. 153 (App.1993) (cleaned up). Therefore, Arizona's courts will give each word, phrase, clause, and sentence meaning so that no part of the statute is rendered superfluous, void, insignificant, redundant, or contradictory. *Id.; see also Morrissey v. Garner*, 248 Ariz. 408, 410, ¶ 10 (2020) ("We strive to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous."); *Williams v. Thude*, 188 Ariz. 257, 259 (1997) ("Each word, phrase, clause, and sentence of a statute must be given meaning so that no part will be void, inert, redundant, or trivial." (cleaned up)); *Compassionate Care Dispensary, Inc. v. Ariz. Dep't of Health Services*, 244 Ariz. 205, 212, ¶ 21 (App. 2018) (citing *Williams*); SCALIA & GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS*, at 176 ("Because legal drafters should not include words that have no effect, courts avoid a reading that renders some words altogether redundant.").

Moreover, courts will not read into a statute a requirement or restriction not otherwise expressly contained within that statute. *See Roberts v. State*, 253 Ariz. 259, 266, ¶ 20 (2022) (noting "courts will not read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself") (cleaned up). "Where a statute is silent on an issue, [our courts] will not read into it . . . nor will [they] inflate, stretch or extend the statute to matters not falling within its expressed provisions." *Ponderosa Fire Dist. v. Coconino Cnty.*, 235 Ariz. 597, 604, ¶ 30 (App. 2014). Nor will courts "interpret a statute in a manner that would lead to an absurd result." *Green Cross Med., Inc. v. Gally*, 242 Ariz. 293, 297, ¶ 11 (App. 2017).

"[T]he scope of an agency's power is measured by the statute and may not be expanded by agency fiat." *Cochise County v. Ariz. Health Care Cost Containment Sys*., 170 Ariz. 443, 445 (App. 1991). Thus, "a rule or regulation of an administrative agency should not be inconsistent with or contrary to the provision of a statutes, particularly the statute it seeks to effectuate." *Sharpe v. Ariz. Health Care Cost Containment Sys*., 220 Ariz. 488, 495 (App. 2009). An administrative

agency cannot "enact regulation nor make an order that would conflict with the proper interpretation of [a] statute." *McCarrell v. Lane*, 76 Ariz. 67, 70 (1953). In short: "an administrative rule that diminishes rights in an enabling statute is not valid." *Freelance Interpreting Services, Inc. v.State, Dept. of Econ. Sec.*, 212 Ariz. 457, 461, ¶ 26 (App. 2006); *see also In re Pima Cnty. Mental Health No. MH-2010-0047*, 228 Ariz. 94, 98, ¶ 15 (App. 2011) (noting "if an agency rule conflicts with a statute, the rule must yield." (quoting *Ariz. Bd. of Regents v. Ariz. State Personnel Bd.*, 195 Ariz. 173, ¶ 9 (1999)). Therefore, courts are constrained to strike down an agency's rule that "would defeat the legislative purpose" behind the statute for which the rule is enacted to implement. *Dioguardi v. Superior Court*, 184 Ariz. 414, 417 (App. 1995) (cleaned up).

Accordingly, the Board cannot enact a rule or regulation that conflicts with the New Law, and any rule or regulation that does so is unlawful and void.

III.
THE ASSOCIATION HAS CONCERNS WITH THE BOARD'S INTERPRETATION OF A.R.S. § 32-2501(6)

A.R.S. § 32-2501(6) states:

> "Collaborating Physician or Entity" means a physician, physician group practice, physician private practice or licensed health care institution that employs or collaborates with a physician assistant who has at least eight thousand hours of clinical practice as certified by the board pursuant to section 32-2536 ***and does not require a supervision agreement and that designates one or more physicians by name or position*** who is responsible for the oversight of the physician assistant.

(Emphasis added).

This definition of "Collaborating Physician or Entity" expressly provides that a Physician Assistant with 8,000 hours of clinical practice can ***forego*** a supervision agreement and the "Collaborating Physician or Entity" need only designate one or more physicians by name ***or*** position. This means that the physician designation can be by name (*i.e.*, Dr. Jane Doe, M.D.) or by position (*i.e.*, Chief Medical Officer; Chief Cardiologist; Head of Internal Medicine); it need not be both, and it certainly cannot be revised by rule to require one to the exclusion of the other. Moreover, the New Law does not require a written collaboration plan; the parties involved are left to determine the appropriate level of collaboration. This makes sense, given a (if not ***the***) core purpose behind the New Law is to remove the tether to a single named physician so that a Physician Assistant can collaborate with a physician or entity in a team setting and deliver critical and affordable basic health services to Arizonans (especially those in marginalized and disadvantaged communities who are most in need).

We understand that the Board is contemplating the passage of a rule that requires either the name of a physician or both a name and position – both of which are tantamount to the very tether the New Law has removed. We understand the purpose of such a rule (and if not, then, the effect) is to continue to tether an otherwise qualified Physician Assistant to a physician, rendering the concept of a "Collaborating Physician or Entity" a nullity, because requiring a specific physician to be involved in a collaboration scenario is tantamount to requiring a Supervision Agreement.

Such a rule would offend the plain meaning of A.R.S. § 32-2501(6), nullify the entire reason for a collaborative relationship (*i.e.*, to remove the tether to a single physician so a more team-oriented affordable approach to healthcare delivery can occur), and therefore would be void. Our Legislature means what it says. Had the Legislature desired to require both, as opposed to one or the other, the Legislature would have said so by using the word "and". But the Legislature chose differently and the Board cannot rewrite the law through the rulemaking process.

The Association urges the Board to pass a rule that comports with A.R.S. § 32-2501(6) and only requires a "Collaborating Physician or Entity" to designate one or more physicians by name ***or*** position – and not both (as the New Law clearly intends).

IV.
THE ASSOCIATION HAS CONCERNS WITH THE BOARD'S INTERPRETATION OF A.R.S. § 32-2536

A.R.S. § 32-2536 states, in part:

> A. A physician assistant who is licensed pursuant to this chapter, who is in good standing, who has graduated from an accredited physician assistant program in the United States and who has at least eight thousand clinical practice hours within the previous five years in this state or another jurisdiction shall provide the board with documentation of having completed at least eight thousand hours of clinical practice in order to meet the requirements of section 32-2531, subsection B. The board shall develop:
>
> > 1. A policy that sets forth the process of attestation or documentation required as proof of completion of at least eight thousand clinical practice hours and issuance of certification of completion of the eight thousand clinical practice hours.
> >
> > 2. An alternative comparable standard for certification of eight thousand hours of clinical practice for physician assistants who have been actively practicing for more than five years.
>
> B. The board shall adopt rules establishing additional certification standards or requirements for physician assistants who previously completed eight thousand

> clinical practice hours certified by the board and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified. The certification standards or requirements shall ensure appropriate training and oversight, including a supervision agreement if warranted, for the physician assistant's new practice setting or specialty.

The Association has concerns with the Board's recent public statements indicating how the Board interprets and plans to implement this statute.

First, the Association has concerns with the Board's apparent direction as it pertains to implementing A.R.S. § 32-2536(A)(2). It appears that the Board has not considered an "alternative comparable standard" that is indeed alternative, comparable and actually takes into consideration that many Physician Assistants who have been "actively practicing for more than five years" may not have been continuously practicing throughout that time in what the Board may (for better or worse) consider a "traditional" manner. For example, any "alternative comparable standard" must account for those who have engaged in part-time clinical practice for more than five years, or those who taught in a clinical setting, or have taken substantial clinical coursework, or have engaged in the equivalent of a clinical practice (for example, someone who has worked to achieve a doctorate, and while doing so, has worked in a clinical setting for several years, even if part-time). The failure to consider these practical realities when implementing A.R.S. § 32-2536(A)(2) will result in the failure to effectuate its legislative purpose. Simply requiring these individuals to meet the same 8,000 hour standard as a more "traditional" full-time active practitioner would render the "alternative comparable standard" in 32-2536(A)(2) superfluous; there would be no alternative (let alone comparable) standard at all. Any rule or regulation that does so will violate the law.

Second, the Association has concerns with the Board's direction as it pertains to its implementation A.R.S. § 32-2536(B). In its public discussions, the Board appears to plan to implement this portion of the New Law by requiring any Physician Assistant who did not spend 8,000 hours in a particular specialty, but who desires to work in that specialty, to have to start their career anew and gain 8,000 hours of clinical experience ***in that specialty*** in order to be able to avoid the tether of a Supervision Agreement. This would likely deprive Arizonans access to affordable critical basic healthcare, and in any event, it is not the intent of A.R.S. § 32-2536(B).

As the Board knows, a Physician Assistant is not taught, nor do they practice, in a specific discipline or "specialty". In fact, there is no requirement that a Physician Assistant's initial 8,000 hours of clinical experience be in the exact same discipline or "specialty". Physician Assistants conduct physical exams, diagnose and treat illnesses, order and interpret tests, counsel on preventive health care, assist in surgery, and write prescriptions. A Physician Assistant's practice may also include education, research, and administrative services. All of these traverse many disciplines or "specialties" (*i.e.*, internal medicine, women's health, rehabilitation, emergency medicine, urgent care, pediatrics, OBGYN, orthopedics, or endocrinology). It was not the Legislature's intent to make a Physician Assistant, in any instance where they desire to move from

one area of practice to another, start anew and amass 8,000 more hours of clinical experience in a specific area. Indeed, given the overlap of a Physician Assistant's clinical experience across disciplines and specialties, such an interpretation makes no sense.

This is why the Legislature proscribed that any "requirements shall" simply "ensure appropriate training and oversight, including a supervision agreement ***if warranted***, for the physician assistant's new practice setting or specialty." A.R.S. § 32-2536(B) (emphasis added). Merely defaulting to an 8,000 hour requirement in every instance is to ignore the Legislature's command that every instance of a Physician Assistant seeking to practice in a given area must be viewed independently so that the Board can truly ascertain what training and oversight is necessary, and whether a supervision agreement is "warranted". *Id*. Indeed, the Board cannot deny that in many instances, the "appropriate training and oversight" may need only consist of a collaboration relationship and sufficient continuing education.

The only way to honor the spirit and purpose of A.R.S. § 32-2536(B) is to develop rules and regulations that consider what "appropriate training and oversight" a given Physician Assistant necessarily requires, taking into account the overlap of qualifications a well-educated and experienced Physician Assistant will have that translate equally across various specialties and practice settings. Had the Legislature desired for the Board to revert back to a draconian 8,000 hours standard for those Physician Assistants who have already met or exceeded that standard, then the Legislature would not have mandated that the Board's rules (1) must account for a Physician Assistant's existing qualifications when determining what "appropriate training and oversight" may be necessary, and (2) only require a Supervision Agreement "if warranted".

Thus, we encourage the Board to take into account the need to effectuate A.R.S. § 32-2536(B) in a manner that both preserves legislative intent and enables an implementation of the New Law that is harmonious with its overall purpose: to remove the tether of restrictive Supervision Agreements so that underserved Arizonans can obtain the critical basic healthcare services they so desperately need.

V.
THE BOARD HAS AN OPPORTUNITY TO HELP ARIZONANS GAIN ACCESS TO CRITICAL AND NECESSARY BASIC HEALTHCARE SERVICES

Arizona has chosen to become a leader in modern healthcare delivery by becoming the fourth state to remove the tether between a Physician Assistant and a specific physician so that Arizona can expand access to patient care through more modernized, team-based healthcare.

In its path toward modernizing healthcare delivery, Arizona has recognized that the most appropriate approach is to allow healthcare ***teams*** to decide at the practice level how they will collaborate to best meet patient needs. This is why Arizona enacted the New Law. And this patient-centered change must not, and cannot, be nullified through administrative overreaching and haphazard rulemaking and regulation.

We are confident many on the Board agree with the Association's position and understand its concerns. We ask that those who do share the Association's concerns work hand-in-hand with their colleagues, the Association, and other stakeholders to reflect on the Board's present path, and divert it as necessary to ensure fidelity to the New Law's meaning and purpose.

If you have any questions or desire to discuss these matters further, please do not hesitate to contact me (for legal matters) or Melinda Rawcliffe at melindarawcliffe@gmail.com (for non-legal, substantive matters). In the meantime, the Association expressly reserves all remedies, at law or in equity, it may have to address these issues.

Very truly yours,

Craig A. Morgan

CAM/em

cc: Bo Dul
General Counsel
Governor Katie Hobbs
E-Mail: Bdul@az.gov .

Client

Exhibit 1

Exhibit 1

AZ News Rel., H.R. Rep. 4/18/2023

Image 1 within document in PDF format.

Arizona House Republican Caucus News Release, April 18, 2023

April 18, 2023
Arizona House of Representatives Republican Caucus
Fifty-sixth Legislature, First Regular Session, 2023

Tuesday, April 18, 2023

FOR IMMEDIATE RELEASE

Governor Signs Representative Bliss's Bill to Increase Access to
Medical Care for Communities Experiencing Severe Shortages

STATE CAPITOL, PHOENIX - State Representative Selina Bliss is pleased to announce the signing of HB 2043, legislation she sponsored to increase access to healthcare in critical needs areas in Arizona by establishing a collaborative relationship between physicians and physician assistants (PAs) after the PA has completed 8,000 hours of clinical practice hours under a supervision agreement with a physician.

"The signing of HB 2043 is a step in the right direction for communities experiencing severe shortages to have better access to routine, preventive, and necessary medical care," said Representative Bliss. **"The law addresses healthcare worker shortages by allowing PAs to perform appropriate and agreed upon medical services based on their education, training, and clinical experience. The advance practice nurses entered into collaborative agreements with physician providers two years ago, and I believe it was time that the PAs do so as well."**

Representative Bliss's legislation, which received wide bipartisan support in the legislature, was patterned after other states that have established similar models and seen success. More detail on the provisions of HB 2043 is available here.

Selina Bliss is a Republican member of the Arizona House of Representatives serving Legislative District 1 in Yavapai County and Chairs the House Appropriations Subcommittee on Fiscal Accountability. Follow her on Twitter at @SelinaBliss.

AZ News Rel., H.R. Rep. 4/18/2023

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Exhibit 2

Exhibit 2

ARIZONA STATE SENATE

Fifty-Sixth Legislature, First Regular Session

FACT SHEET FOR H.B.2043

physician assistants; supervision; collaboration

Purpose

Effective January 1, 2024, allows a physician assistant (PA) who has at least 8,000 hours of clinical practice certified by the Arizona Regulatory Board of Physician Assistants (AZPA) to practice without a supervision agreement in collaboration with appropriate health care professionals. Requires a PA who has less than 8,000 hours of AZPA-certified clinical practice to work under a supervision agreement.

Background

PAs in Arizona are licensed and regulated by the AZPA. PAs may work under the supervision of a licensed physician in physician offices, clinics, hospitals, surgical centers, patient homes, nursing homes or other health care institutions. The duties of a PA include: 1) ordering, prescribing, dispensing or administering drugs and medical devices; 2) pronouncing and authenticating deaths; 3) obtaining patient histories; 4) performing physical examinations; 5) ordering and performing diagnostic and therapeutic procedures; 6) formulating diagnostic impressions; 7) developing and implementing treatment plans; 8) monitoring the effectiveness of therapeutic interventions; 9) assisting in surgery; 10) offering counseling and education; 11) making appropriate referrals; 12) prescribing schedule II, III, IV or V controlled substances; 13) performing minor surgery; and 14) performing other delegated nonsurgical health care tasks.

A physician supervising a PA must: 1) meet AZPA supervision requirements; 2) accept responsibility for all tasks and duties delegated to a PA; 3) notify the AZPA and the PA in writing if the PA exceeds the scope of the delegated health care tasks; and 4) maintain a written agreement with the PA that describes the PA's scope of practice (A.R.S. § 32-2531).

The AZPA certifies PAs for 30-day prescription privileges for schedule II, III, IV and V controlled substances that are opioids or benzodiazepine and 90-day prescription privileges for schedule II, III, IV and V controlled substances that are not opioids or benzodiazepine if the physician assistant meets outlined requirements (A.R.S. §. 32-2504).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

PA Scope of Practice

1. Expands a PA's scope of practice from health care tasks delegated by a supervising physician to any legal medical service for which the PA has been prepared by education, training and experience and that the PA is competent to perform and adds, to the medical services that a PA may provide:
   a) interpreting diagnostic studies and therapeutic procedures;

b) providing, rather than offering, counseling and education to meet patient needs;
c) providing consultation on request;
d) writing medical orders;
e) obtaining informed consent;
f) delegating and assigning therapeutic and diagnostic measures to and supervising licensed or unlicensed personnel; and
g) prescribing prescription-only medications for up to one year for each patient.

Collaborative PAs

2. Exempts a PA who has at least 8,000 hours of AZPA-certified clinical practice from the requirement to practice pursuant to a supervision agreement and requires the PA to continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the PA's education, experience and competencies.

3. Deems a PA who does not practice pursuant to a supervision agreement as legally responsible for the health care services performed by the PA.

4. Specifies that the level of collaboration required of a PA is determined by the policies of the practice setting at which the PA is employed, including a physician employer, physician group practice or health care institution.

5. Allows a PA's collaboration, consultation or referral to an appropriate health care professional to occur through electronic means and specifies that the collaboration, consultation or referral does not require the physical presence of the appropriate health care professional at the time or place the PA provides medical services.

6. Specifies that the authority for a PA who has 8,000 hours of AZPA-certified clinical practice to practice without a supervision agreement does not prohibit the PA from practicing pursuant to a supervision agreement.

7. Requires a licensed PA who is in good standing, who has graduated from an accredited U.S. PA program and who has at least 8,000 hours of clinical practice within the previous five years in Arizona or another jurisdiction to provide the AZPA with documentation of having completed at least 8,000 hours of clinical practice.

8. Allows a PA to bill and receive direct payment for the professional services provide by the PA.

PAs Working Under a Supervision Agreement

9. Requires a PA who has less than 8,000 hours of AZPA-certified clinical practice to work in accordance with a supervision agreement that describes the PA's scope of practice and prohibits the PA from performing health care tasks until the PA has completed and signed a supervision agreement.

10. Requires the supervision agreement to specify the PA's ability to prescribe, dispense or administer prescription-only medication or schedule II, III, IV or V controlled substances.

11. Allows, under a supervision agreement, supervision to occur through electronic means and specifies that the physical presence of the supervising physician is not required at the time or place the PA provides medical services.

12. Exempts a PA from the supervision agreement requirements on receipt of AZPA-certification of the PA's completion of at least 8,000 hours of clinical practice.

AZPA

13. Allows the AZPA to count practice hours earned in another jurisdiction toward the hours of required clinical practice.

14. Requires the AZPA to develop:
    a) a policy that sets forth the process of attestation or documentation required as proof of completion of at least 8,000 hours of clinical practice and issuance of certification of completion of the 8,000 hours of clinical practice; and
    b) an alternative comparable standard for certification of 8,000 hours of clinical practice for PAs who have been actively practicing for more than five years.

15. Requires the AZPA to adopt rules establishing additional certification standards or requirements for PAs who previously completed 8,000 hours of AZPA-certified clinical practice and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the PA was previously certified.

16. Modifies AZPA membership by allowing collaborating physicians to fulfil the physician member positions.

17. Removes the requirement for the AZPA to randomly audit at least five percent of supervision agreements each year.

18. Exempts the AZPA from rulemaking requirements for one year.

Supervising Physicians

19. Removes requirements for a supervising physician to:
    a) meet AZPA-established supervisory requirements;
    b) notify the AZPA and PA in writing if the PA exceeds the scope of the delegated health care tasks.

20. Removes the requirement, if a PA practices in a location where a supervising physician is not routinely present, for the PA to meet with the supervising physician at least once each week to ensure ongoing direction and oversight of the PAs work.

Miscellaneous

21. Applies requirements for supervising physicians in disciplinary action investigations to collaborating physicians.

22. Specifies that a PA is not required to have completed 8,000 hours of clinical practice to provide medical care in response to a natural disaster, accident or other emergency.

23. Adds, to the methods of pronouncing death or authenticating a form, a PA's certification, stamp, verification, affidavit or endorsement.

24. Removes the requirement for a PA to wear a name tag with the designation *physician assistant* while on duty.

25. Defines *collaborating physician or entity* and *supervision agreement*.

26. Modifies the definition of *unprofessional conduct* to include the PA performing a health care task that does not meet the applicable supervision or collaboration requirements.

27. Makes technical and conforming changes.

28. Becomes effective on January 1, 2024.

House Action

HHS	2/13/23	DPA	6-3-0-0
3rd Read	3/7/23		42-18-0

Prepared by Senate Research
March 24, 2023
MG/slp

Exhibit 3

Exhibit 3

ARIZONA HOUSE OF REPRESENTATIVES

Fifty-sixth Legislature
First Regular Session

House: HHS DPA 6-3-0-0 | 3rd Read 42-18-0-0
Senate: HHS DP 6-1-0-0 | 3rd Read 19-10-1-0

HB 2043: physician assistants; supervision; collaboration
Sponsor: Representative Bliss, LD 1
Transmitted to the Governor

Overview

Permits, beginning January 1, 2024, physician assistants with at least 8,000 hours of clinical practice certified by the Arizona Regulatory Board of Physician Assistants (Board) to practice with a collaborating physician or entity without a supervision agreement. Subjects a physician assistant with less than 8,000 hours of Board-certified clinical practice to work under a supervision agreement.

History

The Board is authorized to license and regulate physician assistants. Physician assistants are licensed to practice medicine within the scope of their supervising physician's area of practice. A physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing and administration of drugs and medical devices that are delegated by the supervising physician. A physician assistant may provide any medical services that are delegated by the supervising physician if the service is within the physician assistant's skills, scope of practice and supervised by the physician. Physician assistants may pronounce death and is the physician's agent in the performance in all practice related activities, including the ordering of diagnostic, therapeutic and other medical services. These health professionals may practice in any setting authorized by the supervising physician (A.R.S. §§ 32-2504 and 32-2531).

Provisions

Collaborative Physician Assistants

1. Outlines the scope of practice for collaborative physician assistants with at least 8,000 hours of clinical practice certified by the Board. (Sec. 3)
2. Asserts that a physician assistant with at least 8,000 hours of Board-certified clinical practice is not required to practice pursuant to a supervision agreement, but must continue to collaborate, consult or refer to the appropriate health care professional as indicated by the patient's condition and by the physician assistant's education, experience and competencies. (Sec. 3)
3. Specifies that the level of collaboration is determined by the policies of the practice setting at which the physician assistant is employed, including a physician employer, group practice or health care institution. (Sec. 3)
4. Permits collaboration, consultation or referrals to occur through electronic means and does not require the physical presence of the appropriate health care professional at the time or place the physician assistant provides medical services. (Sec. 3)
5. Stipulates that this does not prohibit a physician assistant with at least 8,000 hours of Board-certified clinical practice from practicing pursuant to a supervision agreement. (Sec. 3)

6. Requires physician assistants who are in good standing, have graduated from an accredited physician assistant program in the U.S. and with at least 8,000 clinical practice hours within the previous five years in this state or another jurisdiction to provide to the Board documentation of having completed 8,000 clinical hours to practice collaboratively. (Sec. 9)
7. Requires the Board to develop a policy that sets forth the process including attestation or documentation required as proof of completion and issuance of certification of completion of at least 8,000 clinical practice hours. (Sec. 9)
8. Requires the Board to develop an alternative comparable standard for certification of the 8,000 hours for physician assistants who have been actively practicing for more than five years. (Sec. 9)
9. Directs the Board to adopt rules establishing certification standards or requirements for physician assistants who have previously completed the 8,000 certified hours and who are seeking employment with a collaborating physician or entity for a position not substantially similar to the practice setting or specialty in which they were certified. (Sec. 9)
10. Requires the certification standards or requirements must ensure appropriate training and oversight, including a supervision agreement if warranted for the physician assistant new practice setting or environment. (Sec. 9)

Supervision Agreements

11. Requires a physician assistant with less than 8,000 hours of Board-certified clinical practice to work in accordance with a supervision agreement that describes the physician's scope of practice. (Sec. 3)
12. Prohibits physician assistants from performing health care tasks until they have completed and signed a supervision agreement. (Sec. 3)
13. Permits supervision to occur through electronic means and does not require the physical presence of the appropriate health care professional at the time or place the physician assistant provides medical services while under a supervision agreement. (Sec. 3)
14. Requires the supervision agreement to be kept on file at the main location of the physician assistant's practice and, on request, be made available to the Board or their representative. (Sec. 3)
15. Specifies that a physician assistant is no longer subject to the supervision agreement requirements upon receipt of Board certification that they have completed at least 8,000 hours of clinical practice. (Sec. 3)
16. Allows the Board to count practice hours earned in another jurisdiction toward the required hours for clinical practice. (Sec. 3)
17. Asserts that a physician assistant who does not practice pursuant to a supervision agreement is legally responsible for the health care services performed by them. (Sec. 3)
18. Requires the supervision agreement to specify the physician assistant's ability to prescribe, dispense or administer a schedule II, III, IV or V controlled substance or prescription-only medication. (Sec. 4)
19. States that a supervising physician is responsible for all aspects of the physician assistant's performance who has less than 8,000 hours of clinical practice, whether the supervising physician pays the physician assistant a salary. (Sec. 5)

20. States that a physician assistant is not required to have completed 8,000 clinical practice hours if providing medical care in response to a natural disaster, accident or other emergency. (Sec. 8)

Miscellaneous

21. Defines *collaborative physician or entity*. (Sec. 1)
22. Defines *supervision agreement*. (Sec. 1)
23. Modifies terms. (Sec. 1)
24. Deems it *unprofessional conduct* for physician assistants to perform health care tasks that do not meet applicable supervision or collaboration requirements. (Sec. 1)
25. Modifies Board membership to include two licensed Medical Doctors and two licensed Osteopathic Physicians who are actively engaged in the practice of medicine and that collaborate with physician assistants. (Sec. 2)
26. Allows a supervising physician, collaborating physician or entity to contest the imposition of a civil penalty issued by the Board. (Sec. 3)
27. Specifies that a physician assistant may not dispense, prescribe or refill prescription-only drugs for a period exceeding one year for each patient. (Sec. 4)
28. Requires the Board to advise the Arizona State Board of Pharmacy and the U.S. Drug Enforcement Administration of all the physician assistant's authorized to prescribe or dispense drugs and any modification of their authority. (Sec. 4)
29. Repeals statute relating to physician assistant's initiation of practice. (Sec. 6)
30. Allows physician assistants to bill and receive direct payment for their professional services. (Sec. 7)
31. Specifies that if the Board begins an investigation, it may require the physician assistant to promptly provide the name and address of the supervising physician or collaborating physician or entity, as applicable. (Sec. 10)
32. Allows the Board or, if delegated by the Board, the executive director to require a mental, physical or medical competency examination or any combination of those examination or investigations for a collaborating physician or physician representative of the collaborating entity, as applicable. (Sec. 10)
33. Exempts the Board from rulemaking requirements for one year after the effective date of this act. (Sec. 11)
34. Contains an effective date of January 1, 2024. (Sec. 12)
35. Makes technical and conforming changes. (Sec. 1-5, 8,10)

☐ Prop 105 (45 votes) ☐ Prop 108 (40 votes) ☐ Emergency (40 votes) ☐ Fiscal Note

EXHIBIT H

Arizona Revised Statutes Annotated
Title 32. Professions and Occupations (Refs & Annos)
Chapter 25. Physician Assistants (Refs & Annos)
Article 3. Scope of Practice and Approval of Employment

This section has been updated. Click here for the updated version.

A.R.S. § 32-2531

§ 32-2531. Physician assistant scope of practice; health care tasks; supervising physician duties; civil penalty

Effective: July 24, 2014 to December 31, 2023

<Section effective until Jan. 1, 2024. See, also, section 32-2531 effective Jan. 1, 2024.>

A. A supervising physician may delegate health care tasks to a physician assistant.

B. A physician assistant shall not perform surgical abortions as defined in § 36-2151.

C. The physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing and administration of drugs and medical devices, that are delegated by the supervising physician.

D. The physician assistant may provide any medical service that is delegated by the supervising physician if the service is within the physician assistant's skills, is within the physician's scope of practice and is supervised by the physician.

E. The physician assistant may pronounce death and, if delegated, may authenticate by the physician assistant's signature any form that may be authenticated by a physician's signature.

F. The physician assistant is the agent of the physician assistant's supervising physician in the performance of all practice related activities, including the ordering of diagnostic, therapeutic and other medical services.

G. The physician assistant may perform health care tasks in any setting authorized by the supervising physician, including physician offices, clinics, hospitals, ambulatory surgical centers, patient homes, nursing homes and other health care institutions. These tasks may include:

1. Obtaining patient histories.

2. Performing physical examinations.

3. Ordering and performing diagnostic and therapeutic procedures.

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4. Formulating a diagnostic impression.

5. Developing and implementing a treatment plan.

6. Monitoring the effectiveness of therapeutic interventions.

7. Assisting in surgery.

8. Offering counseling and education to meet patient needs.

9. Making appropriate referrals.

10. Prescribing schedule IV or V controlled substances as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code § 802) and prescription-only medications.

11. Prescribing schedule II and III controlled substances as defined in the federal controlled substances act of 1970.

12. Performing minor surgery as defined in § 32-2501.

13. Performing other nonsurgical health care tasks that are normally taught in courses of training approved by the board, that are consistent with the training and experience of the physician assistant and that have been properly delegated by the supervising physician.

H. The supervising physician shall:

1. Meet the requirements established by the board for supervising a physician assistant.

2. Accept responsibility for all tasks and duties the physician delegates to a physician assistant.

3. Notify the board and the physician assistant in writing if the physician assistant exceeds the scope of the delegated health care tasks.

4. Maintain a written agreement with the physician assistant. The agreement must state that the physician will exercise supervision over the physician assistant and retains professional and legal responsibility for the care rendered by the physician assistant. The agreement must be signed by the supervising physician and the physician assistant and updated annually. The agreement must be kept on file at the practice site and made available to the board on request. Each year the board shall randomly audit at least five per cent of these agreements for compliance.

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I. A physician's ability to supervise a physician assistant is not affected by restrictions imposed by the board on a physician assistant pursuant to disciplinary action taken by the board.

J. Supervision must be continuous but does not require the personal presence of the physician at the place where health care tasks are performed if the physician assistant is in contact with the supervising physician by telecommunication. If the physician assistant practices in a location where a supervising physician is not routinely present, the physician assistant must meet in person or by telecommunication with a supervising physician at least once each week to ensure ongoing direction and oversight of the physician assistant's work. The board by order may require the personal presence of a supervising physician when designated health care tasks are performed.

K. At all times while a physician assistant is on duty, the physician assistant shall wear a name tag with the designation "physician assistant" on it.

L. The board by rule may prescribe a civil penalty for a violation of this article. The penalty shall not exceed fifty dollars for each violation. The board shall deposit, pursuant to §§ 35-146 and 35-147, all monies it receives from this penalty in the state general fund. A physician assistant and the supervising physician may contest the imposition of this penalty pursuant to board rule. The imposition of a civil penalty is public information, and the board may use this information in any future disciplinary actions.

Credits

Added by Laws 1984, Ch. 102, § 5. Amended by Laws 1988, Ch. 113, § 6; Laws 1993, Ch. 197, § 16; Laws 1994, Ch. 262, § 2; Laws 1998, Ch. 205, § 15; Laws 2000, Ch. 193, § 312; Laws 2010, Ch. 172, § 8, eff. Jan. 1, 2011; Laws 2014, Ch. 123, § 8.

Notes of Decisions (1)

A. R. S. § 32-2531, AZ ST § 32-2531

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of February 9, 2024.

End of Document

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EXHIBIT I

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DISTRICT 1

COMMITTEES:
APPROPRIATIONS
APPROPRIATIONS
SUBCOMMITTEE ON
HEALTH & WELFARE,
Chairman
HEALTH & HUMAN SERVICES
JUDICIARY,
Vice-Chairman

February 9, 2024

Patricia McSorley
Executive Director, Arizona Medical Board,
Arizona Regulatory Board of Physician Assistants
1740 W. Adams St. #4000
Phoenix, AZ 85007

Re: Rulemaking regarding Physician Assistants

Dear Ms. McSorley,

I am writing you with some concerns regarding the recently adopted rules for Physician Assistants (PAs) to implement HB2043 ("the Bill") passed in last year's legislative session. As sponsor of this legislation, I am concerned that several of the rules may be interpreted in a manner which is contrary to the intent of the Bill.

HB2043, in Section 32-2536(B) directed the Board to adopt "rules establishing additional certification standards or requirements for physician assistants who previously completed eight thousand clinical practice hours certified by the board and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified." I do not believe there was a necessity for rulemaking on other provisions of the bill but appreciate the work you have put into implementing the bill and have a few concerns I have outlined below.

I am concerned that the following rules do not align with the purposes of the Bill:

- R4-17-402(C) requires that a PA and collaborating physician must sign a written "policy" that must contain specific information set forth in the preceding section. This would seem to require what is tantamount to an agreement, not very different from a supervision agreement, between the PA and physician. That could undermine the purpose of the Bill to eliminate supervision agreements after the 8,000 hours depending on the practice. It also can result in the same

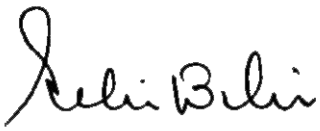
concerns that were discussed during the passing of the Bill, in which PAs were paying for supervision. The same may result with a written and signed policy.

- R4-17-402(F) Requires that each physician that the PA may collaborate with also sign a policy as described above. This is quite burdensome to PAs that may collaborate with multiple physicians, such as those working in surgery, emergency departments, as hospitalists, etc.

I also am concerned that these requirements also don't account for the many PA practice owners we have across the state. Is the requirement of "the employer" making certain decisions, providing proof of the 8,000 hours, etc. left up to a PA practice owner? That should be clarified.

The goal of the Bill is to eliminate administrative barriers so that PAs may continue to deliver great health care to Arizonans across the state. I appreciate all the Board's work on these issues and hope that we can clarify and refine the rules I have referenced so we are not taking a step back, rather than forward in our efforts to do so.

Respectfully,



Rep. Selina Bliss
Legislative District 1

Katie Hobbs
Governor

Arizona Regulatory Board of Physician Assistants
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Susan Reina, PA-C
Chair

February 16, 2024

Honorable Representative Selina Bliss
Arizona House of Representatives
1700 W. Washington, Ste. H
Phoenix, AZ 85007

RE: Rulemaking regarding Physician Assistants

Dear Representative Bliss,

Thank you for reaching out regarding this important issue. In creating the rules for collaborative practice, multiple meetings of the Arizona Regulatory Board of Physician Assistants (ARBoPA) were held, some were attended by stakeholders, and HB 2043, was carefully reviewed to ensure that the words of the statute directed the formation of the rules. ARBoPA is aware that many PAs are frustrated with the bill as they believe they were being given the statutory right to practice independently, and that they would be free of any financial burden associated with "supervision." However, HB2043 is clear that even under the collaborative model, a certain level of oversight is still mandated, and the collaborating physician assistant must collaborate, consult and refer to appropriate health care professionals based on the physician assistant's education, experience and competencies.

The rules created by ARBoPA were designed to be consistent with this statutory requirement for oversight and to ensure that the collaborative practice would be implemented to meet the stated requirements of the bill, and to protect the public, particularly when a collaborative physician assistant might be embarking on a practice that "is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified."

A.R.S. § 32-2501 requires a collaborating entity to designate "one or more physicians by name or position who is responsible for oversight of the physician assistant:

> 6. "Collaborating physician or entity" means a physician, physician group practice, physician private practice or licensed health care institution that employs or collaborates with a physician assistant who has at least eight thousand hours of clinical practice as certified by the board pursuant to section 32-2536 and does not require a supervision agreement **and that designates one or more physicians by name or position who is responsible for the oversight of the physician assistant.**

A.R.S. § 32-2531(B) requires collaboration between a collaborating physician assistant as set forth in their practice setting's policies:

> B. Pursuant to the requirements of this chapter and the standard of care, a physician assistant who has at least eight thousand hours of clinical practice certified by the board pursuant to section 32-2536 is not required to practice pursuant to a supervision agreement **but shall continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the physician assistant's education, experience and competencies. The level of collaboration required by this subsection is determined by the policies of the practice setting at which the physician assistant is employed, including a physician employer, physician group practice or health care institution.**

Lastly, A.R.S. § 32-2536(B) required ARBoPA to adopt rules to ensure that collaborating physician assistants continue to be safe when they move to new areas of practice:

B. The board shall adopt rules establishing additional certification standards or requirements for physician assistants who previously completed eight thousand clinical practice hours certified by the board and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified. The certification standards or requirements shall ensure appropriate training and oversight, including a supervision agreement if warranted, for the physician assistant's new practice setting or specialty.

ARBoPA approached the implementation of HB2043 with the goal of identifying the least restrictive manner in which to enforce the provisions of the bill. To that end, the rules adopted by ARBoPA leave the authority at the practice level for ensuring that the collaborating physician assistant practices in accordance with A.R.S. § 32-2531(B) as well as ensuring that collaborating physician assistants who move into new areas of practice are properly educated and trained to practice safely. It should be noted that during the deliberations regarding the new rules, the Board considered and rejected requirements to have the policies submitted to the Agency, and for the Agency to affirmatively regulate the training and education requirements of A.R.S. § 32-2536(B).

Thus, the requirement for a collaborating physician or entity to maintain policies regarding the collaborating physician assistant is already in statute. The language of R4-17-402 simply ensures that those policies are in writing and sufficiently clear so that all parties involved can understand the degree of collaboration required by the entity for the physician assistant. Additionally, the rules are designed to meet the Agency's obligation under the statute to ensure that collaborating physician assistants remain competent to practice when they change practice areas.

It should be noted that as part of every investigation of a PA, a supervision or collaboration agreement is requested, which provides the Board with written documentation supporting the identity of the supervising/collaborating physician. Without this requirement, the Board would have no ability to confirm the identity of the reported physician supervising or collaborating with the PA. Since PA's cannot practice independently, the supervising/collaborating physician is required to provide a response related to the complaint and their supervision/collaboration of the PA. Therefore, the requirement for written policies assists the Board to meet its obligation to investigate and regulate unsafe practice, which is the primary duty of ARBoPA. *See* A.R.S. § 32-2504(A)(1) (stating that the Board shall, "As its primary duty, protect the public from unlawful, incompetent, unqualified, impaired or unprofessional physician assistants.)

I hope that this letter has answered the concerns that you have raised. The goal of the rules is to create a process that is clear, and to provide the least amount of administrative barriers by shifting much of the oversight away from the Board to the practice level, but still protects the public.

I am happy to engage in any further discussion if that would be helpful.

Respectfully,

Patricia E. McSorley
Executive Director

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Chairman
HEALTH & HUMAN SERVICES
JUDICIARY,
Vice-Chairman

February 26, 2024

Patricia E. McSorley
Executive Director
Arizona Regulatory Board of Physician Assistants
1740 W. Adams, #400
Phoenix, AZ 85007

Re: Rulemaking regarding Physician Assistants

Dear Ms. McSorley,

Thank you for your Feb. 16 response to my letter regarding the Board's rulemaking which arose from the passage of HB2043. After reviewing your response, I still have concerns that the rulemaking is exceeding the letter and intent of the bill. I will address your response in the order they appear in your letter.

You referenced that you are "aware that many PAs are frustrated with the bill as they believe they were being given the statutory right to practice independently, and they would be free of any financial burden associated with "supervision." While it is debatable what "practicing independently" may mean, it was the understanding when passing the legislation that PAs may currently own a practice even while a supervision agreement was required and that there is a financial burden placed on many PAs by the supervision agreement. It was contemplated and intended in this legislation that the various current practice arrangements could continue and that the financial burden placed upon the PAs by a supervision agreement could be removed.

As I stated in my previous letter, the rulemaking authority provided to the Board in the legislation was regarding a PA who may be embarking on a practice that is not substantially similar to the practice setting….". The bill did not contemplate further rulemaking on other aspects of the bill, particularly when those rules provide more restrictions and requirements than set forth in the bill.

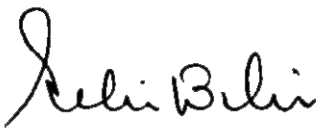
The definition cited of a "collaborating physician or entity" from the bill provides that one or more physicians be designated by name OR position. It does not require an *agreement* between a named physician or physicians. Clearly if an entity or practice is collaborating, they can

designate a position such as medical director etc., or list specific physicians, but a written and signed agreement is not required.

Further, A.R.S. Sect. 32-2531(B) provides that the level of collaboration is determined "by the policies of the practice setting at which the physician assistant is *employed*." However, it neither requires the policies to be in writing nor signed by the applicable physician(s) and PA. Further, the policies apply to those PAs who are "employed", not a contracted PA or a PA who owns a practice. The major concern is that the rules promulgated by the Board require a written policy SIGNED by a physician and PA, which is tantamount to an agreement, which is not required, contemplated, or intended by the legislation.

I appreciate your diligence and the work of the Board in implementing this legislation and look forward to continuing to consult with you on rule revisions which will align with the intent of the bill.

Respectfully,



Representative Selina Bliss

Katie Hobbs
Governor

Susan Reina, P.A.-C
Chair

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April 1, 2024

Patricia Grant, Esq.
Staff Attorney
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 302
Phoenix, AZ 85007

Via email: patricia.grant@azdoa.gov

RE: Petition for Review of A.A.C. R4-17-401 and A.A.C. R4-17402

Dear Ms. Grant,

The purpose of this letter is to serve as a preliminary response to the Petition for Review of A.A.C. R4-17-401 and A.A.C. R4-17402 as passed by the Arizona Regulatory Board of Physician Assistants ("Board" or "ARBoPA") through exempt rulemaking and to provide Governor's Regulatory Rule Council ("GRRC") with the Board's rationale for the rules as adopted. Additionally, this letter should serve to supplement the record regarding the Board's deliberations on implementation of HB2043, and other relevant issues. In short, the Board's rules are consistent with statute, reasonably necessary to carry out the purpose of the statute, and procedurally valid. To that end, this letter will address the concerns identified by the Petitioner in their brief.

1. **A.A.C. R4-17-402(B)-(G) are Consistent with A.R.S § 41-1033(A)**

Attached are the Board and Committee meeting minutes reflecting the substantial deliberation and careful study undertaken by the Board in coming to the final version of Rules R4-17-401 and 402.(*See* Board and Committee meeting minutes attached as Exhibit 1.) The Board's review was focused on the following key portions of the new statutory language created by SB2043:

A.R.S. § 32-2501(6):

> "Collaborating physician or entity" means a physician, physician group practice, physician private practice or licensed health care institution that employs or collaborates with a physician assistant who has at least eight thousand hours of clinical practice as certified by the board pursuant to section 32-2536 and does not require a supervision agreement **and that designates one or more physicians by name or position who is responsible for the oversight of the physician assistant.**

A.R.S. § 32-2531(B):

> B. Pursuant to the requirements of this chapter and the standard of care, a physician assistant who has at least eight thousand hours of clinical practice certified by the board pursuant to section 32-2536 is not required to practice pursuant to a supervision agreement **but shall continue to collaborate with, consult with or refer to the appropriate health care professional** as indicated by the patient's condition and by the physician assistant's education, experience and competencies. **The level of collaboration required by this subsection is determined by the policies of the practice setting at which the physician assistant is employed, including a physician employer, physician group practice or health care institution.** Collaboration, consultation or a referral pursuant to this subsection may occur through electronic means and does not require the physical presence of the appropriate health care professional at the time or place the physician assistant provides medical services. This subsection does not prohibit a physician assistant who has at least eight thousand hours of clinical practice certified by the board pursuant to section 32-2536 from practicing pursuant to a supervision agreement.

A.R.S. § 32-2536(B):

> B. **The board shall adopt rules establishing additional certification standards or requirements for physician assistants** who previously completed eight thousand clinical practice hours certified by the board and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified. The certification standards or requirements shall ensure appropriate training and oversight, including a supervision agreement if warranted, for the physician assistant's new practice setting or specialty.

A.A.C. R4-17-402(B)-(G) is both consistent with these statutes and reasonably necessary for the Board to carry out their purpose. In short, A.R.S. § 32-2536(B) requires the Board to develop rules that ensure that collaborating physician assistants who become employed in an area of practice that is not substantially similar to previous practice areas are safe to practice in their newly chosen field.

The Board ultimately determined that this was best accomplished at the practice level, rather than more restrictive alternatives, such as having the Board determine substantial similarity or dictate continuing education/supervision requirements through an affirmative application and review process. However, the Board recognized that in order to make these determinations, collaborating physicians and entities would need to have sufficient and objective data for review. For that reason, R4-17-402(B)-(D) and (F) requires collaborating physicians and entities to have written and annually reviewed policies articulating the collaborating physician's scope of practice. As noted in the Board's response to Senator Bliss, the requirement for a collaborating physician or entity to have policies is articulated in A.R.S. § 32-2531(B). (*See* Board's Response to Senator Bliss dated February 16, 2024 attached as Exhibit 2.)These written policies could then be used by any prospective collaborating physician or entity to determine substantial similarity and whether additional training or supervision is necessary at the initiation of the collaborative relationship. R4-17-402(E) serves to ensure that the new collaborating physician or entity provides the necessary training and oversight as required by A.R.S. § 32-2536(B). In the event that the

Board undertakes an investigation regarding a collaborating physician assistant, R4-17-402 (G) simply addresses the collaborating physician or entity's obligation to provide them to the Board upon request.

Thus, these rules are both consistent with the Board's new statutes and reasonably necessary to carry out the purpose of A.R.S. § 32-2536(B).

2. The Rules are Procedurally Valid

The Board obtained the approval of the Governor's Office prior to promulgating the rules. Attached are the emails between the Board's Executive Director and the Governor's Office in December, 2023. (*See* emails attached as Exhibit 3.) Approval was obtained on December 19, 2023.

3. The Rules are not Unduly Burdensome.

The Board in its multiple meetings held to consider and draft rules for collaborative practice and the directives in HB2043, and carefully considered the intent of the statute, the language within the statute and the input it received from physician assistant members of the board, stakeholders and from Ms. Kathy Busby, the lobbyist, who was involved in the legislative process. The Board also discussed and weighed its obligation to protect the public.

The Board did not find it unreasonable or contrary to statute to have a written business record articulating the relationship between a collaborating physician assistant and their respective collaborating physician or entity. The rule requirements do not limit the designation to a single physician, nor do they "tether" the collaborating physician assistant to a specific physician like a supervisory agreement would. The rules embrace the Optimal Team Practice model cited by the Petitioner in its original Sunrise Application, and the requirements were left flexible to allow for the possibility that the collaboration agreement would designate a physician collaborator by role or department within an entity. (See Sunrise Application, attached as Exhibit 4.)

While the rules do not tether a collaborating physician assist to a specific physician, neither the statute nor the rule contains language that would lead to a complete untethering of the relationship between the collaborating physician and the collaborating physician assistant as there remains the statutory obligation for "oversight." *See* A.R.S. § 2501(6).

The Petitioner finds any requirement for written documentation for collaborating physician assistants objectionable; however, the statute itself indicates that the level of collaboration would be made at the practice level, and determined by the policies of the practice setting at which the physician assistant is employed. *See* A.R.S. § 32-2531(B) From a healthcare management perspective, and in light of the legal liabilities related to the practice of medicine, it strains belief that the "policies" referenced in the statute would intend to be verbal in nature and devoid of lack a mutual agreement and understanding at the initiation of a collaborative practice relationship where oversight is required by law.

Further, the written policies referenced in R4-17-402 call for a plan individualized for the collaborating physician assistant's education, experience, and competencies. There are no requirements under the written policies for the collaborating physician to exercise direction or control over the performance of health care services as defined in A.R.S. § 32-2501(18):

> 18. "Supervision means a physician's opportunity or ability to provide or exercise direction or control over the services of a physician assistant. Supervision does not require a

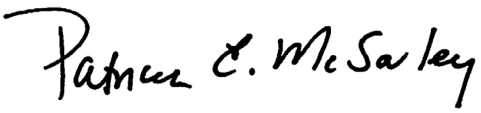
physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.

While collaboration is not defined in statute, the distinction between supervision and collaboration is a matter of degree, as made evident by language in A.R.S. § 32-2531(B) requiring a collaborating physician assistant to "continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the physician assistant's education, experience and competencies."

4. Conclusion

Thank you for the opportunity to submit this initial response. I hope this provides GRRC with additional context and background necessary to understand the Board's rationale with regard to the challenged rules. The Board is committed to engaging in rulemaking that meets statutory requirements to protect the public and effectuate its governing practice act, while also minimizing regulatory impact on practitioners. For this reason, the Board is concurrently requesting approval from the Governor's Office to open a rulemaking docket pursuant to A.R.S. § 41-1095 to review and finalize A.A.C. R4-17-401 and R4-17-402. Please advise if any additional information would be helpful for your review.

Respectfully submitted,



Patricia E. McSorley

Executive Director

Arizona Regulatory Board of Physician Assistants

Arizona Regulatory Board of Physician Assistants
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FINAL MINUTES FOR MEETING OF JOINT LEGISLATION AND RULES COMMITTEE TELECONFERENCE MEETING Held on Friday, June 23, 2023 1740 W. Adams St., Board Room 4100, Phoenix, AZ 85007

Committee Members
Susan Reina, P.A.-C., Chair
David J. Bennett, D.O.
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
John J. Shaff, PA-C, DFAAPA

A. CALL TO ORDER

Chairwoman Reina called the meeting to order a 3:04 p.m.

B. ROLL CALL

The following Committee Members participated via Zoom: Dr. Bennet, Dr. Dang and PA DiBaise.

The following Committee Member was present in the room: PA Reina and PA Shaff.

ALSO PRESENT

The following Board staff participated in the meeting: Patricia McSorley, Executive Director; Kristina Jensen, Deputy Director; Michelle Robles, Board Operations Manager. Also present: Carrie Smith, Assistant Attorney General ("AAG").

C. CALL TO THE PUBLIC

No individuals addressed the Committee at the Call to the Public.

D. APPROVAL OF MINUTES

- April 29, 2021 Joint Legislation and Rules Committee Teleconference

  MOTION: PA Shaff moved to approve the April 29, 2021 Joint Legislation and Rules Committee Teleconference.
  SECOND: Dr. Bennett.
  The following Committee Members voted in favor of the motion: Dr. Bennet, Dr. Dang, PA DiBaise, PA Reina and PA Shaff.
  VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
  MOTION PASSED.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS

Ms. McSorley provided a copy of the statute, a preliminary draft and information on how other states are handling the collaborative practice to the Committee. She stated that the goal is to create rules that better explain the statute. It should include how and who is going to establish the hours and the methodology for how the hours have been met. The statute also requires some type of certification by the Board. Finally, if the PA is initially certified in a specialty but changes to a substantially different area there needs to be rules on how to transition.

Ms. Smith noted that the courts will use a dictionary definition if they cannot find a legal definition.

PA Reina commented that Arizona is unique in the transition to another substantially different type of practice. The Committee needs to determine the requirements for certification of that transition.

PA Shaff commented that the Board can include a timeframe and training for new area.

PA DiBaise asked about why the Board was considering classification of areas of practice.

PA Reina discussed designating 3 specialties and the PA would provide documentation of the 8000 hours of training for the specialty. The Committee would need to determine how to create the certification for these PAs to begin.

Ms. Smith noted that the bill addresses the minimum requirements; the issue is how to best address the qualitative requirements in the statute.

PA Shaff opined that the rules should not create too many obstacles. If the collaborative physician (CP) approves of the hours and signs off on the training it should be adequate. This would mirror the current process.

PA Reina stated that the Committee needs to establish whether the certification is a general certification or a subspecialty certification.

Dr. Bennet noted that it would be difficult to put a timeframe or 8000 hours for each subspeciality and it would make it difficult to get PAs licensed. Dr. Bennet opined that it should be simple and if the collaborative physician agrees that they are ready and agreement between the CP and the PA can be signed.

Ms. McSorley noted an example collaborative agreement that the Committee can use as a starting point.

Ms. Smith referred the Committee to A.R.S. § 32-2536(B) which requires the Board to adopt rules establishing additional certification standards for collaborating PAs who seek employment for a position that is not substantially similar to the area in which the PA was previously certified. Ms. Smith stated that this is policy decision.

PA DiBaise noted the Oregon agreement and opined that it is simple and easy to follow. The PA can reapply instead of transitioning when changing practices.

PA Shaff noted that currently, if a PA's practice changes they have ten days to inform the board therefore it can be as simple as informing the Board of their new position and collaborative practice agreement.

PA Reina expressed concern about having sufficient ability to protect the public.

PA DiBaise noted that PAs can already do these things and ultimately this process would require a legal document and would need a CP.

PA Shaff opined that unfortunately there is always going to be a few bad eggs and overall this won't change too much about how PA's practice.

PA Reina commented that a CP takes away the legal liability whereas a supervising physician has a legal liability to what the PA does. PA Reina opined that the Committee needs to be careful when wording this to protect the public.

PA DiBaise noted that if utilizing this route PAs will be responsible for their own liability insurance.

PA Reina suggested adding language that the CP must be in the same area of practice to help protect the public.

Ms. McSorley stated that staff can create language that the PA's area of practice should be substantially similar to the CP and if changing then apply for recertification.

PA DiBiase commented that this statute is not intended to restrict the PA who has obtained the 8000 hours to practice at the top of their practice.

Committee members agreed that this should not make the PA's practice more restrictive, this should be used to move the PA practice forward.

PA Shaff opined that the Maryland Board had a good definition of what collaborative practice is. The Board can use the current process but for a CP and duties would be delegated on the practice level. The only change is taking the liability from the physician.

PA Reina inquired about clarifying how PA's can establish that they've obtained the 8000 hours.

PA DiBaise suggesting letting the site that they work at or who's hiring them verify the work history and make that determination.

Ms. McSorley noted Maryland's transition statute language, which is restrictive.

PA Reina commented that even if you have a collaborative certification, when moving to a substantially different area the PA can sign a supervising physician delegation agreement for a certain amount of hours before qualifying for a collaborative agreement in the new area.

PA DiBaise reiterated that the 8000 hours should be determined at the practice site otherwise if the Board sets an arbitrary limit it would make the Board a certifying body.

Ms. Smith reiterated that this is a policy decision for the Board but noted that the legislature has made a policy decision by wanting the Board to be involved in the change of practice area process. Ms. Smith noted the language of the statute which states, "The certification standards, or requirements shall ensure appropriate training and oversight, including a supervision agreement if warranted for the physician assistant's new practice setting or specialty."

PA Shaff suggested that the Board can use those exact words but include that the certification for a new practice setting or specialty qualification would be decided at the practice level and a new affidavit of collaboration would be signed to certify the change.

Ms. Smith opined that the proposed language would likely meet the statutory criteria.

PA Shaff noted that if there is a change in practice the PA has 10 days to notify the Board, otherwise they're in violation of the statute, and you can get brought in front of the Board.

Ms. Smith stated that the Committee will have to create some draft rules and get them through the GRRC process.

PA Shaff stated that the rules can contain language to fulfil subsection b, that anytime you change jobs you need to submit this form with x, y, z within 10 days. From a practice standpoint the Board doesn't want to make things more difficult but need to create the steps to meet section b.

PA Reina summarized that the generalized certification is for 8000 hours within the last 5 years. It would document the scope of practice, and then in order to satisfy the language in the statute if you have any sort of lateral movement the PA will have to submit the collaborating agreement again. The form can state that it is on the practice level to establish you've met the requirement. The PA doesn't need to have a collaborating agreement but can opt for a supervising agreement.

The Committee agreed with the idea to have the PA re-submit the collaborative agreement.

Ms. Smith opined that this would satisfy the requirement by directing the PA and the practice to ensure this is met. Ms. Smith noted that this proposed rule would need to be brought to the Board and GRRC.

PA Reina stated that is should include that if there is any change in practice the PA has 10 days to inform the Board with a new collaborative agreement

Ms. McSorley stated that staff will create a draft form for consideration by the Committee prior to sending it to the Board.

PA Reina suggested having another Committee meeting prior to the full Board's August meeting.

Ms. McSorley requested guidance for calculating the 8000 hours.

PA Shaff noted that there are 2000 hours per year if working full time, so there needs to be at least four years' worth of work within the five-year timeframe. This can be verified by getting a letter from the employer verifying the hours and can be submitted with the application. The PA can attest on the application that they had 8000 clinical practice.

Ms. McSorley confirmed the application will include obtaining an attestation from the employers over the 5 year and have it sent directly to the Board.

Ms. Smith noted that it is important to define a clinical hour in the rule, policy or on the application.

PA Shaff opined that a clinical hour is anything directly related to patient care.

F. DISCUSSION OF DATES AND TOPICS FOR UPCOMING COMMITTEE MEETING

G. ADJOURNMENT

MOTION: PA Shaff moved for adjournment.
SECOND: Dr. Bennett.
The following Committee Members voted in favor of the motion: Dr. Bennet, Dr. Dang, PA DiBaise, PA Reina and PA Shaff.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

The Committee's meeting adjourned at 4:30 p.m.

Patricia E. McSorley, Executive Director

Arizona Regulatory Board of Physician Assistants
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FINAL MINUTES FOR MEETING OF JOINT LEGISLATION AND RULES COMMITTEE TELECONFERENCE MEETING Held on Thursday, August 17, 2023 1740 W. Adams St., Board Room 4100, Phoenix, AZ 85007

Committee Members
Susan Reina, P.A.-C., Chair
David J. Bennett, D.O.
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
John J. Shaff, PA-C, DFAAPA

A. CALL TO ORDER

Chairwoman Reina called the meeting to order a 5:04 p.m.

B. ROLL CALL

The following Committee Members participated via Zoom: Dr. Bennet, Dr. Dang and PA DiBaise.

The following Committee Member was present in the room: PA Reina and PA Shaff.

ALSO PRESENT
The following Board staff participated in the meeting: Patricia McSorley, Executive Director; Kristina Jensen, Deputy Director; Michelle Robles, Board Operations Manager. Also present: Carrie Smith, Assistant Attorney General ("AAG").

C. CALL TO THE PUBLIC

Sarah Bolander, Amanda Shelley and Melanie Lyon from ASAPA addressed the Committee during the Call to the Public.

D. APPROVAL OF MINUTES

- June 23, 2023 Joint Legislation and Rules Committee Teleconference

  MOTION: PA Shaff moved to approve the June 23, 2023 Joint Legislation and Rules Committee Teleconference.
  SECOND: PA DiBaise.
  The following Committee Members voted in favor of the motion: Dr. Dang, PA DiBaise, PA Reina and PA Shaff. The following Committee Member was absent: Dr. Bennet.
  VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
  MOTION PASSED.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS

Ms. McSorley noted the definition of collaborating physician or entity on page 1 which is regarding designating one or more physicians by name or position, who is responsible for the oversight of the physician assistant. Ms. McSorley also noted the language in section 32 2536 on page 14 which is the nuts and bolts of regarding the documentation and certification for collaborative practice. Ms. McSorley provided the Committee with the rules. The first step is the process would be certification of the physician assistant for collaborative practice. This will be done at the staff level and will provide the

application to the PA, who is in good standing. The PA is going to provide the application with proof of the 8,000 clinical hours within the previous five years. Ms. McSorley read for the record the definition of a "clinical hour". The idea is that the PA will gather the documentation necessary, and we'll have an attestation from a previous employer confirming the hours. If the PA satisfactorily meets all of the requirements for collaborative physician assistant staff will certify them and maintain a list on the Board's website. Ms. McSorley noted that this is the only piece that Board staff will be involved in. The next part goes to the certification for an area of practice, and that's going to be completely dealt with at the practice level. Ms. McSorley noted that the next rule is regarding the requirements for collaborative practice agreement and certification to practice in a specified area. This is being done to comply with the rule regarding what collaborative practice is and that there needs to be a position, name, or position from the entity that is going to be responsible for oversight of the physician assistant. Ms. McSorley noted that oversight and supervision are different. Oversight is to have a mechanism in place should the PA need to collaborate or refer with somebody. Ms. McSorley also noted that if an investigation is required, the Board is going to have to look to the collaborating physician and interview that person, so the Board needs a record of it. The agreement and any addendums would need to be maintained by both the practice and the PA. If a collaborating physician considers certifying a PA for an area practice that is not substantially similar to an area practice for which the PA was previously certified, certification should only take place at the time and there needs to be a record of it. Ms. McSorley stated that the collaborative agreement addresses the need for certification, which is set forth in the statute. Ms. McSorley reiterated that this is all done at the practice level and is through a discussion between the PA and the collaborating physician. There is also language in the rules regarding if the PA requires supervision. Regarding supervision prior to acting in a collaborative manner, the length of supervision shall be determined by the physician accepting responsibility for the training and supervision of the PA. The terms of the supervision shall be documented in the collaboration agreement. Ms. McSorley noted that section J's language is to create a communication chain and to create a mechanism to be able to refer to the collaborator.

PA DiBaise opine that the Board does not need to create the collaborating agreement since the supervising agreement is at the practice level. PA DiBaise opined that these proposed rules are stringent compared to supervision.

Ms. McSorley noted that these collaborating agreements are not required to be submitted to the Board unless there is an investigation.

PA Reina commented that the proposed form is to be used as a universal template. PA Shaff opined that having a template would make the process easier and more uniform. PA Shaff noted that since it is decided and kept at the practice level it is not more restrictive.

PA DiBaise expressed concern that this is codifying more terminology and rules for a collaborative PA that what is required for supervising. PA DiBaise opined that the onus is on the practice and the PA to have everything in order.

PA Reina noted that the bill specifically states you must designate a physician by name or position.

PA DiBaise expressed concern regarding naming a collaborative physician by name when it can just state the position.

Committee members discussed if there is an investigation or a change in practice what that would look like if only a position was listed on the collaborative agreement instead of a physician by name.

Ms. Smith clarified that the statute states "the Board shall adopt rules establishing additional certification, standards, or requirements. Physician or physician assistants who previously completed the 8,000 hours and were seeking employment with a collaborating physician or entity for a position

that is not substantially similar to the practice setting or specialty in which the PA was previously certified.". This requires the Board to establish some rules for when a PA changes practice.

Regarding a change in practice or supervisory agreement, PA DiBaise opined that this should be decided at the practice level.

PA Shaff confirmed that the rule states if they change to a field that is substantially different or not, it is decided at the practice level whether they need to go to a supervisory position until they are able to go to a collaborating position or they can sign off to collaborate in a substantially different role. This is determined between the PA and their practice.

PA DiBaise expressed concern that the draft language reads as if it gets turned into the Board.

PA Reina confirmed that there is no language that states it needs to be turned into the Board. It only needs to be submitted if there is an investigation.

PA Shaff noted that the application and documents for certification get turned into the Board, everything else is at the practice level.

PA DiBaise noted the language in Point B and suggested using the language certify a collaborative "scope of practice" instead of "area of practice".

Ms. McSorley noted that she used the term "certification" to be in line with the statute.

PA Shaff noted that the Board is doing the initial certification. The collaborative agreement is saying this is the area that I'm working in and here are my collaborating physicians. PA Shaff suggested replacing the word "certify" with "state" as it may be more appeasing.

Ms. Smith informed the Committee that it is a policy decision.

Ms. McSorley agreed that certification is a strong word but that is the language in the statute. Ms. McSorley explained that she is trying to get the Committee to agree on the concepts and a process. A professional rule writer will get the language in the right form for public comment and then to turn it into GIRC. Once the Committee agrees on the concepts, Ms. McSorley suggested that a FAQ should be sent out to the community.

Regarding Point B, PA DiBiase opined that only the person who's agreed to have oversight needs to be listed and not have a list of everyone you could potentially work with.

PA Reina commented that the understanding is that one physician or position is needed but multiple can be added. PA Reina noted that this language was proposed by the ASAPA lobbyist.

PA DiBaise requested that staff touch base with ASAPA's lobbyist to clarify the intent of what's stated in Point B.

PA Shaff agreed that the language can be cleaned up but it is just asking for the collaborating physician's information.

PA DiBaise agreed with alternate pathway regarding the 8,000 hours within five year for certification but expressed concern regarding section four that requires the PA to get a signed attestation. PA DiBaise opined that this seems superfluous and inquired what would happen if there is an issue obtaining the attestation.

PA Shaff agreed that point four seems redundant.

PA DiBaise commented that claiming didactic hours may require an attestation but it may not be needed if the PA has the required documentation.

Ms. McSorley stated that the Committee can determine if just documentation of the hours is sufficient or if an attestation is needed as well.

PA DiBaise commented that the attestation can be another form of documentation.

Committee members suggested adding language that an attestation from a previous employer, clinical practice, credentialing department or supervising physician for the 8,000 clinical hours should be added as an option in Section 3 and remove Point 4.

Ms. Smith encouraged the Committee to provide Board staff with the tools necessary to address those who aren't utilizing the process in good faith and complying with the law. There should be some way for Board staff to be authorized to communicate with these prior employers in order to give the Board the investigatory functionality in the instance where there is a concern that the information being presented to the Board is not truthful.

Ms. McSorley commented, in the context of looking at these clinical hours, if staff has a question perhaps the Committee can add some language that staff may contact previous employers to confirm the number of hours.

Committee members agreed that is reasonable.

Ms. McSorley also suggested as an alternative, the attestation from the employer can be primary source and sent directly from the employer to the Board.

PA DiBaise inquired about what would occur if the attestation cannot be obtain due to some catastrophic reason.

Ms. Smith noted that the MD Board has language regarding waiver requests in its application rules and suggested that the Committee can be provided with something translated from that for consideration.

PA DiBaise agreed with having a waiver of some form to address those situations where an attestation cannot be obtained.

PA Reina inquired about language regarding a substantial lapse in employment.

PA Shaff commented that if they have kept their license active do we ask if they have been clinically working.

Ms. McSorley noted that if the PA kept an active license they would be keeping up to date with their CME and would have maintained licensure and education requirements.

PA DiBiase noted that the PA would be evaluated at the practice level.

PA Reina clarified that this is for the initial application.

PA Shaff noted that this is addressed in the language, if the physician assistant can provide proof of 8,000 hours within 10 years of the date of the application.

Ms. McSorley noted that this is a situation or question that can also be added to the FAQs.

PA Reina requested that this topic be added to the full Board's meeting and if needed a specialty meeting can be held.

F. DISCUSSION OF DATES AND TOPICS FOR UPCOMING COMMITTEE MEETING

G. ADJOURNMENT

MOTION: PA DiBaise moved to adjourn the meeting.
SECOND: PA Shaff.
The following Committee Members voted in favor of the motion: Dr. Dang, PA DiBaise, PA Reina and PA Shaff. The following Committee Member was absent: Dr. Bennet.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The meeting adjourned at 6:29 p.m.

Patricia E. McSorley, Executive Director

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FINAL MINUTES FOR REGULAR SESSION MEETING
Held on Wednesday, August 30, 2023
1740 W. Adams St., Board Room A, Phoenix, AZ 85007

Board Members
Susan Reina, P.A.-C, Chair
John J. Shaff, PA-C, D.F.A.A.P.A., Vice-Chair
Levente G. Batizy, D.O.
David J. Bennett, D.O.
Kendra Clark, P.A.-C
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
Shiva K. Y. Gosi, M.D., M.P.H., F.A.A.F.P., C.P.E.
Amanda Graham, P.A.
Beth E. Zoneraich

GENERAL BUSINESS

A. CALL TO ORDER
Chairwoman Reina called the meeting to order at 10:05 a.m.

B. ROLL CALL
The following Board members participated in the meeting: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich.

The following Board member was absent: Dr. Bennet and PA Clark.

ALSO PRESENT
The following Board staff and Assistant Attorney(s) General were present: Kristina Jensen, Deputy Director; Carrie Smith, Assistant Attorney General ("AAG"); Raquel Rivera, Investigations Manager; Joseph McClain, M.D., Chief Medical Consultant and Michelle Robles, Board Operations Manager.

C. CALL TO THE PUBLIC
Individuals who addressed the Board during the Call to the Public appear beneath the matter(s) referenced.

D. REVIEW, DISCUSSION, AND POSSIBLE ACTION REGARDING EXECUTIVE DIRECTOR'S REPORT
- Discussion Regarding Meeting Calendar for 2024

  Board staff noted that there is limited availability for Board Room A in November 2024 and provided alternative dates for the Board's consideration.

  MOTION: PA Shaff moved to approve the Calendar with the December 4, 2024 date.
  SECOND: PA Graham.
  VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich.
  The following Board member was absent: Dr. Bennet and PA Clark.
  VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

MOTION: PA Shaff moved to approve the February 28, 2024, May 29, 2024, and August 28, 2024, meeting dates.
SECOND: Dr. Dang.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board member was absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING CHAIR'S REPORT

No report was given.

F. REVIEW DISCUSSION AND POSSIBLE ACTION REGARDING LEGAL ADVISOR'S REPORT

No report was given.

G. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS

PA Melinda Rawcliffe from ASAPA addressed the Board during the Public Statements portion of the meeting.

Ms. McSorley reported that the JLRC and staff have been working to create a set of proposed rules to meet the requirements of the statute. Rule 1 would address the initial certification process. The Board will maintain a register of certified PAs on the Board's website. Ms. McSorley further explained Rule 2 which would identify the PA's area of practice as determined between the PA and the collaborating physician/entity.

PA Shaff explained that under the proposed rules, once the initial 8000 hours is certified the PA would not have to repeat 8000 hours in another field before being allowed to practice collaboratively, but will require a sign off in the new area by the collaborating physician/entity.

Ms. McSorley noted that a new collaborative agreement will be needed for each new employer, any training or education needed is best identified by the collaborating physician in discussion with the PA. Ms. McSorley confirmed that the liability remains with the PA.

Ms. Zoneraich expressed concern with regulations that would leave the decision-making on training and education at the practice level without additional oversight from the Board. PA Reina noted that the collaborating physician and PA would have to agree and that a collaborating physician/entity would have the option of requiring a supervision agreement until the PA has reached the skill to work collaboratively PA Shaff opined that there is some onus on the next physician who signs off and says it is okay. PA DiBaise noted that there is a credentialling process in hospital settings, so there are checks and balances. Ms. Zoneraich commented that procedures can take place out of the hospital setting and there would be no government or DHS oversight. Ms. Zoneraich opined that the lack of oversight could be a risk to the public. Ms. Zoneraich also expressed concern regarding allowing for teaching hours to count toward certification. PA Reina stated that this is not independent practice and that there is oversight. Dr. Gosi agreed that teaching hours are significantly different than clinical hours and that if a PA is changing to a substantially different area there should be some sort of supervision. PA Reina explained that per the statute if a PA changes to a substantially different area of practice, the need for a supervision agreement can be discussed at the practice level before changing to collaborative practice. PA Shaff opined that there are more checks and balances with this agreement than the current practice.

Ms. McSorley noted that the statute does not specify that the 8000 must be in a specific field but generally requires 8000 hours in clinical practice. The proposed rules contemplate that when the

collaborating PA makes the initial engagement with a collaborating physician, they establish the area that the PA will be practicing in. Ms. McSorley noted the statute language for switching to a substantially different area of practice. She further noted that the drafted rule does contemplate switching areas and there is room for a supervising agreement if the physician opines that the PA is not sufficiently trained in that area.

PA Graham noted that if a physician does not want to collaborate with a PA, they do not have to. Ms. Zoneraich opined that there is a financial incentive to utilize PAs in the office setting, and therefore this gives that physician the ability to have more PAs without the liability. Dr. Dang noted that this current method of collaboration is being used in other states.

Ms. McSorley confirmed that collaborative practice is currently being done in seven states.

Dr. Dang requested that ASAPA provide data on how this is working in those states for the Board's review. Dr. Dang commented that the PA will have to assess their own ability since if they make a mistake, they hold all the liability and can potentially lose their license. Dr. Dang stated that he was in agreement with allowing the PA and physician to use their own clinical judgment.

Ms. McSorley explained that Rule 3 permits multiple collaborative agreements, and each new collaborative physician or entity requires an agreement that recognizes the PA is working under a collaboration agreement with an entity or physician. Rule 5 contemplates broadening the timeframe for accumulating the hours to ten years and that didactic hours can contribute towards the 8000-hour requirement.

Ms. Zoneraich expressed concern regarding the ten-year timeframe as there can be a large gap in practice.

Ms. McSorley reiterated that this goes back to what agreement is used with the physician or entity.

PA Shaff noted that the license has to remain active and that there are provisions in place if a PA lets their license lapse. PA Reina noted that a PA can keep the license active by taking CMEs even if they aren't actively practicing.

H. APPROVAL OF MINUTES

- May 31, 2023 Regular Session Meeting

MOTION: Ms. Zoneraich moved to approve the May 31, 2023 Teleconference meeting.
SECOND: Dr. Batizy.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

LEGAL MATTERS

I. FORMAL INTERVIEWS

1. PA-22-0024A, CHRISTOPHER M. BERO, P.A., LIC. #5861
   PA Bero was present with counsel Jeffrey McLerran.

   Board staff summarized that the Board is considering this case in which patient LT's left total knee arthroplasty site was diagnosed with an infection approximately 1.5 years after its implantation. SIRC determined that an allegation against PA Bero for failure to non-invasively investigate evidence suggesting the presence of infection was supported and recommended CME hours addressing PA Bero's inconsistent medical records. Board staff summarized the case findings, and noted that the Medical Consultant ("MC") opined that PA Bero deviated from the standard of care by failing to follow-up into bone scan results, though this was ordered for the contralateral knee all sites containing foreign

materials were at risk. T In addition, the MC cited the PA's decision to attempt aspirations three times at a site of foreign body implants, and then fail to submit the one successfully obtained sample, was inconsistent with the standard of care. The failure to obtain and follow-up with abnormal infection markers obtained in an ER visit known to have occurred while the patient's pain increased and function decreased failed to meet the standard of care. Finally, the MC noted that inaccurate and inconsistent documentation would make it difficult for a subsequent provider to know exactly what happened and when, including in-office procedures and laboratory obtained test results.

PA Bero provided an opening statement where he requested that the case be dismissed. PA Bero acknowledged that in hindsight he could have done things differently but believes that in the face of such an atypical presentation the outcome would not have changed. PA Bero informed the Board of LT"s presentations during the follow up visits and addressed the MC's findings. PA Bero stated that he has made efforts to improve his charting and that he no longer uses a scribe. He has also decreased his volume and spends thirty minutes per visit. PA Bero stated that he has already completed the recommended CME for records and wound control.

During questioning, PA Shaff acknowledged that this was a challenging case.

PA Bero acknowledged that the documentation errors are ultimately his fault as he approves what the scribe writes. PA Bero clarified that on the second aspiration the physician was not there but confirmed that he does discusses the cases with his supervising physician every day. PA Bero agreed that in hindsight he should have sent the 5ccs of fluid for testing. PA Bero informed the Board that the first aspiration was inarticulate, the second was superficial and the third was inarticulate and done after the IND. PA Bero explained that a bone scan was ordered for the right knee but once LT complained of left knee pain the right knee was tabled. PA Bero confirmed that there is not always a physician on site and that Friday he was there himself. PA Bero informed the Board of his rationale for prescribing Augmentin. PA Bero explained that he had opined that this was arthrofibrosis being managed long-term and therefore changed the antibiotic after the dry aspiration. The patient did report improvement after the medication change. Infection is always on the differential which is why he attempted the aspiration. PA Bero stated that the subjective findings made this a complicated case.

PA Shaff inquired about the choice made by the Supervising Physician and the phone call to the patient's husband to not proceed with the explant.

Pa Bero stated that he was in the operating room during the debridement and once the decision was made by the Supervising Physician and the patient's husband they closed the patient back up.

PA Shaff commented that this did not change the ultimate outcome but with the exception of timing.

PA Bero agreed that the issue is regarding timing.

In closing, Mr. McLerran stated that PA Bero has taken responsibility for his action and taken the recommended CME. Mr. McLerran stated that this does not warrant discipline and noted that the Medical Board dismissed the case regarding the supervising physician.

In closing, Board staff noted that arthrofibrosis was never documented.

MOTION: PA Shaff moved for a finding of unprofessional conduct in violation of A.R.S. § 32-2501(18)(j) and (p) for reasons as stated by SIRC.
SECOND: Dr. Dang.

VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

PA Shaff acknowledged the CME that has been completed by PA Bero.

MOTION: PA Shaff moved to issue an Advisory Letter for failing to check infection markers and consider obtainment of a knee arthrogram to aid in determining the presence and/or extent of the infection or a fistula and inadequate documentation. While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
SECOND: PA DiBaise.
Ms. Smith explained that this motion is a non-disciplinary outcome versus the Letter of Reprimand recommendation by staff, which is disciplinary.

Ms. Zoneraich opined that there should have been sooner intervention and asking for assistance. The lack to obtain help led to this patient suffering for longer. Dr. Batizy opined that the Supervising Physician was involved in the care and that the Board must look at the role of the supervising physician and the PA. Dr. Batizy spoke in favor of the motion.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board member voted against the motion: Dr. Dang. The following Board members were absent: Dr. Bennett and PA Clark.
VOTE: 7-yay, 1-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

CONSENT AGENDA

J. CASES RECOMMENDED FOR DISMISSA

MOTION: PA Shaff moved to dismiss in item numbers 1 and 2.
SECOND: Ms. Zoneraich.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

1. PA-22-0059A, CHRISTOPHER J. COSTELLO, P.A., LIC. #7505

   RESOLUTION: Dismissed.

2. PA-22-0043A, DEVON J. AUTH, P.A., LIC. #5342
   M.B. addressed the Board during the Call to Public Statements portion of the meeting.

   RESOLUTION: Dismissed.

K. CASES RECOMMENDED FOR ADVISORY LETTERS

MOTION: PA Shaff moved to issue an Advisory Letter in item numbers 1-4.
SECOND: PA DiBaise.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board member was absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

1. PA-22-0047A, MARIO R. MUNOZ, P.A., LIC. #3490

RESOLUTION: Advisory Letter for failing to report felony and misdemeanor charges within ten days as required by statute. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

2. PA-22-0060A, CHAD N. SIEVERS, P.A., LIC. #7233

RESOLUTION: Advisory Letter for action taken by the Montana Board. While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

3. PA-23-0026A, ASHLEY N. CIALLELLA, P.A., LIC. #7475

RESOLUTION: Advisory Letter for performing health care tasks without an appropriate delegation agreement and for failing to timely update addresses on file with the Board. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

4. PA-23-0063A, MARIANNE CONTRERAS, P.A., LIC. #4274

RESOLUTION: Advisory Letter for practicing with an expired license. While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

L. CASES RECOMMENDED FOR ADVISORY LETTERS WITH NON-DISCIPLINARY CONTINUING MEDICAL EDUCATION ORDER

1. PA-22-0092A, PA-22-0086A, PA-22-0062A, MARK R. SCOTT, P.A., LIC. #2319

MOTION: PA Shaff moved to issue an Advisory Letter and Order for Non-Disciplinary CME for inadequate documentation. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee. Within six months, complete no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding medical recordkeeping. The CME hours shall be in addition to the hours required for license renewal.
SECOND: Dr. Batizy.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

M. PROPOSED CONSENT AGREEMENTS (Disciplinary)

1. PA-21-0078A, PA-21-0055A, PA-22-0049A, PA-22-0068A, SCOTT J. WOFFINDEN, P.A., LIC. #4966

MOTION: PA Shaff moved to accept the proposed consent agreement for a Decree of Censure.
SECOND: Ms. DiBaise.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

N. LICENSE APPLICATIONS

i. APPROVE OR DENY LICENSE APPLICATION

1. PA-23-0060A, ELIZABETH N. ADY, P.A., LIC. #N/A

MOTION: PA Shaff moved to grant the license.
SECOND: Dr. Dang.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

OTHER BUSINESS

O. ADJOURNMENT

MOTION: PA Shaff moved for the Board to adjourn.
SECOND: PA Graham.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

The Board meeting adjourned at: 11:44 am

Patricia E. McSorley, Executive Director

Arizona Regulatory Board of Physician Assistants
1740 W. Adams St, Suite 4000, Phoenix, AZ 85007
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DRAFT MINUTES FOR MEETING OF JOINT LEGISLATION AND RULES COMMITTEE TELECONFERENCE MEETING Held on Monday, October 2, 2023 1740 W. Adams St., Board Room 4100, Phoenix, AZ 85007

Committee Members
Susan Reina, P.A.-C., Chair
David J. Bennett, D.O.
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
John J. Shaff, PA-C, DFAAPA

A. CALL TO ORDER
Chairwoman Reina called the meeting to order a 5:01 p.m.

B. ROLL CALL
The following Committee Members participated via Zoom: Chair Reina, Dr. Bennett, Dr. Dang, PA DiBaise and PA Shaff.

ALSO PRESENT
The following Board staff participated in the meeting: Patricia McSorley, Executive Director; Kristina Jensen, Deputy Director; Michelle Robles, Board Operations Manager. Also present: Carrie Smith, Assistant Attorney General ("AAG").

C. CALL TO THE PUBLIC
Sarah Bolander, Amanda Shelley and Melanie Lyon from ASAPA addressed the Committee during the Call to the Public.

D. APPROVAL OF MINUTES
- August 17, 2023 Joint Legislation and Rules Committee Teleconference

MOTION: PA Shaff moved to approve the August 17, 2023 Joint Legislation and Rules Committee Teleconference.
SECOND: Dr. Bennett
The following Committee Members voted in favor of the motion: Chair Reina, Dr. Bennett, Dr. Dang, PA DiBaise and PA Shaff.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS
Ms. McSorley noted that the Rules will be sent to a rule writer to get the format GRRC ready. Ms. McSorley informed the Committee that one of the changes is in Rule 1 paragraph 5, which added language that addresses physician assistants who have been actively practicing for 5 years and that 2000 clinical hours must be within three years. The change in Rule 2 is regarding what happens when the collaborating physician assistant substantially changes their practice would require a one year supervision agreement.

PA Shaff disagreed with the one-year supervision agreement requirement and opined that it should be decided at the practice level. PA DiBaise agreed that it should be at the practice level and questioned the logistics of who decides what is substantially different. PA Shaff noted that when a PA changes practices they are still required to inform the Board. PA Reina inquired about how the Board would differentiate what is substantially different.

Ms. Smith explained that the statute does not require the Board to make the determination, and the current language of the rule would leave that for, the PA and the collaborating physician to make.

Dr. Bennett reiterated that the Board is not a certification board. Dr. Dang inquired where this requirement came from.

Ms. McSorley clarified that this is not mirroring other states as each state is different. The certification is an Arizona distinction and the one-year supervision requirement was a suggestion for the Committee to consider as it is still going to be handled at the practice level.

Ms. Smith noted that the language of the statute leaves room for the board to make an interpretation.

PA Reina expressed concern that some PAs may interpret this as independent practice but stated that she does not want to create roadblocks on what a trained PA can do. PA DiBaise opined that if the Board is not determining what is substantially different then imposing an arbitrary one-year supervisory agreement, it seems complicated since it will be handled at the practice site anyway. PA Reina noted that it is the Board's mission to protect the public. PA Shaff reiterated that if the Board included this language, they would need to create rules and regulations on what is substantially different. PA Shaff opined that the language should remain as is without the one-year supervisory requirement. PA DiBaise agreed that the previous language was less cumbersome. The Committee agreed to keep the previous August 17th draft version of Rule 2; without the supervisory agreement.

Regarding Rule 1 Paragraph 5, PA Reina stated that this is mostly going to affect the educators. This change is that within the last 3 years have at least 2000 hours of clinical hours.

Ms. Smith clarified that this would also affect the PAs who have been practicing for over five years and who haven't reached the 8000 hours in the last five years.

Committee members agreed with the change and current draft of Rule 1. Committee members opined that 2000 hours is attainable in a three-year period for PAs working in education.

PA DiBaise noted a correction regarding the didactic hours in the FAQs and noted that the statement of the waiver is missing.

Ms. McSorley noted number 9 of the FAQs for the Committee's review; the medical services that may be provided by a collaborative PA includes "delegating and assigning therapeutic and diagnostic measures to and supervising licensed or unlicensed personnel."

PA Reina noted that the PA is held to a higher liability as a collaborative PA.

Ms. Smith noted that this bill does have changes from the regular PA's perspective and an update will be given to the full Board at the November meeting. Ms. Smith explained that this does adjust some of the supervising physician and PA relationship. Prescribing authority has to be described in the supervision agreement now and the agreement no longer needs to be updated annually.

PA Shaff suggested including the changes to the supervisory agreement in the FAQs.

Ms. Smith suggested having a separate FAQ page for supervisory agreements to prevent confusion.

Ms. McSorley confirmed that after today these drafts will go to the rule writer but suggested that they go to the full board for approval first.

Committee members agreed to send the rules to the full Board for approval.

Ms. Smith noted that there is a timeframe for public feedback on how the rules are working.

F. DISCUSSION OF DATES AND TOPICS FOR UPCOMING COMMITTEE MEETING

G. ADJOURNMENT

MOTION: PA DiBaise moved to adjourn the meeting.
SECOND: Dr. Bennett.
The following Committee Members voted in favor of the motion: Chair Reina, Dr. Bennett, Dr. Dang, PA DiBaise and PA Shaff.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

The meeting adjourned at 5:42 p.m.

Patricia E. McSorley, Executive Director

DRAFT

Arizona Regulatory Board of Physician Assistants
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FINAL MINUTES FOR REGULAR SESSION MEETING
Held on Wednesday, November 29, 2023
1740 W. Adams St., Board Room A, Phoenix, AZ 85007

Board Members
Susan Reina, P.A.-C, Chair
John J. Shaff, PA-C, D.F.A.A.P.A., Vice-Chair
Levente G. Batizy, D.O.
David J. Bennett, D.O.
Kendra Clark, P.A.-C
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
Shiva K. Y. Gosi, M.D., M.P.H., F.A.A.F.P., C.P.E.
Amanda Graham, P.A.
Beth E. Zoneraich

GENERAL BUSINESS

A. CALL TO ORDER
Chairwoman Reina called the meeting to order at 10:04 a.m.

B. ROLL CALL
The following Board members participated in the meeting: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham.

The following Board members were absent: Dr. Gosi and Ms. Zoneraich.

ALSO PRESENT
The following Board staff and Assistant Attorney(s) General were present: Patricia McSorley, Executive Director; Kristina Jensen, Deputy Director; Carrie Smith, Assistant Attorney General ("AAG"); Raquel Rivera, Investigations Manager; Joseph McClain, M.D., Chief Medical Consultant and Michelle Robles, Board Operations Manager.

C. CALL TO THE PUBLIC
Individuals who addressed the Board during the Call to the Public appear beneath the matter(s) referenced.

D. REVIEW, DISCUSSION, AND POSSIBLE ACTION REGARDING EXECUTIVE DIRECTOR'S REPORT
No report given.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING CHAIR'S REPORT
No report given.

F. REVIEW DISCUSSION AND POSSIBLE ACTION REGARDING LEGAL ADVISOR'S REPORT
- 2023 Legislative Advice Memorandum

  Ms. Smith provided a 2023 legislative update for review. All statutes went into effect on October 30, 2023 and most are administrative. Ms. Smith informed the Board of the

changes in HB204, regarding the definition for supervising physician agreements and noted that it goes into effect on December 31, 2023. Starting January 1, 2024, agreements should be amended to be in line with the statute change.

G. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS

Ms. Kaitlin Bezuyan, Ms. Melinda Rawcliffe from ASAPA and Dr. Valerie Miranda addressed the Board during the Call to the Public portion of the meeting.

Ms. McSorley informed the Board that one modification is to include the definition of good standing. A PA cannot have a pending investigation, current investigation, or disciplinary action. The collaborative agreement is an agreement between the PA and the employer or collaborating physician. The PA would apply to the Board and submit the hours for certification. Board staff will determine if those hours meet the requirement. The Board will certify the PA to be able to work as a collaborative PA but it is at the practice level to determine the scope of practice and needs to be set forth in the individualized agreement. If changing from one specialty to another the collaborating physician will determine at the practice level if additional training is needed and will have the option to have a supervisory agreement in place. Ms. McSorley noted that given all the changes, a FAQ for the collaborative practice and supervised practice will be posted to the Board's website.

PA Shaff noted that if a physician has worked 8000 hours it is approximately equivalent to four years of full-time practice.

Ms. McSorley confirmed that she will also provide the FAQs through an email blast.

MOTION: PA Shaff moved to approve the rules for the implementation of HB2043 and the amendments.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

H. APPROVAL OF MINUTES

- August 30, 2023 Regular Session Meeting

MOTION: Dr. Batizy moved to approve the August 30, 2023 Regular Session meeting.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

LEGAL MATTERS

I. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION

Possible action includes, but is not limited to, adopting Findings of Fact, Conclusions of Law and Order.

Pursuant to A.R.S. § 41-1092.08(i), the Board may meet and confer for purposes of modifying the recommended decision, including the Findings Of Fact, Conclusions Of Law and Recommended Order set forth in the ALJ's recommended decision issued in case no. 23A-8510-PAB involving Wagner Gervais, PA and in case no. 23A-8463-PAB involving Herold Pierre-Louis, PA.

1. PA-21-0101A, WAGNER GERVAIS, P.A., LIC. #8510

PA Gervais was not present. Counsel Michael Goldberg participated virtually on behalf of the PA. AAG Elizabeth Campbell was present on behalf of the State and AAG Diane DeDea was present as the Board's Independent Legal Advisor.

Ms. Campbell stated that there is a recommended decision by the Administrative Law Judge (ALJ) for Revocation. Ms. Campbell requested an amendment in Findings of Fact 6 for clarity and completeness regarding the description of unprofessional conduct as alleged in the complaint and notice of hearing. Ms. Campbell also requested that the Board amend the ALJ's Conclusion of Law. Principally, the Board should interpret the statute to require that an applicant establish residency as a condition for granting the license under the Universal Recognition pathway. Ms. Campbell noted that the PA had the option to apply for licensure through the traditional licensure pathway under the Board statutes if he had not established residency. Ms. Campbell requested that the Board adopt the ALJ's recommended order for Revocation with the requested modifications and to include the Board's costs for the hearing, which is permitted by the Board's statutes.

Mr. Goldberg provided an opening statement to the Board. Mr. Goldberg stated that the statute does not say an applicant has to establish residency before they apply. Mr. Goldberg stated that this case is going to go for review and the court can determine what the statute means. Mr. Goldberg requested that the Order go up on appeal the way it is. Mr. Goldberg opined the process has not been followed the way it should be. Mr. Goldberg opined that revocation is not appropriate and noted that the ALJ finding a deficiency in the statute shows that it is not clear. Mr. Goldberg opined that it is the job of the legislature not the Board to determine the intent of the statute. Mr. Goldberg requested the board not revoke the license and that the order go on appeal.

Ms. Campbell noted that there are two issues, first the ALJ found taht PA Gervais lied to the Board and second, PA Gervais did not establish residency in Arizona. The State does not preclude applicants that aren't Arizona residents from getting licensed in Arizona. Applicants who chose not to become an Arizona resident can use the traditional pathway for licensure. Ms. Campell informed the Board that it has the authority to accept, reject, or modify any aspect of the ALJ's recommendation by statute. Ms. Campbell requested that the Board amend the portion of the ALJ's recommended conclusions of law regarding PA Gervais having to establish residency in Arizona as a condition for obtaining a licensure under the Universal Recognition pathway.

MOTION: PA Shaff moved to adopt the attached proposed Findings of Fact including the modifications requested by the State and initiate the meet and confer process.
SECOND: Dr. Dang.
PA Shaff inquired if the PA can withdraw his application and go through the initial application process at this point.

Ms. DeDea confirmed that that is not an option at this point.

MOTION: Dr. Bennet moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).
SECOND: Dr. Bennett.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

The Board entered into Executive Session at 11:02 a.m.
The Board returned to Open Session at 11:29 a.m.
No legal action was taken by the Board during Executive Session.

VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: PA Shaff moved to adopt the attached proposed Conclusions of Law modifying the ALJ's Recommended Decision as requested by the State and initiate the meet and confer process.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: PA Shaff moved to adopt the ALJ recommendation for revocation. The Respondent shall be assessed the costs of the formal hearing incurred by the Board of $1436.80.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

During the Meet and confer process

Ms. Campbell, on behalf of the State, encouraged the Board to accept the modifications as requested.

Mr. Goldberg objected to the modifications as the process today was not the correct one. Mr. Goldberg opined that the Board does not have the authority to modify the ALJ's order and that if the statute needs to be interpreted it shall be done by the legislature.

MOTION: PA Shaff moved to adopt the attached proposed Findings of Fact, Conclusions of Law and Order, which incorporates the requested amendments.
SECOND: Dr. Batizy.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

2. PA-21-0099A, HEROLD PIERRE-LOUIS, P.A., LIC. #8463
PA Pierre-Louis was not present. Counsel Michael Goldberg participated virtually on behalf of the PA. AAG Elizabeth Campbell was present on behalf of the State and AAG Diane DeDea was present as the Board's Independent Legal Advisor.

AAG Campbell informed the Board that the arguments that the Respondent makes are the same as the previous case. PA Pierre-Louis' council claims that there is prejudice, however this is not true. PA Pierre-Louis' council was provided a copy of the State's position on ALJ's recommended decision and was given an opportunity to respond and did so. Ms. Campbell requested a minor amendment in Finding of Fact 8 to protect the PA's privacy by removing his New York home address. Ms. Campbell also requested a minor amended to the Conclusions of Law paragraph 11 for clarity of the estabblished violation. In the recommended order Ms. Campbell requested that the Board accept the recommended order for revocation and to include the costs of the hearing.

Mr. Goldberg requested that the Board not adopt the ALJ's recommended discipline as the statute is not clear on what must happen prior to accepting employment. The PA listed a real address and testified that he didn't stay there but thought that met the statutory requirement. PA Pierre-Louis is in a residency program and the revocation will devastate that path. PA Pierre-Louis has no disciplinary actions on his healthcare records to indicate a revocation is warranted. Mr. Goldberg opined that revocation is not a proportionate discipline.

AAG Campbell stated that Revocation is appropriate in this case as PA Pierre-Louis does not meet the requirements of the license he was given. If he was not an Arizona resident he could have pursued licensure through the traditional pathway. Under the Universal Recognition pathway, Arizona residency is required for licensure. Ms. Campbell noted that the other issue in this case is the PA's honesty; nothing that truthfulness is a cornerstone to the Board's ability to regulate a licensee.

MOTION: PA Shaff moved to adopt the attached proposed Findings of Fact including the modifications requested by the State and initiate the meet and confer process.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: PA Shaff moved to adopt the attached proposed Conclusions of Law modifying the ALJ's Recommended Decision as requested by the State and initiate the meet and confer process.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: PA Shaff moved to adopt the ALJ recommendation for revocation. The Respondent shall be assessed the costs incurred by the Board of $1,778.30.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

Meet and confer process:

AAG Campbell requested that the Board accept the ALJ's recommendation with the proposed modifications by the state.

Mr. Goldberg did not object to the change to the findings of fact, but objected to modifications to the COL.

MOTION: PA Shaff moved to adopt the attached proposed Findings of Fact, Conclusions of Law and Order, which incorporates the requested amendments.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

J. FORMAL INTERVIEWS

1. PA-22-0083A, VINCENT J. TAPIA, P.A., LIC. #2400
   PA Tapia was present without counsel.

   Board staff summarized that the Board received a notice from the Pharmacy Board that PA Tapia was non-compliant with the mandatory use requirements for the Arizona Controlled Substance Prescription Monitoring Program ("CSPMP"). Board staff reviewed a CSPMP repot for PA Tapia from October 2021 to October 2022 and selected 5 patients for review. Board staff reviewed PA Tapia's prescribing in these cases. SIRC discussed the case and observed PA Tapia's report that he had only utilized the CSPMP as an extra tool and used it as he felt necessary, which SIRC found concerning considering because the patients were being prescribed multiple controlled substances over long periods of time. SIRC observed that recent CSPMP data has confirmed that after the investigation, PA Tapia appears to be consistently utilizing the CSPMP. SIRC recommended returning the case to investigation to obtain an MC review of the 5 patients. A Medical Consultant ("MC") determined that PA Tapia deviated from the standard of care by failing to utilize the CSPMP, by prescribing high doses of opioids without documentation of referrals to a pain specialist, for concurrent prescribing of benzodiazepines, opioids, and muscle relaxants, inadequate monitoring, and inadequate documentation. PA Tapia responded that he has made the CSPMP system a daily part of his regimen in screening patients receiving controlled substances. SIRC discussed the case and remained concerned regarding the deviations identified. SIRC observed that the MC also identified irregular use of controlled substance agreements as well as a lack of documentation related to medication changes, alternatives attempted, or the patient responses to treatment. SIRC stated that based on the concerning and repetitive deviations identified, this case rises to the level of discipline and requires education and remediation.

   In an opening statement, PA Tapia stated that he understands the requirements of the CSPMP report and has been more diligent in querying the CSPMP. PA Tapia informed the Board that his goal is to provide his patients adequate care and improve quality of life. PA Tapis explained that he does not want to criminalize his patients for taking opioids or narcotic medications.

   During questioning, PA Tapia stated that he does not have special training in pain management but has completed continuing medical education (CME) in pain management. PA Tapia explained that the electronic filing system (EMR) he utilizes does not have CSPMP software incorporated but he is in the process of adding it. PA Tapia mentioned that he did not refuse to use the CSPMP report but referred to it as a tool. PA Tapia clarified for the Board that his medical practice is an internal medicine practice and estimated about 30 percent of the patients are on narcotic medications. PA Tapia also clarified that the patients seen by him are not strictly his but the whole practice, which means all providers have seen these patients depending on availability. PA Tapia noted that the availability and wait time for appointments to see a pain management specialist can be daunting. PA Tapia stated that there is no protocol in place for urine drug screens but informed the Board that after going through this process, his practice is now implementing more protocols. PA Tapia confirmed that there have been no bad patient outcomes.

   PA Shaff commented that PA Tapia's practice does a fair amount of pain management and noted it is the PA's obligation to have appropriate protocols in place. PA Shaff further noted that some of these protocols regarding UDS, monitoring or drug amount have not been implemented yet and it is the Board's job is to protect the public. Dr. Dang commented that pharmacists question patients who come into the pharmacy with multiple prescriptions for narcotics because of drug interactions and it is for their protection, not

for criminalization of the patient. PA Graham commented that although there is a lack of pain specialist availability, referrals should be made when appropriate.

PA Tapia informed the Board that since becoming aware of the CSPMP requirement he does not query every patient due to time constraints but for about 99 percent of his patients.

Chair Reina commented that changes need to be made in the office's policies and procedures to protect the public as mistakes can take a life.

During deliberations, Dr. Dang opined that PA Tapia clearly violated the state law requiring to the CSPMP.

MOTION: Dr. Dang moved for a finding of unprofessional conduct in violation of A.R.S. §§ 32-2501(18)(a) for a violation of A.R.S. § 36-2606(F),(j), and (p)).
SECOND: PA Shaff.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: Dr. Dang moved for a draft Findings of Fact, Conclusions of Law and Order for Two Year Probation. Within six months, PA Tapia shall complete no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding medical recordkeeping, and complete no less than the 15 hour of Board staff pre-approved Category I CME in an intensive, in-person course regarding controlled substance prescribing. The CME hours shall be in addition to the hours required for license renewal. Within thirty days of completing the Board ordered CME, PA Tapia shall enter into a contract with a Board approved monitoring company to perform periodic chart reviews, at the physician assistant's expense. After two consecutive favorable chart reviews, PA Tapia may petition the Board to terminate the Probation. PA Tapia shall not request early termination of Probation without having completed the chart review process. The Probation shall not terminate except upon affirmative request of the physician assistant and approval by the Board.
SECOND: Dr. Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

2. PA-20-0006A, MICHAEL M. ABRAHAM, P.A., LIC. #5934
PA Abraham was present with counsel Flynn Carey.

Board staff summarized that this case was initiated on January 31, 2020, after receipt of a non-compliance report from PA Abraham's PHP Monitor who reported that PA Abraham had presented to work impaired. PA Abraham subsequently failed to check into the testing website, and he notified the relapse prevention group facilitator that he would not attend that Friday's meeting. The PHP Monitor found that PA Abraham was not safe to practice until he obtained a comprehensive evaluation. After meeting with the PHP Contractor on January 31, 2020, PA Abraham was arrested and charged with DUI which he failed to timely report. Effective February 4, 2020, PA Abraham entered into an Interim Consent Agreement for Practice Restriction. Shortly thereafter, PA Abraham surrendered his DEA registration and his pharmacist license with the AZ Pharmacy Board. By November 14, 2022, PA Abraham had completed treatment and started IOP along with private PHP Monitoring. On December 2, 2022, PA Abraham requested that Board staff lift his restriction. The PHP Monitor found that PA Abraham was safe to return to practice

medicine if he enters into 5 years of PHP monitoring and complete workplace evaluations for the first 3-6 months of practice with chart review by his supervisor. Effective April 25, 2023, PA Abraham entered into an Interim Consent Agreement for PHP Participation with an Amended Interim Practice Restriction prohibiting him from prescribing or having access to controlled substances in the workplace. This mirrored his Decree of Censure with restriction from case MD-18-0038A. Board staff considered whether PA Abraham's relapse in this case should be considered as his third strike. PA Abraham has not yet completed one PHP Agreement with this Board. PA Abraham has requested that his final agreement not include the practice restriction prohibiting him from prescribing controlled substances. The Board's PHP Monitor is supportive of PA Abraham's return to the practice of medicine without the restriction on controlled substances.

Mr. Carey provided an opening statement to the Boar where he stated that they do note disagree with monitoring but requested that PA Abraham be allowed to have prescribing privileges. Mr. Carey noted that Dr. Sucher opined that PA Abraham is safe to practice and prescribe controlled substances. Mr. Carey noted that he will be monitored by his employer and the Board. Mr. Carey stated that the Board allowing him to prescribe would be the first step to clearing an obstacle for PA Abraham as he would still need to obtain a DEA license. Mr. Carey requested that the Board allow PA Abraham to prescribe to seek a DEA license.

PA Abraham provided an opening statement to the Board and requested that he be allowed the opportunity to prescribe controlled substances again. PA Abraham stated that he has learned a great deal from his addiction and hopes to give back to his community. PA Abraham informed the Board that he is 16 months sober and informed the Board of the activities he continues to partake in that are key to his recovery. PA Abraham agreed that monitoring is one of those key activities. PA Abraham requested that he be allowed to prescribe controlled substances and work in addiction medicine to help those with this disease.

During questioning, PA Abraham informed the Board that he works at Scottsdale Recovery and works under one Supervising Physician. He does not hold hospital privileges. PA Abahram explained that his Supervising Physician is the director of Scottsdale Recovery and at Banner hospital and in the event of a patient undergoing detoxing, it can delay care to wait for his Supervising Physician to prescribe the control substance. PA Abraham stated that he also sees patients in an outpatient setting. There are controlled substances locked in the fridge at the practice which he does not have access to. PA Abraham confirmed that his Supervising Physician is aware that he may not be able to prescribe controlled substances for a period of 5 years depending on the outcome of the formal interview. PA Abraham acknowledged that a relapse can result in an interim summary suspension of his license. PA Abraham explained that he struggled with tapering off Suboxone in the past due to withdrawal and his obsession to use. PA Abraham informed the Board that he is confident that his obsession has been removed and that he would not relapse on Suboxone. PA Abraham informed the Board of his reasoning use of Kratom and that he wasn’t familiar with the drug and dosage. PA Abraham explained that he wasn’t working as a pharmacist in 2017 and voluntary surrendered his pharmacy license.

PA Shaff noted the third strike policy and that there is a possibility of losing his license in the event of a relapse. PA Shaff expressed concern regarding removing guardrails when there is a possibility of relapse.

PA Abraham stated that he is grateful that he can still practice and that 100 percent of his charts are being reviewed by his supervising physician. PA Abraham explained that he is requesting the ability to prescribe controlled substances to best treat his patients. PA Abraham further explained that a Supervising Physician is not always onsite and therefore he needs to be able to have prescribing abilities. PA Abraham stated that his supervising physician is willing to sign off on all his charts.

In closing, PA Abraham stated that he is thankful to continue practicing and is confident in his ability to stay in recovery.

MOTION: Dr. DiBaise moved for a finding of unprofessional conduct in violation of A.R.S. §§ 32-2501(18)(a) for a violation of A.R.S. § 32-3208(A), (d), (j), (q) and (ee).
SECOND: PA Shaff.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: Dr. DiBaise moved for a draft Findings of Fact, Conclusions of Law and Order for a Decree of Censure with Minimum Five-Year Probation with terms and conditions consistent with his Interim Order. PA Abraham shall enter into a Practice Restriction prohibiting him from prescribing controlled substances or having access to them in the workplace and limiting his performance of health care tasks to a group setting during the time of probation. In addition, the Supervising Physician shall submit quarterly reports confirming PA Abraham's compliance with the workplace restriction. PA Abraham shall not request early termination of Probation. The Probation shall not terminate except upon affirmative request of the physician assistant and approval by the Board. PA Abraham's request for termination shall be accompanied by recommendation from his PHP Contractor stating that monitoring is no longer required.
SECOND: PA Shaff.
PA Graham spoke in favor of allowing PA Abraham to prescribe control substances. PA Clark agreed with granting that option with the understanding that the DEA process is still forthcoming. PA DiBaise spoke in favor of allowing prescribing but not access to the locked drugs on the practice's premises.

Mr. Carey noted that the DEA would not grant a license with a restriction.

Board staff stated that how the order is written now the Board would get quarterly reports from his supervising physician. If the restriction is removed, the Board can still request quarterly reports from the supervising physician and the Board can change the recommendations to monitor his prescribing. Board staff further clarified that at this point PA Abraham has not met the third strike policy and SIRC included the third strike language as the Board telling the PA this is your last chance.

PA Smith clarified that counsel's request is to allow PA Abraham to obtain a DEA license and to do so he cannot be prohibited from prescribing medications. As board staff stated there are other ways to monitor the PA in lieu of restriction.

Dr. Batizy opined that the restriction is a moot point; if the PA relapses and meets the third strike policy he will lose his license.
VOTE: The following Board members voted against the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Grahm. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 0-yay, 8-nay, 0-abstain, 0-recuse, 2-absent.
MOTION FAILED.

MOTION: Dr. DiBaise moved for a draft Findings of Fact, Conclusions of Law and Order for a Decree of Censure with Minimum Five-Year Probation with terms and conditions consistent with his Interim Order. PA Abraham's Supervising Physician shall perform routine reviews of PA Abraham's care and treatment of his patients to evaluate his controlled substance prescribing. PA Abraham shall cause his Supervising Physician to provide quarterly reports to the Board or at any time the Supervising Physician has concerns regarding PA Abraham's prescribing of controlled substances. PA Abraham shall not request early termination of

Probation. The Probation shall not terminate except upon affirmative request of the physician assistant and approval by the Board. PA Abraham's request for termination shall be accompanied by a recommendation from his PHP Contractor stating that monitoring is no longer required.
SECOND: PA Shaff.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

CONSENT AGENDA

K. CASES RECOMMENDED FOR ADVISORY LETTERS

1. PA-22-0085A, RISE CURIEL, P.A., LIC. #6994
PA Curiel and counsel Steve Perlmutter addressed the Board during the Call to Public statements portion of the meeting.

MOTION: PA Shaff moved to issue an Advisory Letter for prescribing a medication without an established physician patient relationship and for acting outside the scope of his delegation agreement. While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
SECOND: Dr. Dang.
PA Shaff agreed that the PA acted in good faith, provided good care and had excellent notes however, it was against statute and was not a delegated task or within the scope of practice. Dr. Dang opined that to dismiss would set a bad precedence. PA Clark stated that the spirit of the law is not the same as the letter of the law and the PA must follow the statute.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

2. PA-22-0072A, ELIZABETH G. ABBOTT, P.A., LIC. #7732

MOTION: PA Shaff moved to issue an Advisory Letter for failing to timely report a misdemeanor charge. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
SECOND: Dr. Dang.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

L. CASES RECOMMENDED FOR ADVISORY LETTERS WITH NON-DISCIPLINARY CONTINUING MEDICAL EDUCATION ORDER

1. PA-21-0114A, ERIC E. COLE, P.A., LIC. #3789

MOTION: PA Shaff moved to issue an Advisory Letter and Order for Non-Disciplinary CME for prescribing high dose opioids without clinical justification, inadequate monitoring of patients prescribed controlled substances, and inadequate documentation. While there is insufficient evidence to support

disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee. Within six months, complete no less than 15 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding controlled substance prescribing; and complete no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding medical recordkeeping. The CME hours shall be in addition to the hours required for license renewal.
SECOND: PA Graham.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

M. REVIEW OF EXECUTIVE DIRECTOR DISMISSALS

1. PA-23-0014A, BAHMAN NAJI-TALAKAR, P.A., LIC. #2738

MOTION: PA Shaff moved to uphold the dismissal.
SECOND: Dr. Batizy.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

N. LICENSE APPLICATIONS

i. APPROVE OR DENY LICENSE APPLICATION

1. PA-23-0087A, JORDAN W. SCHENK, P.A., LIC. #N/A

MOTION: PA Clark moved to grant the license.
SECOND: Dr. Bennett.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

O. ADJOURNMENT

MOTION: PA Shaff moved for adjournment.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

The Board meeting adjourned at: 11:22 am

Patricia E. McSorley

Patricia E. McSorley, Executive Director

Katie Hobbs
Governor

Arizona Regulatory Board of Physician Assistants
1740 W. Adams, Suite 4000 • Phoenix, Arizona 85007
Telephone: 480-551-2700 • Toll Free: 877-255-2212 • Fax: 480-551-2704
Website: www.azpa.gov

Susan Reina, PA-C
Chair

February 16, 2024

Honorable Representative Selina Bliss
Arizona House of Representatives
1700 W. Washington, Ste. H
Phoenix, AZ 85007

RE: Rulemaking regarding Physician Assistants

Dear Representative Bliss,

Thank you for reaching out regarding this important issue. In creating the rules for collaborative practice, multiple meetings of the Arizona Regulatory Board of Physician Assistants (ARBoPA) were held, some were attended by stakeholders, and HB 2043, was carefully reviewed to ensure that the words of the statute directed the formation of the rules. ARBoPA is aware that many PAs are frustrated with the bill as they believe they were being given the statutory right to practice independently, and that they would be free of any financial burden associated with "supervision." However, HB2043 is clear that even under the collaborative model, a certain level of oversight is still mandated, and the collaborating physician assistant must collaborate, consult and refer to appropriate health care professionals based on the physician assistant's education, experience and competencies.

The rules created by ARBoPA were designed to be consistent with this statutory requirement for oversight and to ensure that the collaborative practice would be implemented to meet the stated requirements of the bill, and to protect the public, particularly when a collaborative physician assistant might be embarking on a practice that "is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified."

A.R.S. § 32-2501 requires a collaborating entity to designate "one or more physicians by name or position who is responsible for oversight of the physician assistant:

> 6. "Collaborating physician or entity" means a physician, physician group practice, physician private practice or licensed health care institution that employs or collaborates with a physician assistant who has at least eight thousand hours of clinical practice as certified by the board pursuant to section 32-2536 and does not require a supervision agreement **and that designates one or more physicians by name or position who is responsible for the oversight of the physician assistant.**

A.R.S. § 32-2531(B) requires collaboration between a collaborating physician assistant as set forth in their practice setting's policies:

> B. Pursuant to the requirements of this chapter and the standard of care, a physician assistant who has at least eight thousand hours of clinical practice certified by the board pursuant to section 32-2536 is not required to practice pursuant to a supervision agreement **but shall continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the physician assistant's education, experience and competencies. The level of collaboration required by this subsection is determined by the policies of the practice setting at which the physician assistant is employed, including a physician employer, physician group practice or health care institution.**

Lastly, A.R.S. § 32-2536(B) required ARBoPA to adopt rules to ensure that collaborating physician assistants continue to be safe when they move to new areas of practice:

B. The board shall adopt rules establishing additional certification standards or requirements for physician assistants who previously completed eight thousand clinical practice hours certified by the board and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified. The certification standards or requirements shall ensure appropriate training and oversight, including a supervision agreement if warranted, for the physician assistant's new practice setting or specialty.

ARBoPA approached the implementation of HB2043 with the goal of identifying the least restrictive manner in which to enforce the provisions of the bill. To that end, the rules adopted by ARBoPA leave the authority at the practice level for ensuring that the collaborating physician assistant practices in accordance with A.R.S. § 32-2531(B) as well as ensuring that collaborating physician assistants who move into new areas of practice are properly educated and trained to practice safely. It should be noted that during the deliberations regarding the new rules, the Board considered and rejected requirements to have the policies submitted to the Agency, and for the Agency to affirmatively regulate the training and education requirements of A.R.S. § 32-2536(B).

Thus, the requirement for a collaborating physician or entity to maintain policies regarding the collaborating physician assistant is already in statute. The language of R4-17-402 simply ensures that those policies are in writing and sufficiently clear so that all parties involved can understand the degree of collaboration required by the entity for the physician assistant. Additionally, the rules are designed to meet the Agency's obligation under the statute to ensure that collaborating physician assistants remain competent to practice when they change practice areas.

It should be noted that as part of every investigation of a PA, a supervision or collaboration agreement is requested, which provides the Board with written documentation supporting the identity of the supervising/collaborating physician. Without this requirement, the Board would have no ability to confirm the identity of the reported physician supervising or collaborating with the PA. Since PA's cannot practice independently, the supervising/collaborating physician is required to provide a response related to the complaint and their supervision/collaboration of the PA. Therefore, the requirement for written policies assists the Board to meet its obligation to investigate and regulate unsafe practice, which is the primary duty of ARBoPA. *See* A.R.S. § 32-2504(A)(1) (stating that the Board shall, "As its primary duty, protect the public from unlawful, incompetent, unqualified, impaired or unprofessional physician assistants.)

I hope that this letter has answered the concerns that you have raised. The goal of the rules is to create a process that is clear, and to provide the least amount of administrative barriers by shifting much of the oversight away from the Board to the practice level, but still protects the public.

I am happy to engage in any further discussion if that would be helpful.

Respectfully,

Patricia E. McSorley
Executive Director

Gmail

Pat Mcsorley <patricia.mcsorley@azmd.gov>

APPROVAL REQUEST FOR RULES RE:COLLABORATVE PRACTICE BY PHYSICIAN ASSISTANTS

14 messages

Pat Mcsorley <patricia.mcsorley@azmd.gov> Fri, Dec 15, 2023 at 11:58 AM
To: Zaida Dedolph <zdedolph@az.gov>

Zaida,

I have attached the rules for collaborative practice for physician assistants, PAs, as allowed by the statute, A.R.S.32-2551(B), Section 1, in HB 2043 which I have also included for you, along with the FAQs. The Arizona Regulatory Board of Physician Assistants have met at least four times to consider the rules, and to find a balance to create rules that protect the public and do not place unreasonable barriers for PAs to practice at the top of their scope.

The statute provides for exempt rulemaking, however, the approval of the Governor's Office is necessary to proceed with the filing of the rules. The statute became effective on December 31,2023. The Arizona State Association of Physician Assistants (ASAPA) is aware of the rules and has provided input. While they are disappointed that the statute does not provide for independent practice, the rules have been crafted to allow the collaborating physician and the certified physician assistant to come to agreement at the practice level.

The effective date is December 31,2023, so I respectfully ask that you review the rules at your earliest convenience. If you have any questions, I am available to respond.

Many thanks.
Pat

--

Patricia McSorley

Executive Director

Arizona Medical Board

Arizona Regulatory Board of

Physician Assistants

3 attachments

Notice of Final Exempt Rulemaking (3).doc
53K

Approved by Gov HB 2043 (3).pdf
103K

PA FAQS COLLABORATIVE PRACTICE.pdf
200K

Pat Mcsorley <patricia.mcsorley@azmd.gov> Mon, Dec 18, 2023 at 10:11 AM
To: Zaida Dedolph <zdedolph@az.gov>

Hi Zaida,

Gmail

Pat Mcsorley <patricia.mcsorley@azmd.gov>

APPROVAL REQUEST FOR RULES RE:COLLABORATVE PRACTICE BY PHYSICIAN ASSISTANTS

Pat Mcsorley <patricia.mcsorley@azmd.gov> Mon, Dec 18, 2023 at 10:11 AM
To: Zaida Dedolph <zdedolph@az.gov>

Hi Zaida,
I am resending the rulemaking that needs to be filed before we can provided with the application which is due to commence Jan 1.
Thanks
Pat
[Quoted text hidden]

3 attachments

Notice of Final Exempt Rulemaking (3).doc
53K

Approved by Gov HB 2043 (3).pdf
103K

PA FAQS COLLABORATIVE PRACTICE.pdf
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Pat
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3 attachments

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53K

Approved by Gov HB 2043 (3).pdf
103K

PA FAQS COLLABORATIVE PRACTICE.pdf
200K

Zaida Dedolph <zdedolph@az.gov> Tue, Dec 19, 2023 at 12:30 PM
To: Pat Mcsorley <patricia.mcsorley@azmd.gov>

Hi Pat, please proceed with submission to GRRC.

OFFICE OF THE GOVERNOR
KATIE HOBBS

Zaida Dedolph Piecoro
She/Her/Hers (what's this?)
Health Policy Advisor
Office of Governor Katie Hobbs
zdedolph@az.gov
Cell: 602.525.9956

1700 W Washington St.
Phoenix, AZ 85007
https://azgovernor.gov
[Quoted text hidden]

Pat Mcsorley <patricia.mcsorley@azmd.gov> Tue, Dec 19, 2023 at 12:30 PM
To: Zaida Dedolph <zdedolph@az.gov>

Thank you!
Pat
[Quoted text hidden]

Pat Mcsorley <patricia.mcsorley@azmd.gov> Tue, Dec 19, 2023 at 12:33 PM
To: "jeanne@arizonarulesllc.com" <jeanne@arizonarulesllc.com>

Jeanne,

I have received approval from the Governor's Office to move ahead with the rulemaking for physician assistant collaborative practice. What needs to happen next?
[Quoted text hidden]

3 attachments

Notice of Final Exempt Rulemaking (3).doc
53K

Approved by Gov HB 2043 (3).pdf
103K

Gmail

Pat Mcsorley <patricia.mcsorley@azmd.gov>

APPROVAL REQUEST FOR RULES RE:COLLABORATVE PRACTICE BY PHYSICIAN ASSISTANTS

Zaida Dedolph <zdedolph@az.gov> Tue, Dec 19, 2023 at 12:30 PM
To: Pat Mcsorley <patricia.mcsorley@azmd.gov>

Hi Pat, please proceed with submission to GRRC.

OFFICE OF THE GOVERNOR
KATIE HOBBS

Zaida Dedolph Piecoro
She/Her/Hers (what's this?)
Health Policy Advisor
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SUNRISE REPORT

PROPOSED ESTABLISHMENT OF THE OPTIMAL TEAM PRACTICE MODEL IN THE PHYSICIAN ASSITANT PRACTICE ACT AND ITS IMPACT ON THE CURRENT USE OF FLUROSCOPY BY PHYSICIAN ASSISTANTS

Submitted by:

November 1, 2021

THE ARIZONA STATE ASSOCIATION OF PHYSICIAN ASSISTANTS

November 1, 2021

The Honorable Karen Fann
The Honorable Rusty Bowers
Arizona Legislature
1700 West Washington
Phoenix, Arizona 85007

RE: Sunrise Application for Optimal Team Practice within the Physician Assistants Practice Act

Dear President Fann and Speaker Bowers:

Out of an abundance of caution, on behalf of the Arizona State Association of Physician Assistants, this Sunrise Application is being submitted in support of the proposed modernization of the Physician Assistants Practice Act through the proposed enactment of the Optimal Team Practice model.

Briefly, Optimal Team Practice occurs when physician assistants, physicians and other healthcare professionals work together to provide quality care without burdensome administrative constraints. While Optimal Team Practice does not eliminate oversight, the practice model allows physician assistants to maximize their education, training and experience within the limitation of the clinical setting in which they practice.

Under existing Arizona statutes, a physician assistant is required to secure a delegation agreement from a specific supervising physician to practice in Arizona. In contrast, under Optimal Team Practice, qualified physician assistants with a minimum of 4,000 hours of clinical practice experience may work within the constraints established by the clinical setting in which they practice, as opposed to being tethered to a specific supervising physician.

It is critical to appreciate that Optimal Team Practice does not eliminate the current oversight of a physician assistant, nor does the practice model allow for independent practice. Nevertheless, Optimal Team Practice replaces the current administrative burdens with a more efficient oversight mechanism that reflects the present relationship between healthcare professionals in a clinical setting.

Under the existing Practice Act, the scope of practice for a licensed physician assistant is determined by each physician assistant's education, training and experience and is limited by provisions contained in the delegation agreement established by the supervising physician. Physician assistants provide medical services within the scope of their delegation agreement, which requires an annual update.

Similarly, under the proposed Optimal Team Practice model, the limitations on what medical services a physician assistant can provide will be determined by their respective education, training and experience as well as the limitations established by the clinical setting in which they practice.

Accordingly, based on the above overview of Optimal Team Practice, the Arizona State Association of Physician Assistants respectfully asserts that there is no increase in the scope of practice that results from the proposed legislation, as physician assistants will continue to be subject to regulatory oversight and limitations on their scope of work in a manner consistent with their respective education, training and experiences and within the limitations established by the clinical setting in which they practice.

On a narrow focus, the proposed legislation does contain clarifying provisions relating to a qualified physician assistant's ability to perform fluoroscopy. Under existing statutes, physician assistants provide fluoroscopic guided procedures under the authority of the delegation agreement.

The proposed Optimal Team Practice legislation contains specific training requirements for physician assistants to provide fluoroscopy within the constraints of the clinical practice setting. We believe adding a specific training requirement enhances the current standard in which a qualified physician assistant provides fluoroscopic guided procedures to patients. In essence, the specific training requirements are intended to enhance public safety and do not suggest that this is an increase in the scope of practice.

A similar discussion about specific training requirements for physician assistants providing fluoroscopy occurred in 2016 between the Arizona Medical Association and the Arizona State Association of Physician Assistants. Ultimately, at the time, the Arizona Regulatory Board of Physician Assistants opted to maintain the current practice of requiring the delegation agreement, as opposed to specific training requirements.

From the perspective of the Arizona State Association of Physician Assistants, under the proposed Optimal Team Practice legislation there is no increase in the scope of practice of a physician assistant providing fluoroscopic guided procedures, as qualified physician assistants are presently providing such services under existing Arizona law. Nevertheless, as expressed above, the attached Sunrise Application is being submitted out of the abundance of caution in order to meet any procedural challenges during the legislative discussion on Optimal Team Practice.

Thank you in advance for your consideration.

Sincerely,

Sarah Bolander, PA-C
President, Arizona State Association of Physician Assistants

The Arizona State Association of Physician Assistants (ASAPA) is seeking a clarification in the statutes that regulate physician assistants regarding fluoroscopy to ensure there are no interruptions in patient care should Optimal Team Practice be enacted in Arizona. From the perspective of ASAPA, there is no increase in the scope of practice of a physician assistant from that clarification; however, we are submitting the attached Sunrise Application out of an abundance of caution and in order to proactively address any procedural challenges during the legislative discussion on Optimal Team Practice.

1. **Why an increased scope of practice is beneficial, including the extent to which health care consumers need and will benefit from safe, quality care from practitioners with this scope of practice.**

   Physician assistants (PAs) practice in nearly all specialties of medicine, providing safe and efficient health care to patients across Arizona. Physician assistants practice has been well received by the public and is an established part of the health care team, with collaboration between supervising physicians and physician assistants expanding access to care.

   As part of a health care team, physician assistants practice in major radiology departments, performing health care tasks delegated by supervising physicians, often radiologists. As part of these health care tasks, fluoroscopic guided procedures performed by physician assistants extend the care of both interventional and diagnostic radiologists. In addition to radiology, physician assistants also practice in other clinical settings that commonly employ radiology as a part of patient care, including but not limited to general surgery, subsurgical specialties, emergency medicine, and orthopedics.

   Physician assistants have been performing diagnostic and interventional procedures that use ionizing radiation since the early days of the profession. Under existing law, fluoroscopy is currently within a physician assistant's scope of practice if they have the proper training, experience, and education and the procedure has been delegated to the physician assistant as part of their delegation agreement.

   In addition, ARS 30-672, which regulates ionizing radiation, states physician assistants, along with other occupations, are governed by their own licensing acts and the Arizona Department of Health Services cannot require them to obtain any other license to use a diagnostic x-ray machine.

   This sunrise application seeks to ensure there is no disruption in patient care related to fluoroscopy should Optimal Team Practice be enacted in Arizona.

2. **Whether those health professionals seeking an increased scope of practice currently have or will be required to have didactic and clinical education from accredited professional schools or training from recognized programs that prepare them to perform the proposed scope of practice, and details on what that education or training includes for that proposed scope of practice.**

   Under existing Arizona statutes, a physician assistant is required to secure a delegation agreement from a specific supervising physician to practice in Arizona. In contrast, under Optimal Team Practice, qualified physician assistants with a minimum of 4,000 hours of clinical practice experience may work within the constraints established by the clinical setting in which they practice, as opposed to being tethered to a specific supervising physician.

As part of the Optimal Team Practice legislation that ASAPA is pursuing, a Physician Assistant with over 4,000 hours of practice under a delegation agreement (renamed collaboration agreement) documented to the Arizona Regulatory Board of Physician Assistants, will be required to collaborate with, consult with or refer to the appropriate member of the health care team as indicated by the patient's condition and as indicated by the physician assistant's education, experience and competencies. The level of collaboration required will be determined by their practice setting, not the collaboration agreement.

To ensure adequate training, ASAPA is seeking to require that a physician assistant has at least 16 hours of documented training in radiation safety to operate a fluoroscopy machine.

3. **Whether the subject matter of the proposed increased scope of practice is currently tested by nationally recognized and accepted examinations for applicants for professional licensure and the details of the examination relating to the increased scope of practice.**

Physician assistants are educated at the master's degree level. There are more than 277 physician assistant programs in the country and admission is highly competitive, requiring a bachelor's degree and completion of courses in basic and behavioral sciences as prerequisites. Incoming physician assistant students bring with them an average of more than 3,000 hours of direct patient contact experience, having worked as paramedics, athletic trainers, or medical assistants, for example. Physician assistant programs are approximately 27 months (three academic years) and include classroom instruction and more than 2,000 hours of clinical rotations. Specifically:

Prerequisites:

- Bachelor's degree with courses in basic and behavioral sciences (typically 2 years of coursework in these areas)
    - Majority of programs have the following prerequisites: chemistry, physiology, anatomy, microbiology, biology
- Clinical experience (average is 3,000 hours of direct patient contact experience)
    - Common types of experience: medical assistant, EMT, paramedic, medic/medical corpsman, Peace Corps volunteer, lab assistant/phlebotomist, R.N., emergency room technician, surgical tech, CNA
- Standardized tests: varies, about half of programs require the GRE, few require the MCAT, few have no requirement, few are starting to adopt the PA-CAT

Program length: The typical length is 27 continuous months (equivalent to approximately 3 academic years), but ranges from 24-36 months

Curriculum:

Didactic phase: Basic medical sciences (anatomy, physiology, etc.), pharmacology, physical diagnosis, behavioral sciences, medical ethics, clinical medicine

On average, PA students take:

- 75 hrs pharmacology
- 175 hrs behavioral sciences
- 400 hrs basic sciences
- 580 hrs clinical medicine

Clinical phase: rotations in medical and surgical disciplines (family medicine, internal medicine, general surgery, pediatrics, OB/GYN, emergency medicine, psychiatry)

On average, by graduation PA students will have completed at least 2,000 hours of supervised clinical practice

Degree awarded: Master's degree (entry-level and terminal degree for profession)

Practice Requirements

- Pass the Physician Assistant National Certifying Examination (PANCE) developed by the National Commission on Certification of Physician Assistants
    - To maintain certification, physician assistants must log 100 hours of continuing education (50 hours must be category 1) every 2 years and pass the Physician Assistant National Recertification Exam (PANRE) every 10 years
- Obtain a license issued by the applicable state regulatory jurisdiction, in the case of Arizona, the Arizona Regulatory Board of Physician Assistants

4. **The extent to which the proposed increased scope of practice will impact the practice of those who are currently licensed in this state or the entry into practice of those individuals who have relocated from other states with substantially equivalent requirements for registration, certification, or licensure as this state.**

The proposal will not have a negative impact on those currently licensed as physician assistants. The goal of this change is to ensure that physician assistants who currently practice fluoroscopy will have the ability to continue doing so should the Optimal Team Practice model be enacted in Arizona.

For individuals that relocate to Arizona, it will be dependent on the scope of practice that they had in the jurisdiction they practiced in. If the individual has the education/experience and can document that to the Arizona Regulatory Board of Physician Assistants, they will still be able to practice fluoroscopy, assuming their delegation agreement (collaboration agreement) or practice setting allows for that. If they do not have the education/experience, they will be able to gain that education/experience in Arizona assuming their delegation agreement (collaboration agreement) or practice setting allows for fluoroscopy.

5. **The extent to which implementing the proposed increased scope of practice may result in savings or a cost to this state and to the public.**

There will not be a cost to the state or the public since physician assistants already perform fluoroscopy.

There will be a continued cost savings to the state by having a physician assistant available to perform fluoroscopy for AHCCCS members.

6. **The relevant health profession licensure laws, if any, in this or other states.**

   Physician assistants are regulated in every state throughout the U.S. From an Arizona perspective, the current Physician Assistant Practice Act is contained in Title 32, Chapter 25

7. **Recommendations, if any, from the applicable regulatory entity or entities, from the department of health services and from accredited educational or training programs.**

   None.

Gmail

Patricia Grant <patricia.grant@azdoa.gov>

Letter from the Arizona Medical Association Re: PA Collaborative Practice

2 messages

Pat Mcsorley <patricia.mcsorley@azmd.gov> Tue, Apr 9, 2024 at 9:52 AM
To: Patricia Grant <patricia.grant@azdoa.gov>
Cc: Raquel Rivera <raquel.rivera@azmd.gov>

Dear Ms. Grant,

I would appreciate it if you would also include this letter from the Arizona Medical Association related to HB2043 in GRRC's materials for April 30. Both associations, the Arizona Medical Association and the Arizona State Association of Physician Assistants, were the major stakeholders that worked with Representative Bliss on HB2043 resulting in collaborative practice for physician assistants. The letter from the Arizona Medical Association will add additional context and another perspective for GRRC when they meet on April 30 to consider the petition to invalidate the rules filed by the Arizona State Association of Physician Assistants.

Thank you for your attention to the matter.

--

Patricia McSorley

Executive Director

Arizona Medical Board

Arizona Regulatory Board of

Physician Assistants

ARMA HB2043 GRRC Letter.pdf
284K

Patricia Grant <patricia.grant@azdoa.gov> Tue, Apr 9, 2024 at 10:33 AM
To: Pat Mcsorley <patricia.mcsorley@azmd.gov>
Cc: Raquel Rivera <raquel.rivera@azmd.gov>

Will do. I have added it to the file. Thank you for the letter.

Very respectfully,

Patricia Grant, Esq.
Staff Attorney | Governor's Regulatory Review Council
Department of Administration | State of Arizona
100 North 15th Avenue, Suite 302, Phoenix, AZ 85007
phone number: 602-542-3320
patricia.grant@azdoa.gov| https://grrc.az.gov/

How are we doing? Please take a moment to complete a brief survey.

[Quoted text hidden]

ARIZONA MEDICAL ASSOCIATION

WILLIAM C. THOMPSON IV, MD, FASA
PRESIDENT

LIBBY DE BIE, CAE
CHIEF EXECUTIVE OFFICER

April 5, 2024

Patricia McSorley
Executive Director, Arizona Medical Board
1740 W. Adams St, Suite 4000
Phoenix, Arizona 85007

Dear Ms. McSorley:

On behalf of the Arizona Medical Association (ArMA) and our nearly 4,000 physician members across the state, I commend the work of the Arizona Regulatory Board of Physician Assistants (ARBoPA) in writing rules to guide the implementation of HB2043 (physician assistants; supervision; collaboration), which was signed into law in 2023.

It is our understanding that the Arizona State Association of Physician Assistants (ASAPA) has expressed concern and requested the Governor's Regulatory Review Council (GRRC) review the rulemaking regarding the implementation of the law, specifically the requirement for documentation of relationships between Physician Assistants (PA) and Physicians.

ASAPA's request is disappointing in light of ArMA's extensive, collaborative discussions with the organization leading up to and during the 2023 Legislative Session. During our meetings, ASAPA members' stated goal was to update the PAs' practice act, creating an environment that would allow PAs, physicians, and other healthcare professionals to work together to provide quality care without certain administrative constraints.

ArMA worked alongside ASAPA to this end, as PAs are highly-valued members of the healthcare team and there was a feasible solution to reach their stated goal while maintaining patient safety. Both entities agreed that allowing those who have completed 8,000 hours of practice to enter into a collaborative practice agreement, thereby gaining a well-deserved degree of flexibility in practice, is a safe and appropriate process. However, at no point during our negotiations did ASAPA frame the discussion as an attempt to secure independent practice.

In fact, the term "independent practice" was not mentioned as a stated goal once in the committee testimony from ASAPA representatives. Further, the ASAPA Sunrise Report filed on November 1, 2021, and signed by ASAPA President Sarah Bolander, PA-C, stated:

> It is critical to appreciate that Optimal Team Practice does not eliminate the current oversight of a physician assistant, nor does the practice model allow for independent practice. Nevertheless, Optimal Team Practice replaces the current administrative burdens with a more efficient oversight mechanism that reflects the present relationship between healthcare professionals in a clinical setting.

ARIZONA MEDICAL ASSOCIATION

WILLIAM C. THOMPSON IV, MD, FASA
PRESIDENT

LIBBY DE BIE, CAE
CHIEF EXECUTIVE OFFICER

To call HB2043 “independent practice” or an “untethering of the relationship between a physician and PA” is intellectually dishonest and an inaccurate characterization of the legislation’s intent, which received strong public support from the ASAPA throughout the legislative process.
The rules produced by the ARBoPA accurately reflect the nature of the bill’s stakeholder process as well as the public testimony. ArMA strongly urges GRRC to approve the rules so Arizona’s healthcare community can begin implementation of the new statute.

Sincerely,

Amanda Sheinson

Amanda Sheinson
Director of Government Relations

info@AZmed.org
AZmed.org
@AZmedicine
@ArizonaMedicine
@ArizonaMedicine

2401 W. PEORIA AVE. SUITE 315 PHOENIX, AZ 602.347.6900

Katie Hobbs
Governor

Susan Reina, P.A.-C
Chair

Arizona Regulatory Board of Physician Assistants
1740 W. Adams Street, Ste. 4000 • Phoenix, Arizona 85007
Telephone: 480-551-2700 • Toll Free: 877-255-2212 • Fax: 480-551-2704
Website: www.azpa.gov

Patricia Grant, Esq.
Staff Attorney
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 8507

via email: patricia.grant@azdoa.gov

Dear Ms. Grant,

The Arizona Regulatory Board of Physician Assistants (ARBoPA) submits this response to the Arizona State Association of Physician Assistants' (Petitioner's) request to invalidate rules R4-17-401 and R4-17-402 related to collaborative practice by physician assistants. These rules were promulgated in exempt rulemaking pursuant to the authority provided in HB2043. This response will address the arguments raised by the Petitioner and fulfill the request by the Governor's Regulatory Review Council (GRRC) to address how the adopted rules comply with the requirements prescribed by A.R.S. § 41-1030(A), which requires a rule to be consistent with statute, reasonably necessary to carry out the purpose of the statute, and passed in compliance with law.

1. Rule R4-17-402 Was Adopted Pursuant to a Specific Statutory Mandate.

Petitioner's substantive objections to R4-17-402(B-G)[1] fail to acknowledge the specific grant of rulemaking authority provided to the Board in HB2043. A.R.S. § 32-2536(B), as added in the bill, states:

> B. **The board shall adopt rules establishing additional certification standards or requirements** for physician assistants who previously completed eight thousand clinical practice hours certified by the board **and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar** to the practice setting or specialty in which the physician assistant was previously certified. **The certification standards or requirements shall ensure appropriate training and oversight,** including a supervision agreement if warranted, for the physician assistant's new practice setting or specialty.

[1] Petitioner also raised a procedural objection based on the allegation that ARBoPA failed to obtain approval from the Governor as required by A.R.S. § 14-1039. ARBoPA refers GRRC to its original response, which included communications from the Governor's Office approving the Rules. *See* April 1, 2024 Preliminary Response to Petition for Review at Exhibit 3.

(emphasis supplied) The Legislature thus tasked ARBoPA with drafting rules addressing safety to practice for collaborating physician assistants who enter new practice settings. The statutory language explicitly contemplates that the rules ultimately adopted by ARBoPA would be beyond the requirements and certification standards already set forth in statute. Rule R4-17-402 was adopted by the Board to satisfy this statutory directive.

2. Rule R4-17-402 is Reasonably Necessary to Effectuate the Purpose of A.R.S. § 32-2536(B).

As shown by ARBoPA's Board and Committee meeting minutes, Board members deliberated at significant length on how to balance public protection without undue burden to the practitioner in the context of this legislative directive. *See* April 1, 2024 Preliminary Response to Petition for Review at Exhibit 2.

Ultimately, ARBoPA determined that analysis of substantial similarity and appropriate training/oversight are best handled at the practice level, leaving the decision to the practitioner and their collaborating physician or entity. *See* e.g. Exhibit 2 at 11-12, 17-18, 21. However, ARBoPA also recognized that in order to meet the statutory obligation to "ensure appropriate training and oversight" occurs, there should be sufficient information documented in a consistent format to allow physician assistants and their collaborating physician/entity the ability to evaluate these questions. For that reason, the Board drafted Rule R4-17-402 to require written policies created at the initiation of the practice relationship that 1) explain the physician assistant's scope of practice, 2) demonstrate that the involved practitioners have analyzed the question of substantial similarity, 3) identify necessary training and oversight that may need to be provided and 4) document successful completion of that training and oversight.

ARBoPA determined that a practice-level analysis of substantial similarity and necessary training or oversight was the least restrictive option for effectuating the requirements of this statute. The alternative would be to require the agency to be involved in these highly individualized decisions, necessitating a more complex framework of rules.

3. Rule R4-17-402 is Consistent with Statute.

Rule R4-17-402 is consistent with the overall statutory scheme for collaborating physician assistants adopted in HB2043. Petitioner's arguments are contingent on the false premise that the Legislature intended

collaborating physician assistants to practice independently. Collaborating physician assistants are still subject to “oversight” by the definitions found in statute.

A.R.S. § 32-2501(6) states:

> "Collaborating physician or entity" means a physician, physician group practice, physician private practice or licensed health care institution that employs or collaborates with a physician assistant who has at least eight thousand hours of clinical practice as certified by the board pursuant to section 32-2536 and does not require a supervision agreement **and that designates one or more physicians by name or position who is responsible for the oversight of the physician assistant.**

A.R.S. § 32-2531(B) also states:

> B. Pursuant to the requirements of this chapter and the standard of care, a physician assistant who has at least eight thousand hours of clinical practice certified by the board pursuant to section 32-2536 is not required to practice pursuant to a supervision agreement but shall continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the physician assistant's education, experience and competencies. **The level of collaboration required by this subsection is determined by the policies of the practice setting at which the physician assistant is employed, including a physician employer, physician group practice or health care institution.** Collaboration, consultation or a referral pursuant to this subsection may occur through electronic means and does not require the physical presence of the appropriate health care professional at the time or place the physician assistant provides medical services. This subsection does not prohibit a physician assistant who has at least eight thousand hours of clinical practice certified by the board pursuant to section 32-2536 from practicing pursuant to a supervision agreement.

The definition in A.R.S. § 32-2501(6) is clear that the collaborating physician assistant is required to have a relationship with a “collaborating physician” or “entity” that “designates one or more physicians by name or position who is responsible for the oversight of the physician assistant” (the entity designee). In keeping with the best practices, ARBoPA determined that the statutory language requiring a “designation” called for a written, business record that would identify the physician or physicians responsible for the collaborating physician assistant’s oversight.

Similarly, ARBoPA determined that the language in A.R.S. § 32-2531(B) stating that, “(t)he level of collaboration required by this subsection is determined by the policies of the practice setting” necessarily and reasonably included written policies.

In its deliberations ARBoPA recognized that in a true team setting such as a clinic, hospital or facility, collaboration as required in A.R.S. § 32-2531(B) would occur more intrinsically than in a more independent or small practice setting, such as a medical spa, in which the collaborating physician assistant may be the sole provider of care with no readily available collaborating physician or entity designee. If the collaborating

physician or entity designee for such a sole provider was not identified in advance, and with a commitment in writing, a patient's care might be compromised if the collaborating physician assistant is left identify a collaborating physician to refer to collaborate with or refer in the midst of an emergency. ARBoPA determined that the best safeguard for the public in all circumstances would be to have a written designation putting both collaborating parties on notice of who should be contacted in the event the collaborating physician assistant found themselves in circumstances with the need to collaborate, consult, or refer to a physician with advanced training.

Further, the identity of the collaborating physician or entity designee would become significant to the Board in fulfilling its mission to protect the public by investigating complaints alleging violations of the Physician Assistant Practice Act. HB 2043 amended A.R.S. §§ 32-2551(A), (B) and (G) to give ARBoPA authority to identify and interview the collaborating physician or entity designee during the course of a Board's investigation and subsequent formal interview. As is typically the case in board investigations, the first request from a staff investigator is for any documentation or written materials that will provide the investigator with context, particularly establishing who the collaborating physician assistant collaborated or consulted with. Having no written documentation of the collaborating relationship would stymie the board's ability to investigate complaints received from the public and thereby create a disservice to the public.

In addition, APBoPA asserts there is no place in the statutes where the written documentation of the collaborating relationship is restricted, and the use of the words" designate" and "policies" by their nature call for a writing to put all involved on notice as to who hold the designation and delineates the expectations of the policy. These writings have significance to the collaborating parties, particularly when there is a change of practice area not similar to the previous one and may be required to satisfy a board investigation or other legal proceeding.

4. **The Rules are Consistent with ARBoPA's General Rulemaking Authority.**

Although Petitioner does not object to the substance of Rules R4-17-401, and R4-17-402(A), ARBoPA notes that these provisions were adopted in accordance with A.R.S. § 41-1030(A), in that they are consistent with statute, reasonably necessary to carry out the purpose of A.R.S. § 32-2536, and were made in approved in accordance with the rulemaking exemption provided in Section 11 of HB2043. ARBoPA's statute provides authority to adopt rules for the administration of its practice act. A.R.S. § 32-2504(C). *See also Joshua Tree*

Health Center, LLC v. State, 255 Ariz 220, 224, 539 P.3d 1228, 1231 (App. 2023) (noting that agencies may establish rules for complete operation and enforcement of legislation.) The Court in *Joshua Tree* also stated that the Legislature need not expressly set forth all rulemaking authority in statute; but rather the agency can take actions reasonably implied from the statutory scheme as a whole. *Id*. These rules are necessary to provide all parties with notice regarding the minimum requirements and application process for collaborative practice, as well as to ensure that the collaborating physicians and entities perform due diligence with regard to those holding themselves out as collaborating physician assistants.

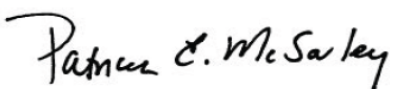
5. **The Rules are Consistent with Other States Who Have Implemented Collaborative Practice.**

Prior to adopting the rules for collaborative practice, ARBoPA studied the trend towards collaborative practice, and reviewed processes of other states permitted collaborative practice. ARBoPA found that while the policies were different, the majority called for documentation of collaborative practice. The following states require documentation of the collaboration agreement between the collaborating physician and the physician assistant: Oregon, Illinois, Maine, Alaska, Minnesota, Colorado, and Indiana. *See* Exhibits 1-7.

Conclusion:

For all these reasons, ARBoPA requests that GRRC deny the Petitioners request to invalidate the rules, as the rules do not exceed the authority provided in A.R.S. §§ 32-2504(C), as well as 32-2536(A) and (B) and are valid pursuant to A.R.S. § 41-1030(A). Moreover, the ARBoPA rules protect the public while allowing qualified physician assistants to practice with increased flexibility. Lastly, since these rules were adopted pursuant to a rulemaking exemption, the Board will shortly be initiating the robust review required pursuant to A.R.S. § 41-1095. ARBoPA requests that any recommended changes be addressed through this process, in order to allow ARBoPA the ability to amend, rather than invalidate, the rules.

Respectfully submitted,



Patricia E. McSorley
Executive Director

SAMPLE COLLABORATION AGREEMENT TEMPLATE

Revised 4/2024

Per ORS 677.495, a collaboration agreement is a written agreement that describes the manner in which the physician assistant collaborates with physicians (MD/DO/DPM), that does not assign supervisory responsibility to, or represent acceptance of legal responsibility by, a physician for the care provided by the physician assistant and that is signed by the physician assistant and the physician or physician assistant's employer.

Collaboration means, as indicated by the patient's condition, community standards of care and a physician assistant's education, training and experience: (a) Consultation between the physician assistant and a physician; or (b) Referral by the physician assistant to a physician. Community standards of care means that degree of care, skill, and diligence that is used by ordinarily careful licensees in the same or similar circumstances in the licensee's community or a similar community.

Beginning date for Collaboration Agreement (mm/dd/yyyy):_____

Physician Assistant Information:

Last Name	First Name	Middle Initial	Oregon License Number

Primary Practice Location Name	Primary Practice Street Address, City, State, and Zip Code

Business Phone	Business Email	NCCPA ID Number (optional)

Employer Representative or Physician (MD/DO/DPM) Information:

Last Name	First Name	Middle Initial	Oregon License Number *If applicable*

COLLABORATION

A general description of the physician assistant's process for collaboration with physicians (MD/DO/DPM) and if applicable, include any differences in the process for collaboration based on practice location. The description may also include additional requirements specific to the physician assistant's practice, including additional levels of oversight, limitations on autonomous judgment, and designating a primary contact for collaboration:

Note: By OAR 847-050-0041(2), a physician assistant may issue prescriptions based on the physician assistant's education, training, experience, and commensurate with the collaboration agreement, thus, prescribing does not have to be specifically included in the process for collaboration.

Does the physician assistant have at least 2,000 hours of post-graduate clinical experience?
"Post-graduate clinical experience" means professional practice as a physician assistant applying principles and methods to provide assessment, diagnosis, and treatment of patients.

- ☐ Yes, the physician assistant must provide evidence of post-graduate clinical experience to the physician or employer entering the collaboration agreement. The physician or employer is responsible for determining the physician assistant meets the 2,000 hour requirement and does not require a Specified Collaboration Plan.
- ☐ No, include Attachment A: Specified Collaboration Plan (see page 4)

REVIEW

The collaboration agreement review process:

AGREEMENT REQUIREMENTS

- A collaboration agreement must be replaced or amended in writing to add, remove, or change requirements.
- The collaboration agreement must be available at the physician assistant's primary location of practice and made available to the Oregon Medical Board upon request.
- The physician assistant must be provided a copy of the collaboration agreement and any amendments.
- The physician assistant and the physician or employer with whom the physician assistant has entered into the collaboration agreement is responsible for upholding the terms of the collaboration agreement and ensuring availability for collaboration.
- ORS 677.495 to 677.535 and OAR 847 chapter 50 provides the requirements for physician assistant practice in Oregon.

SIGNATURES

Signature of Employer Representative or Physician:_____

Name of Employer Representative or Physician:_____ Date:_____

Title of Employer Representative or Physician:_____

Signature of Physician Assistant:_____

Name of Physician Assistant:_____ Date:_____

TERMINATION
To be completed when collaboration agreement is terminated.

Termination date for Collaboration Agreement (mm/dd/yyyy):_____

SIGNATURES

Signature of Employer Representative or Physician:_____

Name of Employer Representative or Physician:_____ Date:_____

Title of Employer Representative or Physician:_____

Signature of Physician Assistant:_____

Name of Physician Assistant:_____ Date:_____

Attachment A: Specified Collaboration Plan

If the physician assistant has fewer than 2,000 hours of post-graduate clinical experience, a plan for consistent and quality collaboration with a specified physician (MD, DO, DPM) on a regular basis. Collaboration with a specified physician may occur in person and through synchronous and asynchronous technology.

A collaboration agreement must be amended in writing to remove or modify a Specified Collaboration Plan.

Physician Assistant Information:

Last Name	First Name	Middle Initial	Oregon License Number

Physician (MD/DO/DPM) Information:

Last Name	First Name	Middle Initial	Oregon License Number *If applicable*

Description of specified collaboration:

IMPORTANT NOTICE: Completion of this form is required by 225 ILCS 95/1, et.seq. of the Illinois Compiled Statutes. Disclosure of this information is mandatory. Any person who is found to have knowingly violated any provision of this Act is subject to discipline under the Act.

PHYSICIAN ASSISTANT NOTICE OF WRITTEN COLLABORATIVE AGREEMENT

COLLABORATING PHYSICIAN: Complete and submit this form as official notification that you have entered into a written collaborative agreement with a physician assistant under the Physician Assistant Practice Act of 1987 (225 ILCS 95/). All forms must be typed or legibly printed in ink. The physician assistant listed below shall not perform any tasks or duties delegated by the collaborating physician until this form is completed and submitted to the Division.

Completed forms may be submitted to the Division as follows: Email form to FPR.MedicalUnit@illinois.gov; Fax form to 217-524-2169; or Mail form to IDFPR - Division of Professional Regulation, 320 West Washington, 3rd Floor, Springfield, Illinois 62786.

Submitted forms will be processed by the Division in the order in which they are received. It may take at least 4-6 weeks for a submitted form to be processed by the Division. After the form is processed, the Division will email or fax an acknowledgment letter to the collaborating physician. The acknowledgment letter must be maintained by the collaborating physician along with the signed, written collaborative agreement. The collaborating physician shall provide a copy of such documentation to the Division upon request.

If the written collaborative agreement is terminated, the collaborating physician must, within 10 days of termination, complete and submit to the Division a NOTICE OF TERMINATION OF COLLABORATION form.

A written collaborative agreement is required for all physician assistants to practice in Illinois, except for physician assistants in hospitals, hospital affiliates, or ambulatory surgical treatment centers as set forth in Section 7.7 of the Physician Assistant Practice Act.

For physician assistants employed by a practice group or other entity employing multiple physicians, one of the physicians practicing at a location shall be designated the collaborating physician. The other physicians with the practice group or other entity who practice in the same general type of practice or specialty as the collaborating physician may collaborate with the physician assistant with respect to their patients.

Forms are periodically updated. To ensure that you are using the current form, visit the IDFPR website at www.idfpr.com/profs/Physician-Assistant.asp.

COLLABORATING PHYSICIAN INFORMATION

1. COLLABORATING PHYSICIAN NAME

2. ILLINOIS LICENSE NUMBERS
036-_____
336-_____

3. DATE AGREEMENT WILL BEGIN
____/____/_____

4. ILLINOIS PRACTICE ADDRESS (Street, City, State, Zip Code)

5. ILLINOIS PHONE NUMBER OF PRACTICE (Include Area Code)
( )

6. ILLINOIS MEDICAL STAFF/CREDENTIALING OR PHYSICIAN
Fax: ( )
Email:

PHYSICIAN ASSISTANT INFORMATION

1. NAME OF PHYSICIAN ASSISTANT

2. ILLINOIS LICENSE NUMBERS
085-_____
385-_____

3. EMPLOYMENT STATUS (See Below)
☐ FULL-TIME
☐ PART-TIME

4. CONTACT INFORMATION FOR PHYSICIAN ASSISTANT

HOME/CELL TELEPHONE ( )

PERSONAL EMAIL REQUIRED _____ SIGNATURE _____

The Physician Assistant Practice Act allows a collaborating physician to collaborate with a maximum of 7 full-time equivalent physician assistants. “Full-time equivalent” means the equivalent of 40 hours per week per individual. You must indicate the number of full-time physician assistants and part time physician assistants you currently have collaborative agreements with, including the physician assistant listed above.

Full-time physician assistants _____ Part-time physician assistants _____

Signature of Collaborating Physician _____ Date Signed _____

For Board Use Only
Date Filed: _____
Date Reviewed by Board: _____
Approved_____/ Not Approved _____
License #: _____

State of Maine Uniform Application for Approval of Collaborative or Practice Agreement

Maine Board of Osteopathic Licensure
142 State House Station
Augusta, ME 04333-0142
www.maine.gov/osteo

Maine Board of Licensure in Medicine
137 State House Station
Augusta, ME 04333-0137
www.maine.gov/md

I am submitting for approval (check one):

_____Collaborative Agreement: means a document agreed to by a physician assistant and a physician that describes the scope of practice for the physician assistant as determined by the practice setting and describes the decision-making process for a health care team, including communication and consultation among health care team members. A collaborative agreement is subject to review and approval by the Board.

_____Practice agreement: means a document agreed to by a physician assistant who is the principal clinical provider in a practice and a physician that states the physician will be available to the physician assistant for collaboration or consultation. A practice agreement is subject to review and approval by the Board.

Start Date: ____/_____/_____

Physician Assistant Name		Maine License #
Proposed Practice Name and Address		
City	State, Zip Code	Business Phone#

Collaborating Physician Name MD ☐ DO ☐		Maine License #
Physician Primary Practice Name and Address		
City	State, Zip Code	Business Phone#

Scope of Practice/Medical Services and Procedures

A physician assistant may provide any medical service for which the physician assistant has been prepared by education, training and experience and is competent to perform. The scope of practice of a physician assistant is determined by the practice setting. Physician assistant scope of practice delineated in collaborative agreements or practice agreements are subject to review and approval by the Board.

Please delineate the scope of the physician assistant's practice and describe the medical services and procedures common to the practice that the physician assistant will provide.

Scope of Practice:

Location where the physician assistant will provide medical services.

Name of Facility	Street Address	City	Zip Code

Collaborative Arrangements

Describe the relationship of, and access to, the collaborating physician and a description of physician collaborative/consultative arrangements.

Education, Training and Employment

Please provide a chronological history of your education and your training and employment that is relevant to your proposed scope of practice in the collaborative or practice agreement:

Dates From/To (Month/Year)	Name & Address	Education, Training or Employment	Scope of Practice (Family, Cardiac, etc.)

We attest that the above information is true to the best of our knowledge and belief.

Physician Assistant Signature Date

Collaborating Physician Signature Date

Attestation

By signing below, we certify that:

- We have read and understand the requirements of the Chapter 2 Joint Rule Regarding Physician Assistants.
- We have read and understand the requirements of the Chapter 21 Joint Rule Use of Controlled Substances for the Treatment of Pain.
- We are in full compliance with the laws and regulations governing the practice of physician assistants.
- We understand that the physician assistant is legally liable for all medical acts performed by her/him and any medical acts delegated by the physician assistant.
- We understand that the physician assistant must keep a copy of the written collaborative/practice agreement at the main practice location and immediately produce it to the Board upon request.
- We understand that the Board may request a meeting with the physician assistant to discuss the scope of practice proposed in any collaborative/practice agreement.
- We understand the following: the physician assistant must be competent to provide the medical services delineated in the collaborative/practice agreement and must conform her/his scope of practice to the one delineated in the collaborative/practice agreement that has been approved by the Board. Any medical acts performed by the physician assistant that are outside the scope of practice of the collaborative/practice agreement may constitute grounds for discipline.

This registration is jointly agreed to and submitted by (please sign and print your names below).

Physician Assistant Name	Maine License #
Signature	Date

Collaborating Physician Name	Maine License #
Signature	Date

Alaska State Medical Board
Board Issued Guidelines

Subject:	***Guidelines for Collaborating Physicians***
Implemented:	

Alaska law requires that certified physician assistants must have an active collaborative plan with a physician in order to practice medicine. Following are the requirements of law and the expectations of the board for physicians who enter into collaborative relationships with physician assistants.

The Collaborative Plan: A collaborative plan is an agreement between a physician and a physician assistant (PA). The plan details the nature of the relationship by asking the physician the PA to define the PA's scope of practice, practice location, method of referrals, etc. There are minimum standards set by law; however, the plans can be customized to meet the needs of the practice, the physician, and the PA. For example, the law details the prescriptive authority for PAs but the physician my wish to restrict the PA from writing prescriptions in that practice.

The collaborative plan is valid when it is approved by a representative of the board (typically the board's administrator) and it is noted on the PA's temporary permit or permanent license. State law requires that a copy of this approved plan be available for review by the public at the place of employment. The physician should retain a copy in their records, as well.

The parties to the collaborative plan are the physician and the PA; however, in order to be approved by the board, there must be at least one alternate collaborating physician who signs the agreement. Alternate physicians may be added and removed in writing, at any time, as long as the alternate physician signs the responsibility statement for alternate physicians. The agreement may be voided at any time by either party to the agreement.

Qualifications of a Collaborating Physician: The law requires that the physician be actively licensed in Alaska. The physician must, by law, also accept "complete personal or employer liability to a patient of the physician assistant for whom malpractice is adjudged."

Responsibilities of a Collaborating Physician:

1. The physician must be available for referrals, consultations, and advice to the PA. The physician should also be willing to serve as an educational resource for the PA.

-continued-

Alaska State Medical Board
Board Issued Guidelines

Guidelines for collaborating physicians (continued)

2. The physician must have a method of quality assurance that includes regular contact with the PA, both via telephone or radio and in person-to-person contacts. State law requires at a minimum: monthly telephone or radio contact and at least two days each quarter of direct and personal contact for the purpose of reviewing the PA's performance in the practice, knowledge, skills, patient care, and health care records.

3. Collaborating physicians are required by law to establish a "periodic method of assessment" of the PA's practice. Methods of assessment include personal observation and evaluation of the PA's clinical skills, assessment of the PA's practice on a regular and on-going basis, and continuing instruction and supervision of the PA's practice. State law requires that collaborating physicians maintain records of assessment. It is the expectation of the board that such records of assessment include performance evaluation records which evaluate the PA's clinical skills, relationships with patients, medical knowledge, and professional attitudes and behaviors. The board does not consider periodic chart reviews to be an adequate method of assessment of a PA's practice. The law also mandates the records of assessment be audited by the board. Evaluating physicians must submit the board form "Periodic Record of Assessment" to board staff to comply with the audit.

4. It is the responsibility of the collaborating physician to maintain records of each collaborative agreement in which he/she is engaged, and to obtain and maintain on file copies of valid licenses and permits prior to allowing the PA to practice.

Scope of Practice for a Physician Assistant

Certified physician assistants may do any task for which they are appropriately educated, trained, and skilled to do as long as they are authorized by their collaborating physician to perform that task. It is the burden of the collaborating physician to insure that the physician assistant with whom they collaborate is properly educated, trained, and skilled for the requirements of the practice.

As with physicians, some physician assistants are trained in certain specialties of medicine. For example, there are those who are trained to work only orthopedics. In Alaska, most physician assistants work in family practice environments.

MINNESOTA
BOARD OF MEDICAL PRACTICE

335 Randolph Avenue, Suite 140
St. Paul, MN 55102
612.617.2130 (phone) | 612.617.2166 (fax)
medical.board@state.mn.us | mn.gov/boards/medical-practice

COLLABORATIVE PRACTICE VERIFICATION FOR PHYSICIAN ASSISTANTS

Minnesota Statutes, section 147A.02(c) states the following:

A physician assistant who qualifies for licensure must practice for at least 2,080 hours, within the context of a collaborative agreement, within a hospital or integrated clinical setting where physician assistants and physicians work together to provide patient care. The physician assistant shall submit written evidence to the board with the application, or upon completion of the required collaborative practice experience. For purposes of this paragraph, a collaborative agreement is a mutually agreed upon plan for the overall working relationship and collaborative arrangement between a physician assistant, and one or more physicians licensed under chapter 147, that designates the scope of services that can be provided to manage the care of patients. The physician assistant and one of the collaborative physicians must have experience in providing care to patients with the same or similar medical conditions. The collaborating physician is not required to be physically present so long as the collaborating physician and physician assistant are or can be easily in contact with each other by radio, telephone, or other telecommunication device.

The information you are asked to provide on the attached affidavit will confirm completion of 2,080 hours of practice within the context of a collaborative agreement, as outlined in this section of Minnesota Statutes.

• Type or print clearly • Provide all information • Do not use initials or abbreviations

APPLICANT/LICENSEE INFORMATION			
LAST NAME	FIRST NAME	MIDDLE NAME	
STREET ADDRESS			
CITY	STATE/PROVINCE	ZIP/POSTAL CODE	COUNTRY
BIRTH DATE (mm/dd/yyyy)			

COMPLETE THE AFFIDAVIT OF COLLABORATIVE PRACTICE

AND SUBMIT WITH THIS FORM

to the MINNESOTA BOARD OF MEDICAL PRACTICE

MINNESOTA
BOARD OF MEDICAL PRACTICE

335 Randolph Avenue, Suite 140
St. Paul, MN 55102
612.617.2130 (phone) | 612.617.2166 (fax)
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AFFIDAVIT OF COLLABORATIVE PRACTICE
COMPLETE ONLY ONE OF A, B, or C

At the time of initial application, select only A or B.

When you complete 2,080 hours of collaborative practice, please submit an Affidavit selecting option C.

A. I have reviewed Minnesota Statute § 147A.02(c) and affirm that **I have completed 2,080 hours** of collaborative practice as outlined in this section of Minnesota Statutes.

The undersigned does hereby affirm that this statement is true and correct.

_____
Print Name

_____ _____
Legal Signature Date (mm/dd/yyyy)

B. I have reviewed Minnesota Statute § 147A.02(c) and affirm that **I have NOT completed 2,080 hours** of collaborative practice as outlined in this section of Minnesota Statutes.

The undersigned does hereby affirm that this statement is true and correct.

_____
Print Name

_____ _____
Legal Signature Date (mm/dd/yyyy)

C. I have reviewed Minnesota Statute § 147A.02(c) and affirm that **I have NOW completed 2,080 hours** of collaborative practice as outlined in this section of Minnesota Statutes.

_____
Date of completion (mm/dd/yyyy)

The undersigned does hereby affirm that this statement is true and correct.

_____
Print Name

_____ _____
Legal Signature Date (mm/dd/yyyy)

MINNESOTA
BOARD OF MEDICAL PRACTICE

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St. Paul, MN 55102
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ADDITIONAL REQUIREMENTS

You may be required to apply for a Drug Enforcement Administration (DEA) registration and register an account with the Minnesota Prescription Monitoring Program (PMP).

To obtain an application for a DEA number/registration:
Access the DEA website at https://www.deadiversion.usdoj.gov/ or call the DEA Regional Field Office at 612-344-4136.

Once you have obtained a DEA number/registration, you may also be required to register and maintain a user account with the Minnesota Prescription Monitoring Program, pursuant to Minnesota Statute § 151.126, Subd. 6(c):

By July 1, 2017, every prescriber licensed by a health-related licensing board listed in section 214.01, subdivision 2, practicing within this state who is authorized to prescribe controlled substances for humans and who holds a current registration issued by the federal Drug Enforcement Administration, and every pharmacist licensed by the board and practicing within the state, shall register and maintain a user account with the prescription monitoring program. Data submitted by a prescriber, pharmacist, or their delegate during the registration application process, other than their name, license number, and license type, is classified as private pursuant to section 13.02, subdivision 12.

To register an account with the PMP, follow this link:
http://pmp.pharmacy.state.mn.us/pmp-user-registration-and-resources.html or contact the PMP at 651-201-2836 or minnesota.pmp@state.mn.us

Collaborative Agreement/Supervisory Agreement—Directions

A PA may not provide care unless the PA has entered into a **Collaborative Agreement** with a physician licensed in good standing or a physician group. A collaborative agreement is a written agreement that describes the manner in which a PA collaborates with a physician or a physician group.

The **Collaborative Agreement** must include:

1. The PA's name, license number, and primary location of practice,
2. The signature of the PA and the physician or physician group with whom the PA has entered into the collaborative agreement,
3. A description of the PA's process for collaboration, the degree of which must be based on the PA's primary location and area of practice and may include:
    a. Decisions made by the physician or physician group with whom the PA has entered into a collaborative agreement, and
    b. The credentialing or privileging requirements of the PA's primary location of practice,
4. A description of the **Performance Evaluation** process, which may be completed by the PA's employer in accordance with a performance evaluation and review process established by the employer, and
5. Any additional requirements specific to the PA's practice required by the physician entering into the collaborative agreement, including additional levels of oversight, limitations on autonomous judgment, and the designation of a primary contact for collaboration.

Additional requirements for PAs with < 5,000 practice hours or PAs changing practice areas with < 3,000 practice hours in the new practice area

For PAs with fewer than 5,000 practice hours or PAs changing practice areas with fewer than 3,000 practice hours in the new practice area, the collaborative agreement is a **Supervisory Agreement**. In addition to the requirements for all collaborative agreements (above), the supervisory agreement must also:

6. Require that collaboration during the first 160 practice hours be completed in person or through technology as permitted by the physician or physician group with whom the PA has entered into the collaborative agreement.
7. Incorporate elements defining the expected nature of collaboration including:
    a. the PA's expected area of practice
    b. expectations regarding support and consultation from the physician or physician group
    c. methods and modes of communication and collaboration, and
    d. any other pertinent elements of collaborative, team-based practice applicable to the PA's practice or established by the employer; and
8. Require a **Performance Evaluation** and discussion of the performance evaluation with the PA after the PA has worked with the employer for six months, again after the PA has worked with the employer for 12 months, and additional evaluation thereafter as determined by the physician or physician group with whom the PA has entered into the collaborative agreement.

After a PA has completed the required practice hours, the PA would work under a collaborative agreement and these three additional requirements no longer apply.

PAs with a collaborative agreement with a physician/physician group in the ED of a hospital with a Level I or Level II trauma center

For PAs working with a physician/physician group in the emergency department of a hospital with a level I or level II trauma center, the collaborative agreement remains a supervisory agreement indefinitely.

For a PA changing practice areas to practice in an emergency department of a hospital that is not a level I or Level II trauma center, the supervising physician or physician group may increase the number of hours for which the collaborative agreement is a supervisory agreement (i.e., greater than 3,000 hours).

Tips for completing the Collaborative Agreement *(numbers below correspond to the numbered elements above):*

3. A description of the PA's process for collaboration, the degree of which must be based on the PA's primary location and area of practice and may include:

a. **Decisions made by the physician or physician group with whom the PA has entered into a collaborative agreement, and**
b. **The credentialing or privileging requirements of the PA's primary location of practice.**

This should include the practice area of the PA and specialty or specialties of the collaborating physician or physician group, for example primary care and family medicine. The scope of practice of the PA should be within the scope of practice of the collaborating physician or physician group. There should be a description of the practice setting and whether there are additional requirements when the PA is working at an ambulatory surgical center or hospital. These may include the facility's requirements related to clinical privileges such as an attending physician's co-signature on certain chart notes.

The description of the process for collaboration may include the method by which the collaborating physician or a member of the physician group is available for consultation during the hours the PA is working. This would include the alternatives if the collaborating physician is unavailable.

4. A description of the performance evaluation process, which may be completed by the PA's employer in accordance with a performance evaluation and review process established by the employer

Expectations for the performance evaluation process and the frequency of review should be included here. This section should be consistent with what the employer or collaborating physician group uses for the Performance Evaluation. Please see the sample template ***Performance Evaluation****.*

5. Any additional requirements specific to the PA's practice required by the physician entering into the collaborative agreement, including additional levels of oversight, limitations on autonomous judgment, and the designation of a primary contact for collaboration.

This can include clinical presentations that are high risk for the practice where there should be real time consultation with a collaborating physician or physician group, for example a patient with neurologic complaints in a family medicine clinic setting. Certain procedures and procedural sedation may be limited to when there is direct physician supervision. Post-operative visits may require having a physician available on-site for surgical practices. COPIC has specialty-specific resources available that focus on the major risk areas for these specialties or practice settings.

<u>Tips for additional requirements when the Collaborative Agreement is a Supervisory Agreement (*numbers below correspond to the numbered elements above*):</u>

6. Require that collaboration during the first 160 practice hours be completed in person or through technology as permitted by the physician or physician group with whom the PA has entered into the collaborative agreement.
A physician maintains a <u>supervisory</u> role for newly trained PAs with < 5,000 practice hours or those changing to a new practice area with < 3,000 practice hours in the new practice area. While the law does not mandate on-site physician supervision during this time, it is up to the responsible supervising physician to determine whether it is the most reasonable practice under the circumstances to do so.

7. Incorporate elements defining the expected nature of collaboration including:

a. **the PA's expected area of practice**
b. **expectations regarding support and consultation from the physician or physician group**
c. **methods and modes of communication and collaboration, and**
d. **any other pertinent elements of collaborative, team-based practice applicable to the PA's practice or established by the employer.**

During the supervisory period for less experienced PAs, there should be a description of how communication will take place, particularly when a supervising physician is not on-site. At all times during the supervisory period, a physician should be available by telephone, radio, or other communication device. A practice or facility may require a physician's co-signature on certain chart notes. Some questions to consider include:

- *Does the practice or facility limit the ability of PAs to perform certain duties?*
- *Does the PA need to consult with the physician before consulting with a specialist, or calling a hospitalist to admit a patient?*
- *Can certain procedures only be performed with the physician on-site (for example, those that are high risk or where the PA has less clinical experience with the procedure)?*
- *Are there conditions on using or prescribing certain high-risk drugs without consultation with the supervising physician (for example, anesthetics or psychotropic drugs)?*

8. Require a Performance Evaluation and discussion of the performance evaluation with the PA after the PA has worked with the employer for <u>six months</u>, again after the PA has worked with the employer for <u>12 months</u>, and additional evaluation thereafter as determined by the physician or physician group with whom the PA has entered into the collaborative agreement.
*Please see the sample template **Performance Evaluation.***

<u>Collaborative Agreement/Supervisory Agreement</u> (template)

Collaborating Physician or Physician Group:

_____

(Print name)

1. Physician Assistant:

_____

(Print name)

_____

(Print CO license number)

_____

(Print primary location of practice)

2. Signatures required at the end of the agreement.

3. A description of the PA's process for collaboration, the degree of which must be based on the PA's primary location and area of practice and may include:

a. **Decisions made by the physician or physician group with whom the PA has entered into a collaborative agreement, and**
b. **The credentialing or privileging requirements of the PA's primary location of practice.**

_____
_____
_____
_____
_____
_____
_____
_____
_____

4. A description of the performance evaluation process, which may be completed by the PA's employer in accordance with a performance evaluation and review process established by the employer.

_____
_____
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_____

5. Any additional requirements specific to the PA's practice required by the physician entering into the collaborative agreement, including additional levels of oversight, limitations on autonomous judgment, and the designation of a primary contact for collaboration.

_____
_____
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_____

Additional Requirements for Supervisory Agreement (if applicable)

6. Require that collaboration during the first 160 practice hours be completed in person or through technology as permitted by the physician or physician group with whom the PA has entered into the collaborative agreement.

_____
_____
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_____
_____

7. Incorporate elements defining the expected nature of collaboration including:

- **a. the PA's expected area of practice**
- **b. expectations regarding support and consultation from the physician or physician group**
- **c. methods and modes of communication and collaboration, and**
- **d. any other pertinent elements of collaborative, team-based practice applicable to the PA's practice or established by the employer.**

_____
_____
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_____

8. Require a Performance Evaluation and discussion of the performance evaluation with the PA after the PA has worked with the employer for six months, again after the PA has worked with the employer for 12 months, and additional evaluation thereafter as determined by the physician or physician group with whom the PA has entered into the collaborative agreement.

_____
_____
_____
_____
_____
_____
_____

(May reference **Performance Evaluation** document)

Collaborating Physician or Collaborating Physician Group representative:

_____
(signature)

Physician assistant: _____
(signature)

Date: _____

HEALTH FACILITY LETTERHEAD

(For additional clarification regarding what information is required in the Collaborative Agreement, please review the Collaborative Agreement Checklist available above this sample agreement at pla.in.gov)

PHYSICIAN ASSISTANT COLLABORATIVE AGREEMENT
(Agreement must be completely typed)

Under the collaboration with [name of Collaborating Physician], the physician assistant provides efficient, cost-effective, quality patient care in accordance with established rules and regulations defining the physician assistant's scope of practice. The physician assistant functions as an extension of the physician in diagnosing and treating patient conditions by performing tasks within the scope of the Collaborating Physician. The physician assistant may perform such tasks, which were traditionally performed by the physician, if that physician assistant has adequate orientation and has demonstrated competent performance.

Physician Assistant's name:	Enter name of PA
PA License Number:	Enter Indiana license number (or indicate "applied")
PA CSR Number	Enter Indiana CSR number (or indicate "applied")
Address of Practice:	Enter address where PA will be practicing
Phone Number:	Enter phone number of practice

List any additional practice addresses

Collaborating Physician's Name:	Enter name of Collaborating Physician
Physician's License Number:	Enter physician's Indiana license number
Address of Practice:	Enter address where physician practices
Phone Number	Enter phone number of practice

ROLE OF THE PHYSICIAN ASSISTANT:
[Name of PA] is delegated to perform the following tasks and procedures that are within his/her education and training and the Collaborating Physician's scope of practice:

1. **Clinical Practice:** List tasks and/or procedures PA will perform. May not include prescribing, administering, or monitoring general anesthesia, regional anesthesia, or deep sedation. See IC 25-27.5-5-4(f) for rules on administering moderate sedation.

2. **Communication:** Maintain communication with referring physicians, ancillary departments, patients and families to ensure that services are rendered in a timely and

SAMPLE

efficient manner. Act as liaison between the Collaborating Physician and ancillary staff to ensure quality of patient card.

3. **Documentation:** Obtain pertinent patient information for case management. Obtain procedure consent, complete pre procedure H&P's, complete consultations, and coordinate cases. Documentation is maintained in the patient's confidential medical record and entered into the appropriate database. Complete billing forms and appropriate documentation to send to the billing agency for the radiology practice.

4. **Professional Development:** Maintain continuing education requirements as required by NCCPA. Maintain knowledge of departmentally specific information systems and software. Participate in advanced practitioner, resident, student and fellow education including clinical management of patients, anatomy and physiology, disease process, new trends in their field, billing and coding, etc.

5. **Research:** Participate in research trials, consenting and maintaining confidential information in accordance with the IRB.

6. **Attendance and Reliability:** Meet the departmental attendance and tardiness policy standards. Manages time effectively. Regularly attends departmental meetings.

SPECIALTY CERTIFICATIONS

[Name of PA] has successfully completed a two to four-year physician assistant training program approved by the Medical Licensing Board of Indiana. He/She is currently licensed by the Physician Assistant Committee and is currently certified by the National Commission on Certification of Physician Assistants. He/She also possesses a current BLS and ACLS certification.

SPECIFIC MANNER OF COLLABORATION

The Collaborating Physician and/or Delegated Collaborating Physician shall provide the overall direction to the Physician Assistant. The PA shall seek consultation and direction from the Collaborating Physician and/or Delegated Collaborating Physicians when conditions or circumstances outside established protocols are encountered. The PA shall communicate directly findings of history and physical examinations.

May add additional information, including percentage of chart reviews.

PROTOCOL DEALING WITH EMERGENCIES

The physician assistant will follow the procedure described below for dealing with emergencies: Specify what the P.A. will do in the event of a patient emergency.
For example:
"The physician assistant will follow the procedure described below for dealing with emergencies: The PA will immediately contact his/her Collaborating Physician and the rest of the staff to inform them of the situation. The PA will then carry out the

SAMPLE

instructions given. If for some reason the Collaborating Physician cannot be reached, the PA will contact a Delegate Collaborating Physician and obtain instructions. Care may include, but is not limited to: vital signs, administration of oxygen, administration of medications, and initiation of advanced life support"

DELEGATED PRESCRIPTIVE AUTHORITY

(ATTENTION! AS OF JULY 1, 2016, A LIST OF MEDICATIONS THAT THE PHYSICIAN ASSISTANT WILL BE PRESCRIBING IS NO LONGER REQUIRED IN THE AGREEMENT.)

- May not include ophthalmic devices
- Indicate whether PA will/will not be prescribing medications
- Indicate whether PA will/will not be prescribing controlled substances

PROTOCOLS FOR PRESCRIBING MEDICATIONS

In prescribing medications, [Name of PA] will examine potential indications and contraindications of the medication, while noting any patient allergies, drug interactions, therapeutic alternatives, and the proper dosage for the patient. The PA will consult with her Collaborating Physician as needed on a case-by-case basis.

_____ _____

Typed name of PA Date

_____ _____

Typed name of Collaborating Physician Date

Have both sign and date agreement.

WE MUST RECEIVE ORIGINAL SIGNATURES, OR AUTHENTICATED ELECTRONIC SIGNATURES (ex. DocuSign) OF THE PA AND COLLABORATING PHYSICIAN.

SAMPLE

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

CHAPTER 54

HOUSE BILL 2043

AN ACT

AMENDING SECTIONS 32-2501, 32-2502, 32-2531, 32-2532 AND 32-2533, ARIZONA REVISED STATUTES; REPEALING SECTION 32-2534, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 25, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 32-2534; AMENDING SECTION 32-2535, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 25, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2536; AMENDING SECTION 32-2551, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-2501, Arizona Revised Statutes, is amended to read:

32-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a regular license issued pursuant to this chapter.

2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

3. "Advisory letter" means a nondisciplinary letter to notify a physician assistant that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved program" means a physician assistant educational program accredited by the accreditation review commission on education for physician assistants, or one of its predecessor agencies, the committee on allied health education and accreditation or the commission on the accreditation of allied health educational programs.

5. "Board" means the Arizona regulatory board of physician assistants.

6. "COLLABORATING PHYSICIAN OR ENTITY" MEANS A PHYSICIAN, PHYSICIAN GROUP PRACTICE, PHYSICIAN PRIVATE PRACTICE OR LICENSED HEALTH CARE INSTITUTION THAT EMPLOYS OR COLLABORATES WITH A PHYSICIAN ASSISTANT WHO HAS AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE AS CERTIFIED BY THE BOARD PURSUANT TO SECTION 32-2536 AND DOES NOT REQUIRE A SUPERVISION AGREEMENT AND THAT DESIGNATES ONE OR MORE PHYSICIANS BY NAME OR POSITION WHO IS RESPONSIBLE FOR THE OVERSIGHT OF THE PHYSICIAN ASSISTANT.

~~6.~~ 7. "Completed application" means an application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

~~7.~~ 8. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician assistant and the natural or adopted children, father, mother, brothers and sisters of the physician assistant's spouse.

~~8.~~ 9. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician assistant that the physician assistant's conduct violates state or federal law and may require the board to monitor the physician assistant.

~~9.~~ 10. "Limit" means a nondisciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be mentally or physically unable to safely engage in health care tasks.

~~10.~~ 11. "Medically incompetent" means that a physician assistant lacks sufficient medical knowledge or skills, or both, in performing delegated health care tasks to a degree likely to endanger the health or safety of patients.

~~11.~~ 12. "Minor surgery":

(a) Means those invasive procedures that may be ~~delegated to~~ PERFORMED BY a physician assistant ~~by a supervising physician~~, that are consistent with the training and experience of the physician assistant, that are normally taught in courses of training approved by the board, ~~and~~ that have been approved by the board as falling within ~~a~~ THE scope of practice of a physician assistant AND THAT ARE CONSISTENT WITH THE PRACTICE SETTING REQUIREMENTS OF THE PHYSICIAN ASSISTANT. ~~Minor surgery~~

(b) Does not include a surgical abortion.

~~12.~~ 13. "Physician" means a physician who is licensed pursuant to chapter 13 or 17 of this title.

~~13.~~ 14. "Physician assistant" means a person who is licensed pursuant to this chapter ~~and who practices medicine with physician supervision~~.

~~14.~~ 15. "Regular license" means a valid and existing license that is issued pursuant to section 32-2521 to perform health care tasks.

~~15.~~ 16. "Restrict" means a disciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be medically incompetent or guilty of unprofessional conduct.

~~16.~~ 17. "Supervising physician" means a physician who holds a current unrestricted license, who supervises a physician assistant WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE and who assumes legal responsibility for health care tasks performed by the physician assistant.

~~17.~~ 18. "Supervision" means a physician's opportunity or ability to provide or exercise direction and control over the services of a physician assistant. Supervision does not require a physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.

19. "SUPERVISION AGREEMENT" MEANS A WRITTEN OR ELECTRONIC SIGNED AGREEMENT THAT BOTH:

(a) DESCRIBES THE SCOPE OF PRACTICE FOR A PHYSICIAN ASSISTANT WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE.

(b) IS BETWEEN THE PHYSICIAN ASSISTANT AND A PHYSICIAN OR THE PHYSICIAN ASSISTANT'S EMPLOYER THAT EMPLOYS OR HAS ON MEDICAL STAFF AT LEAST ONE PHYSICIAN WHO MAY PROVIDE OVERSIGHT, AS APPLICABLE, AND WHO HOLDS A CURRENT UNRESTRICTED LICENSE. FOR THE PURPOSES OF THIS SUBDIVISION, "EMPLOYER" MEANS A PHYSICIAN, PHYSICIAN GROUP PRACTICE, PHYSICIAN PRIVATE PRACTICE OR LICENSED HEALTH CARE INSTITUTION.

~~18.~~ 20. "Unprofessional conduct" includes the following acts by a physician assistant that occur in this state or elsewhere:

(a) Violating any federal or state law or rule that applies to the performance of health care tasks as a physician assistant. Conviction in any court of competent jurisdiction is conclusive evidence of a violation.

(b) Claiming to be a physician or knowingly ~~permitting~~ ALLOWING another person to represent that person as a physician.

(c) Performing health care tasks that ~~have not been delegated by the supervising physician~~ DO NOT MEET THE SUPERVISION OR COLLABORATION REQUIREMENTS, AS APPLICABLE, PURSUANT TO SECTION 32-2531.

(d) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while performing health care tasks or to the extent that judgment may be impaired and the ability to perform health care tasks detrimentally affected.

(e) Signing a blank, undated or predated prescription form.

(f) Committing gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(g) Representing that a manifestly incurable disease or infirmity can be permanently cured or that a disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(h) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in ~~the treatment of~~ TREATING a disease, injury, ailment or infirmity.

(i) Prescribing or dispensing controlled substances or prescription-only drugs for which the physician assistant is not approved or in excess of the amount authorized pursuant to this chapter.

(j) Committing any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(k) Violating a formal order, probation or stipulation issued by the board.

(l) Failing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment.

(m) Failing to use and affix the initials "P.A." or "P.A.-C." after the physician assistant's name or signature on charts, prescriptions or professional correspondence.

(n) Procuring or attempting to procure a physician assistant license by fraud, misrepresentation or knowingly taking advantage of the mistake of another.

(o) Having professional connection with or lending the physician assistant's name to an illegal practitioner of any of the healing arts.

(p) Failing or refusing to maintain adequate records ~~on~~ FOR a patient.

(q) Using controlled substances that have not been prescribed by a physician, physician assistant, dentist or nurse practitioner for use during a prescribed course of treatment.

(r) Prescribing or dispensing controlled substances to members of the physician assistant's immediate family.

(s) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(t) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-2532.

(u) Knowingly making any written or oral false or fraudulent statement in connection with the performance of health care tasks or when applying for privileges or renewing an application for privileges at a health care institution.

(v) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(w) Having a certification or license refused, revoked, suspended, limited or restricted by any other licensing jurisdiction for the inability to safely and skillfully perform health care tasks or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this paragraph.

(x) Having sanctions including restriction, suspension or removal from practice imposed by an agency of the federal government.

(y) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.

(z) Using the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or ~~an~~ osteopathic physician in this state.

(aa) Failing to furnish legally requested information to the board or its investigator in a timely manner.

(bb) Failing to allow properly authorized board personnel to examine on demand documents, reports and records of any kind relating to the physician assistant's performance of health care tasks.

(cc) Knowingly making a false or misleading statement on a form required by the board or in written correspondence or attachments furnished to the board.

(dd) Failing to submit to a body fluid examination and other examinations known to detect the presence of alcohol or other drugs pursuant to an agreement with the board or an order of the board.

(ee) Violating a formal order, probation agreement or stipulation issued or entered into by the board or its executive director.

(ff) Except as otherwise required by law, intentionally betraying a professional secret or intentionally violating a privileged communication.

(gg) Allowing the use of the licensee's name in any way to enhance or ~~permit~~ ALLOW the continuance of the activities of, or maintaining a professional connection with, an illegal practitioner of medicine or the performance of health care tasks by a person who is not licensed pursuant to this chapter.

(hh) Committing false, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative.

(ii) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the licensee has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and ~~if~~ WHETHER the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one physician assistant to another physician assistant or to a doctor of medicine or a doctor of osteopathic medicine within a group working together.

(jj) With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent or without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee, or without approval by the United States food and drug administration or its successor agency.

(kk) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes.

(ll) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a professional relationship with the person. This subdivision does not apply to:

(i) A physician assistant who provides temporary patient care on behalf of the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician assistant.

(mm) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the professional relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a patient.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(nn) Performing health care tasks under a false or assumed name in this state.

Sec. 2. Section 32-2502, Arizona Revised Statutes, is amended to read:

32-2502. Arizona regulatory board of physician assistants; membership; appointment; terms; immunity

A. The Arizona regulatory board of physician assistants is established consisting of the following members:

1. Five physician assistants who hold a current regular license pursuant to this chapter. The governor may appoint these members from a list of qualified candidates submitted by the Arizona state association of physician assistants. The governor may seek additional input and nominations before the governor makes the physician assistant appointments.

2. Two public members who are appointed by the governor.

3. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 17 of this title, one of whom supervises OR COLLABORATES WITH a physician assistant at the time of appointment, and who are appointed by the governor.

4. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 13 of this title, one of whom supervises OR COLLABORATES WITH a physician assistant at the time of appointment, and who are appointed by the governor.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The term of office of members of the board is four years to begin and end on July 1.

D. Each board member is eligible for appointment to not more than two full terms, except that the term of office for a member appointed to fill a vacancy that is not caused by the expiration of a full term is for the unexpired portion of that term and the governor may reappoint that member to not more than two additional full terms. Each board member may continue to hold office until the appointment and qualification of that member's successor. ~~However,~~ The governor may remove a member after notice and a hearing~~,~~ on a finding of continued neglect of duty, incompetence or unprofessional or dishonorable conduct. That member's term ends when the finding is made.

E. A board member's term automatically ends:

1. On written resignation submitted to the board chairperson or to the governor.

2. If the member is absent from this state for more than six months during a one-year period.

3. If the member fails to attend three consecutive regular board meetings.

4. Five years after retirement from active practice.

F. Board members are immune from civil liability for all good faith actions they take pursuant to this chapter.

Sec. 3. Section 32-2531, Arizona Revised Statutes, is amended to read:

32-2531. Physician assistant scope of practice; health care tasks; supervision agreements; supervising physician duties; civil penalty

~~A. A supervising physician may delegate health care tasks to a physician assistant.~~

A. EXCEPT AS PROHIBITED IN SUBSECTION E OF THIS SECTION, A PHYSICIAN ASSISTANT MAY PROVIDE ANY LEGAL MEDICAL SERVICE FOR WHICH THE PHYSICIAN ASSISTANT HAS BEEN PREPARED BY EDUCATION, TRAINING AND EXPERIENCE AND THAT THE PHYSICIAN ASSISTANT IS COMPETENT TO PERFORM, INCLUDING:

1. OBTAINING COMPREHENSIVE HEALTH HISTORIES AND PERFORMING PHYSICAL EXAMINATIONS.

2. EVALUATING AND DIAGNOSING PATIENTS AND MANAGING AND PROVIDING MEDICAL TREATMENT AND THERAPEUTIC INTERVENTIONS.

3. ORDERING, PERFORMING AND INTERPRETING DIAGNOSTIC STUDIES AND THERAPEUTIC PROCEDURES.

4. EDUCATING PATIENTS ON HEALTH PROMOTION AND DISEASE PREVENTION AND PROVIDING COUNSELING AND EDUCATION TO MEET PATIENT NEEDS.

5. PROVIDING CONSULTATION ON REQUEST.

6. WRITING MEDICAL ORDERS.

7. OBTAINING INFORMED CONSENT.

8. ASSISTING IN SURGERY.

9. DELEGATING AND ASSIGNING THERAPEUTIC AND DIAGNOSTIC MEASURES TO AND SUPERVISING LICENSED OR UNLICENSED PERSONNEL.

10. MAKING APPROPRIATE REFERRALS.

11. ORDERING, PRESCRIBING, DISPENSING AND ADMINISTERING DRUGS AND MEDICAL DEVICES.

12. PRESCRIBING PRESCRIPTION-ONLY MEDICATIONS.

13. PRESCRIBING SCHEDULE IV OR SCHEDULE V CONTROLLED SUBSTANCES AS DEFINED IN THE CONTROLLED SUBSTANCES ACT (P.L. 91-513; 84 STAT. 1242; 21 UNITED STATES CODE SECTION 802).

14. PRESCRIBING SCHEDULE II AND SCHEDULE III CONTROLLED SUBSTANCES AS DEFINED IN THE CONTROLLED SUBSTANCES ACT.

15. PERFORMING MINOR SURGERY.

16. PERFORMING NONSURGICAL HEALTH CARE TASKS THAT ARE NORMALLY TAUGHT IN COURSES OF TRAINING APPROVED BY THE BOARD AND THAT ARE CONSISTENT WITH THE PHYSICIAN ASSISTANT'S EDUCATION, TRAINING AND EXPERIENCE.

17. CERTIFYING THE HEALTH OR DISABILITY OF A PATIENT AS REQUIRED BY ANY LOCAL, STATE OR FEDERAL PROGRAM.

18. ORDERING HOME HEALTH SERVICES.

B. PURSUANT TO THE REQUIREMENTS OF THIS CHAPTER AND THE STANDARD OF CARE, A PHYSICIAN ASSISTANT WHO HAS AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE CERTIFIED BY THE BOARD PURSUANT TO SECTION 32-2536 IS NOT REQUIRED TO PRACTICE PURSUANT TO A SUPERVISION AGREEMENT BUT SHALL CONTINUE TO COLLABORATE WITH, CONSULT WITH OR REFER TO THE APPROPRIATE HEALTH CARE PROFESSIONAL AS INDICATED BY THE PATIENT'S CONDITION AND BY THE PHYSICIAN ASSISTANT'S EDUCATION, EXPERIENCE AND COMPETENCIES. THE LEVEL OF COLLABORATION REQUIRED BY THIS SUBSECTION IS DETERMINED BY THE POLICIES OF THE PRACTICE SETTING AT WHICH THE PHYSICIAN ASSISTANT IS EMPLOYED, INCLUDING A PHYSICIAN EMPLOYER, PHYSICIAN GROUP PRACTICE OR HEALTH CARE INSTITUTION. COLLABORATION, CONSULTATION OR A REFERRAL PURSUANT TO THIS SUBSECTION MAY OCCUR THROUGH ELECTRONIC MEANS AND DOES NOT REQUIRE THE PHYSICAL PRESENCE OF THE APPROPRIATE HEALTH CARE PROFESSIONAL AT THE TIME OR PLACE THE PHYSICIAN ASSISTANT PROVIDES MEDICAL

SERVICES. THIS SUBSECTION DOES NOT PROHIBIT A PHYSICIAN ASSISTANT WHO HAS AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE CERTIFIED BY THE BOARD PURSUANT TO SECTION 32-2536 FROM PRACTICING PURSUANT TO A SUPERVISION AGREEMENT.

C. A PHYSICIAN ASSISTANT WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE CERTIFIED BY THE BOARD SHALL WORK IN ACCORDANCE WITH A SUPERVISION AGREEMENT THAT DESCRIBES THE PHYSICIAN ASSISTANT'S SCOPE OF PRACTICE. A PHYSICIAN ASSISTANT MAY NOT PERFORM HEALTH CARE TASKS UNTIL THE PHYSICIAN ASSISTANT HAS COMPLETED AND SIGNED A SUPERVISION AGREEMENT. UNDER A SUPERVISION AGREEMENT, SUPERVISION MAY OCCUR THROUGH ELECTRONIC MEANS AND DOES NOT REQUIRE THE PHYSICAL PRESENCE OF THE SUPERVISING PHYSICIAN AT THE TIME OR PLACE THE PHYSICIAN ASSISTANT PROVIDES MEDICAL SERVICES. THE SUPERVISION AGREEMENT MUST BE KEPT ON FILE AT THE MAIN LOCATION OF THE PHYSICIAN ASSISTANT'S PRACTICE AND, ON REQUEST, BE MADE AVAILABLE TO THE BOARD OR THE BOARD'S REPRESENTATIVE. ON RECEIPT OF BOARD CERTIFICATION OF THE PHYSICIAN ASSISTANT'S COMPLETION OF AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE, A PHYSICIAN ASSISTANT IS NO LONGER SUBJECT TO THE REQUIREMENTS OF THIS SUBSECTION. THE BOARD MAY COUNT PRACTICE HOURS EARNED IN ANOTHER JURISDICTION TOWARD THE HOURS OF CLINICAL PRACTICE REQUIRED BY THIS SUBSECTION.

D. A PHYSICIAN ASSISTANT WHO DOES NOT PRACTICE PURSUANT TO A SUPERVISION AGREEMENT IS LEGALLY RESPONSIBLE FOR THE HEALTH CARE SERVICES PERFORMED BY THE PHYSICIAN ASSISTANT.

~~B.~~ E. A physician assistant shall not perform surgical abortions as defined in section 36-2151.

~~C. The physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing and administration of drugs and medical devices, that are delegated by the supervising physician.~~

~~D. The physician assistant may provide any medical service that is delegated by the supervising physician if the service is within the physician assistant's skills, is within the physician's scope of practice and is supervised by the physician.~~

~~E.~~ F. ~~The~~ A physician assistant may pronounce death and~~, if delegated,~~ may authenticate, by the physician assistant's signature, CERTIFICATION, STAMP, VERIFICATION, AFFIDAVIT OR ENDORSEMENT, any form that may be authenticated by a physician's signature, CERTIFICATION, STAMP, VERIFICATION, AFFIDAVIT OR ENDORSEMENT.

~~F. The physician assistant is the agent of the physician assistant's supervising physician in the performance of all practice related activities, including the ordering of diagnostic, therapeutic and other medical services.~~

~~G. The physician assistant may perform health care tasks in any setting authorized by the supervising physician, including physician offices, clinics, hospitals, ambulatory surgical centers, patient homes,~~

~~nursing homes and other health care institutions. These tasks may include:~~

~~1. Obtaining patient histories.~~

~~2. Performing physical examinations.~~

~~3. Ordering and performing diagnostic and therapeutic procedures.~~

~~4. Formulating a diagnostic impression.~~

~~5. Developing and implementing a treatment plan.~~

~~6. Monitoring the effectiveness of therapeutic interventions.~~

~~7. Assisting in surgery.~~

~~8. Offering counseling and education to meet patient needs.~~

~~9. Making appropriate referrals.~~

~~10. Prescribing schedule IV or V controlled substances as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) and prescription-only medications.~~

~~11. Prescribing schedule II and III controlled substances as defined in the federal controlled substances act of 1970.~~

~~12. Performing minor surgery as defined in section 32-2501.~~

~~13. Performing other nonsurgical health care tasks that are normally taught in courses of training approved by the board, that are consistent with the training and experience of the physician assistant and that have been properly delegated by the supervising physician.~~

~~H. The supervising physician shall:~~

~~1. Meet the requirements established by the board for supervising a physician assistant.~~

~~2. Accept responsibility for all tasks and duties the physician delegates to a physician assistant.~~

~~3. Notify the board and the physician assistant in writing if the physician assistant exceeds the scope of the delegated health care tasks.~~

~~4. Maintain a written agreement with the physician assistant. The agreement must state that the physician will exercise supervision over the physician assistant and retains professional and legal responsibility for the care rendered by the physician assistant. The agreement must be signed by the supervising physician and the physician assistant and updated annually. The agreement must be kept on file at the practice site and made available to the board on request. Each year the board shall randomly audit at least five per cent of these agreements for compliance.~~

~~I. A physician's ability to supervise a physician assistant is not affected by restrictions imposed by the board on a physician assistant pursuant to disciplinary action taken by the board.~~

~~J. Supervision must be continuous but does not require the personal presence of the physician at the place where health care tasks are performed if the physician assistant is in contact with the supervising physician by telecommunication. If the physician assistant practices in a location where a supervising physician is not routinely present, the physician assistant must meet in person or by telecommunication with a~~

~~supervising physician at least once each week to ensure ongoing direction and oversight of the physician assistant's work. The board by order may require the personal presence of a supervising physician when designated health care tasks are performed.~~

~~K. At all times while a physician assistant is on duty, the physician assistant shall wear a name tag with the designation "physician assistant" on it.~~

~~L.~~ G. The board by rule may prescribe a civil penalty for a violation of this article. The penalty shall not exceed ~~fifty dollars~~ $50 for each violation. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it receives from this penalty in the state general fund. A physician assistant and the supervising PHYSICIAN OR COLLABORATING physician OR ENTITY may contest the imposition of this penalty pursuant to board rule. The imposition of a civil penalty is public information, and the board may use this information in any future disciplinary actions.

Sec. 4. Section 32-2532, Arizona Revised Statutes, is amended to read:

32-2532. Prescribing, administering and dispensing drugs; limits and requirements; notice

A. Except as provided in subsection ~~F~~ G of this section, a physician assistant shall not prescribe, dispense or administer:

1. A schedule II or schedule III controlled substance as defined in the ~~federal~~ controlled substances act ~~of 1970~~ (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) without ~~delegation by the supervising physician,~~ board approval and United States drug enforcement administration registration. IF THE PHYSICIAN ASSISTANT HAS LESS THAN EIGHT THOUSAND CLINICAL PRACTICE HOURS, THE SUPERVISION AGREEMENT SHALL SPECIFY THE PHYSICIAN ASSISTANT'S ABILITY TO PRESCRIBE, DISPENSE OR ADMINISTER A SCHEDULE II OR SCHEDULE III CONTROLLED SUBSTANCE.

2. A schedule IV or schedule V controlled substance as defined in the ~~federal~~ controlled substances act ~~of 1970~~ without United States drug enforcement administration registration ~~and delegation by the supervising physician~~. IF THE PHYSICIAN ASSISTANT HAS LESS THAN EIGHT THOUSAND CLINICAL PRACTICE HOURS, THE SUPERVISION AGREEMENT SHALL SPECIFY THE PHYSICIAN ASSISTANT'S ABILITY TO PRESCRIBE, DISPENSE OR ADMINISTER A SCHEDULE IV OR SCHEDULE V CONTROLLED SUBSTANCE.

~~3. Prescription-only medication without delegation by the supervising physician.~~

~~4.~~ 3. Prescription medication intended to perform or induce an abortion.

B. IF THE PHYSICIAN ASSISTANT HAS LESS THAN EIGHT THOUSAND CLINICAL PRACTICE HOURS, THE SUPERVISION AGREEMENT SHALL SPECIFY THE PHYSICIAN ASSISTANT'S ABILITY TO PRESCRIBE, DISPENSE OR ADMINISTER PRESCRIPTION-ONLY MEDICATION.

~~B.~~ C. All prescription orders issued by a physician assistant shall contain the name, address and telephone number of the physician assistant. A physician assistant shall issue prescription orders for controlled substances under the physician assistant's own United States drug enforcement administration registration number.

~~C.~~ D. If THE PHYSICIAN ASSISTANT IS certified for prescription privileges pursuant to section 32-2504, subsection A, initial prescriptions BY THE PHYSICIAN ASSISTANT for schedule II controlled substances that are opioids are subject to the limits prescribed in sections 32-3248 and 32-3248.01 ~~if the physician assistant has been delegated to prescribe schedule II controlled substances by the supervising physician pursuant to this section~~. For each schedule IV or schedule V controlled substance, the physician assistant may not prescribe the controlled substance more than five times in a six-month period for each patient.

~~D.~~ E. A prescription BY A PHYSICIAN ASSISTANT for a schedule III controlled substance that is an opioid or benzodiazepine is not refillable without the written consent of ~~the supervising~~ A physician.

~~E.~~ F. A PHYSICIAN ASSISTANT MAY NOT DISPENSE, PRESCRIBE OR REFILL prescription-only drugs ~~shall not be dispensed, prescribed or refillable~~ for a period exceeding one year FOR EACH PATIENT.

~~F.~~ G. Except in an emergency, a physician assistant may dispense schedule II or schedule III controlled substances for a period of use of not to exceed seventy-two hours with board approval or any other controlled substance for a period of use of not to exceed ninety days and may administer controlled substances without board approval if it is medically indicated in an emergency dealing with potential loss of life or limb or major acute traumatic pain. Notwithstanding the authority granted in this subsection, a physician assistant may not dispense a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders.

~~G.~~ H. Except for samples provided by manufacturers, all drugs dispensed by a physician assistant shall be labeled to show the name of the physician assistant.

~~H.~~ I. A physician assistant shall not obtain a drug from any source other than ~~the supervising~~ A physician or a pharmacist. A physician assistant may receive manufacturers' samples ~~if delegated to do so by the supervising physician~~.

~~I.~~ J. If a physician assistant is approved by the board to prescribe, administer or dispense schedule II and schedule III controlled substances, the physician assistant shall maintain an up-to-date and complete log of all schedule II and schedule III controlled substances the physician assistant administers or dispenses. The board may not grant a physician assistant the authority to dispense schedule II controlled

substances that are opioids, except for implantable devices or opioids that are for medication-assisted treatment for substance use disorders.

~~J.~~ K. The ARIZONA REGULATORY board OF PHYSICIAN ASSISTANTS shall advise the Arizona state board of pharmacy and the United States drug enforcement administration of all physician assistants who are authorized to prescribe or dispense drugs and any modification of their authority.

~~K.~~ L. The Arizona state board of pharmacy shall notify all pharmacies at least quarterly of physician assistants who are authorized to prescribe or dispense drugs.

Sec. 5. Section 32-2533, Arizona Revised Statutes, is amended to read:

32-2533. Supervising physicians; responsibilities

A. A supervising physician is responsible for all aspects of the performance of a physician assistant WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE, whether or not the supervising physician actually pays the physician assistant a salary. The supervising physician is responsible for supervising the physician assistant and ensuring that the health care tasks performed by a physician assistant are within the physician assistant's scope of training and experience and have been properly delegated by the supervising physician.

B. Each physician-physician assistant team must ensure that:

1. The physician assistant's scope of practice is identified.

2. The delegation of medical tasks is appropriate to the physician assistant's level of competence.

3. The relationship of, and access to, the supervising physician is defined.

4. A process for evaluating the physician assistant's performance is established.

C. A supervising physician shall not supervise more than six physician assistants who work at the same time.

D. A supervising physician shall develop a system for recording and reviewing all instances in which the physician assistant prescribes schedule II or schedule III controlled substances.

Sec. 6. Repeal

Section 32-2534, Arizona Revised Statutes, is repealed.

Sec. 7. Title 32, chapter 25, article 3, Arizona Revised Statutes, is amended by adding a new section 32-2534, to read:

32-2534. Billing; direct payment

A PHYSICIAN ASSISTANT MAY BILL AND RECEIVE DIRECT PAYMENT FOR THE PROFESSIONAL SERVICES PROVIDED BY THE PHYSICIAN ASSISTANT.

Sec. 8. Section 32-2535, Arizona Revised Statutes, is amended to read:

32-2535. Emergency medical care

A. Notwithstanding the requirements of this article, in response to a natural disaster, accident or other emergency, a physician assistant who

is licensed pursuant to this chapter, licensed or certified by another regulatory jurisdiction in the United States or credentialed as a physician assistant by a federal employer may provide medical care at any location, and ~~with or without supervision.~~ THE PHYSICIAN ASSISTANT IS NOT REQUIRED TO HAVE COMPLETED EIGHT THOUSAND CLINICAL PRACTICE HOURS PURSUANT TO SECTION 32-2531.

B. A physician who supervises a physician assistant who is providing medical care pursuant to this section is not required to comply with the requirements of this article relating to supervising physicians.

Sec. 9. Title 32, chapter 25, article 3, Arizona Revised Statutes, is amended by adding section 32-2536, to read:

32-2536. Physician assistants; documentation; certification; rules

A. A PHYSICIAN ASSISTANT WHO IS LICENSED PURSUANT TO THIS CHAPTER, WHO IS IN GOOD STANDING, WHO HAS GRADUATED FROM AN ACCREDITED PHYSICIAN ASSISTANT PROGRAM IN THE UNITED STATES AND WHO HAS AT LEAST EIGHT THOUSAND CLINICAL PRACTICE HOURS WITHIN THE PREVIOUS FIVE YEARS IN THIS STATE OR ANOTHER JURISDICTION SHALL PROVIDE THE BOARD WITH DOCUMENTATION OF HAVING COMPLETED AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE IN ORDER TO MEET THE REQUIREMENTS OF SECTION 32-2531, SUBSECTION B. THE BOARD SHALL DEVELOP:

1. A POLICY THAT SETS FORTH THE PROCESS OF ATTESTATION OR DOCUMENTATION REQUIRED AS PROOF OF COMPLETION OF AT LEAST EIGHT THOUSAND CLINICAL PRACTICE HOURS AND ISSUANCE OF CERTIFICATION OF COMPLETION OF THE EIGHT THOUSAND CLINICAL PRACTICE HOURS.

2. AN ALTERNATIVE COMPARABLE STANDARD FOR CERTIFICATION OF EIGHT THOUSAND HOURS OF CLINICAL PRACTICE FOR PHYSICIAN ASSISTANTS WHO HAVE BEEN ACTIVELY PRACTICING FOR MORE THAN FIVE YEARS.

B. THE BOARD SHALL ADOPT RULES ESTABLISHING ADDITIONAL CERTIFICATION STANDARDS OR REQUIREMENTS FOR PHYSICIAN ASSISTANTS WHO PREVIOUSLY COMPLETED EIGHT THOUSAND CLINICAL PRACTICE HOURS CERTIFIED BY THE BOARD AND WHO ARE SEEKING EMPLOYMENT WITH A COLLABORATING PHYSICIAN OR ENTITY FOR A POSITION THAT IS NOT SUBSTANTIALLY SIMILAR TO THE PRACTICE SETTING OR SPECIALTY IN WHICH THE PHYSICIAN ASSISTANT WAS PREVIOUSLY CERTIFIED. THE CERTIFICATION STANDARDS OR REQUIREMENTS SHALL ENSURE APPROPRIATE TRAINING AND OVERSIGHT, INCLUDING A SUPERVISION AGREEMENT IF WARRANTED, FOR THE PHYSICIAN ASSISTANT'S NEW PRACTICE SETTING OR SPECIALTY.

Sec. 10. Section 32-2551, Arizona Revised Statutes, is amended to read:

32-2551. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice; civil penalty

A. The board on its own motion may investigate any evidence that appears to show that a physician assistant is or may be medically

incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. Any physician, physician assistant or health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the physician, physician assistant, health care institution or other person has that appears to show that a physician assistant is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. If the board begins an investigation pursuant to this section, it may require the physician assistant to promptly provide the name and address of the ~~physician assistant's~~ supervising physician or ~~physicians~~ COLLABORATING PHYSICIAN OR ENTITY, AS APPLICABLE. The board or the executive director shall notify the physician assistant ~~and the supervising physician~~ of the content of the reported information in writing within one hundred twenty days ~~of its~~ AFTER THE BOARD'S receipt of the information. Any physician, physician assistant, health care institution or other person that reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting or providing information, and, if requested, the name of the reporter shall not be disclosed unless the information is essential to proceedings conducted pursuant to this section.

B. The board or, if delegated by the board, the executive director may require a mental, physical or medical competency examination or any combination of those examinations or may make investigations, including investigational interviews, between representatives of the board and the physician assistant and the supervising physician, THE COLLABORATING PHYSICIAN OR A PHYSICIAN REPRESENTATIVE OF THE COLLABORATING ENTITY, AS APPLICABLE, as ~~it~~ THE BOARD deems necessary to fully inform itself with respect to any information reported pursuant to subsection A of this section. These examinations may include biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the physician assistant, at the physician assistant's expense, to undergo assessment by a ~~board approved~~ BOARD-APPROVED rehabilitative, retraining or assessment program.

C. If the board finds, based on the information it receives under subsections A and B of this section, that the public safety imperatively requires emergency action~~,~~ and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the physician assistant shall also be served with a written notice of complaint and formal hearing, setting forth the charges, and is entitled to a formal hearing before the board or an administrative law judge on the charges within sixty days pursuant to title 41, chapter 6, article 10.

D. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the physician assistant's license, ~~it~~ THE BOARD may take the following actions:

1. Dismiss if, in the opinion of the board, the complaint is without merit.

2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

3. Require the licensee to complete designated continuing medical education courses.

E. If the board finds that it can take rehabilitative or disciplinary action without the presence of the physician assistant at a formal interview it may enter into a consent agreement with the physician assistant to limit or restrict the physician assistant's practice or to rehabilitate the physician assistant, protect the public and ensure the physician assistant's ability to safely practice. The board may also require the physician assistant to successfully complete a ~~board approved~~ BOARD-APPROVED rehabilitative, retraining or assessment program at the physician assistant's own expense.

F. The board shall not disclose the name of the person who provided the information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

G. If, after completing its investigation, the board believes that the information is or may be true and that the information may be of sufficient seriousness to merit direct action against the physician assistant's license, it may request a formal interview with the physician assistant and the supervising physician, THE COLLABORATING PHYSICIAN OR A PHYSICIAN REPRESENTATIVE OF THE COLLABORATING ENTITY, AS APPLICABLE. If the physician assistant refuses the invitation for a formal interview, the board may issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. The board shall notify the physician assistant in writing of the time, date and place of the formal interview at least twenty days before the interview. The notice shall include the right to be represented by counsel and shall fully set forth the conduct or matters to be discussed.

H. After the formal interview, the board may take the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.

2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

3. Enter into a stipulation with the physician assistant to restrict or limit the physician assistant's practice or medical activities or to rehabilitate, retrain or assess the physician assistant, in order to protect the public and ensure the physician assistant's ability to safely perform health care tasks. The board may also require the physician assistant to successfully complete a ~~board approved~~ BOARD-APPROVED rehabilitative, retraining or assessment program at the physician assistant's own expense as prescribed in subsection E of this section.

4. File a letter of reprimand.

5. Issue a decree of censure. A decree of censure is a disciplinary action against the physician assistant's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.

6. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the physician assistant. Failure to comply with any terms of probation is cause for initiating formal proceedings pursuant to title 41, chapter 6, article 10. Probation may include:

(a) Restrictions on the health care tasks the physician assistant may perform.

(b) Temporary suspension for not ~~to exceed~~ MORE THAN twelve months.

(c) Restitution of patient fees.

(d) Education or rehabilitation at the licensee's own expense.

7. Require the licensee to complete designated continuing medical education courses.

I. If the board finds that the information provided pursuant to subsection A of this section warrants suspension or revocation of a physician assistant's license, ~~it~~ THE BOARD shall immediately initiate formal proceedings ~~for the suspension~~ TO SUSPEND or ~~revocation of~~ REVOKE the license as provided in title 41, chapter 6, article 10. The notice of complaint and hearing is fully effective by mailing a true copy of the notice of complaint and hearing by certified mail addressed to the physician assistant's last known address of record in the board's files. The notice of complaint and hearing is complete at the time of its deposit in the mail.

J. A physician assistant who after a formal hearing pursuant to title 41, chapter 6, article 10 is found to be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely carry out the physician assistant's approved health care tasks, or any combination of these, is subject to censure, probation, suspension or revocation, or any combination of these, for a period of time or permanently and under conditions the board deems appropriate ~~for the protection of~~ TO PROTECT the public health and safety.

K. In a formal interview pursuant to subsection G of this section or in a hearing pursuant to subsection I of this section, the board in

addition to any other action may impose a civil penalty in the amount of ~~not less than three hundred dollars nor~~ AT LEAST $300 BUT NOT more than ~~ten thousand dollars~~ $10,000 for each violation of this chapter or a rule adopted under this chapter.

L. An advisory letter is a public document and may be used in future disciplinary actions against a physician assistant.

M. The board may charge the costs of a formal hearing to the licensee if it finds the licensee in violation of this chapter.

N. If the board acts to modify a physician assistant's prescription writing privileges, the Arizona regulatory board of physician assistants shall immediately notify the Arizona state board of pharmacy and the United States drug enforcement administration of this modification.

O. If during the course of an investigation the ~~Arizona regulatory board of physician assistants~~ determines that a criminal violation may have occurred involving the PHYSICIAN ASSISTANT'S performance of health care tasks, ~~it~~ THE BOARD shall provide evidence of the violation to the appropriate criminal justice agency.

P. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of medicine.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

Q. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

Sec. 11. Rulemaking; exemption

Notwithstanding any other law, for the purposes of this act, the Arizona regulatory board of physician assistants is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 12. Effective date

This act is effective from and after December 31, 2023.

APPROVED BY THE GOVERNOR APRIL 17, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2023.

Arizona Secretary of State
Digitally signed by Arizona Secretary of State
Date: 2024.01.11 15:53:28 -07'00'

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Arizona Administrative REGISTER

Published by the Department of State ~ Office of the Secretary of State

Volume 30, Issue 2 **~ Administrative Register Contents ~** **January 12, 2024**

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NOTICES OF FINAL EXEMPT RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Exempt Rulemaking.

It is common for an agency to be exempt from some of the steps outlined in the rulemaking process as specified in Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10, otherwise known as the Arizona Administrative Procedure Act (APA). An agency's exemption is written in laws - under the APA, or in statute by the Arizona State Legislature, or under a referendum or initiative passed into law by Arizona voters.

The Office makes a distinction when publishing certain exempt rulemakings, as provided in these laws, on a case-by-case basis, as determined by an agency's exemption. Other rule exemption types are published elsewhere in the *Register*.

Notices of Final Exempt Rulemaking were originally proposed with specific conditions, such as requiring the notice to be published in the *Register*, or requiring public input, or a public hearing on the rule.

Notices of Final Exempt Rulemaking include *Register* publication dates where the original Notice of Proposed Exempt Rulemaking was published.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

[R23-259]

PREAMBLE

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

Article 4	Amend
R4-17-401	New Section
R4-17-402	New Section

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

Authorizing statute: A.R.S. § 32-2504(C)
Implementing statute: A.R.S. § 32-2536
Statute or session law authorizing the exemption: Laws 2023, Chapter 54, Section 11

3. The effective date of the rule and the agency's reason it selected the effective date:

December 31, 2023

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

To coincide with the effective date of the applicable statutes, the rules will be effective from and after December 31, 2023.

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

Not applicable

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

None

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

Name: Patricia McSorley, Executive Director
Address: Arizona Medical Board
1740 W. Adams St., Suite 4000
Phoenix, AZ 85007
Telephone: (480) 551-2700
Fax: (480) 551-2704
Email: patricia.mcsorley@azmd.gov
Website: www.azmd.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:

Under Laws 2023, Chapter 54, the legislature amended the statutes applicable to physician assistants to address the scope of practice for physician assistants and authorize physician assistants with at least 8,000 hours of Board-certified clinical practice to practice in collaboration with a physician, physician group practice, or healthcare institution rather than under the supervision of a physician. A physician assistant is required to practice in a manner consistent with the physician assistant's education, experience, and competencies.

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

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:
Not applicable

9. A summary of the economic, small business, and consumer impact, if applicable:
For this rulemaking, Laws 2023, Chapter 54, Sec. 11, exempts the Board from all rulemaking requirements in A.R.S. Title 41, Chapter 6. The exemption includes the requirement to provide an economic, small business, and consumer impact statement. There are currently 4,628 licensed physician assistants in Arizona.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking (if applicable):
Not applicable

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments, if applicable:
Not applicable

12. Other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:
None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:
Physician assistants are required to be licensed by the Board (See A.R.S. §§ 32-2501(14) and 32-2521) but this rulemaking does not address licensing requirements or procedures.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
No federal law is applicable to the subject of this rulemaking.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:
No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:
None

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
No rule in this rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

ARTICLE 4. COLLABORATIVE PRACTICE: REGULATION

Section
R4-17-401. ~~Expired~~ Application for Certification of Clinical Practice Hours; Waiver of Documentation
R4-17-402. ~~Repealed~~ Policies Regarding Collaboration with a Physician Assistant

ARTICLE 4. COLLABORATIVE PRACTICE: REGULATION

R4-17-401. ~~Expired~~ Application for Certification of Clinical Practice Hours; Waiver of Documentation

A. As required under A.R.S. § 32-2536(A), a physician assistant who is licensed by the Board and in good standing may apply to the Board for certification of the clinical practice hours required to practice collaboratively with a physician or entity. A physician assistant is in good standing if the physician assistant is not:
1. Under investigation by a regulatory authority, or
2. Subject to a public or confidential probation order.

B. To be eligible to practice collaboratively with a physician or entity, a physician assistant shall have at least 8,000 hours of clinical practice, as described in subsection (E), obtained:
1. In the five years before the date of the application submitted under subsection (C), or
2. In the 10 years before the date of the application submitted under subsection (C) if:
   a. At least 2,000 hours of clinical practice were obtained in the three years before the date of application submitted under subsection (C); and
   b. The physician assistant is currently certified by the National Commission on Certification of Physician Assistants.

C. To apply for certification of clinical practice hours, a physician assistant shall submit to the Board an application form, which is available on the Board's website.

D. In addition to complying with subsection (C), a physician assistant applying for certification of clinical practice hours shall have submitted directly to the Board by the document custodian or an individual with direct knowledge, documentation of hours of clinical practice performed by the physician assistant. Documentation may be submitted by multiple persons.

E. Clinical practice includes:

1. Performing medical services related directly to patient care;
2. Providing instruction to physician assistants at an institution accredited by the Accreditation Review Commission on Education for the Physician Assistant. Time spent preparing to provide instruction or preforming administrative tasks related to providing instruction is not clinical practice.

F. The Board may waive the documentation requirement specified under subsection (D). To obtain a waiver of the documentation requirement, the physician assistant shall submit to the Board a written request that includes the following information:

1. The physician assistant's name and license number;
2. Date on the request for waiver;
3. Identification and an estimate of the number of clinical hours for which documentation has not been submitted under subsection (D);
4. Description of the physician assistant's efforts to have the documentation submitted as required under subsection (D);
5. Explanation of why the documentation cannot be submitted;
6. If applicable, evidence that supports the request for waiver; and
7. The physician assistant's affirmation that the physician assistant has performed the required hours of clinical practice even though documentation has not been submitted.

G. The Board shall waive the documentation requirement if the Board determines the documentation is unavailable for a reason beyond the control of the physician assistant requesting the waiver. In making this determination, the Board shall consider:

1. The sufficiency of the physician assistant's effort to have the documentation submitted;
2. Evidence it is not possible to have the documentation submitted because:
   a. The required document does not exist;
   b. The individual or entity responsible for maintaining and submitting the documentation is unable to do so; or
   c. Another reason beyond the control of the physician assistant; and
3. Whether the Board is able to obtain the required documentation from another source.

H. The Board shall document the Board's decision regarding a request for waiver submitted under subsection (F) in the official record regarding the application submitted under subsection (C). The Board's decision regarding a request for waiver is not subject to review or appeal.

I. The Board shall maintain on the Board's website a list of physician assistants who have at least 8,000 hours of clinical practice certified by the Board and are eligible to practice in collaboration with a physician, physician group practice, or health care institution.

R4-17-402. ~~Repealed~~ Policies Regarding Collaboration with a Physician Assistant

A. Before employing and practicing collaboratively with a physician assistant, the collaborating physician or entity shall verify that the physician assistant is qualified under A.R.S. § 32-2536 and R4-17-401 to practice collaboratively. The collaborating physician or entity shall maintain evidence of the verification in the employment file of the physician assistant as long as the physician assistant is employed by the collaborating physician or entity.

B. As required under A.R.S. § 32-2531(B), a collaborating physician or entity shall develop written policies regarding collaboration for each physician assistant employed under subsection (A). The policies, which shall be individualized for the physician assistant's education, experience, and competencies, shall specify:

1. The physician assistant's name, license number, and contact information;
2. The name or position of the physician responsible for providing oversight of the physician assistant;
3. Description of the level of collaboration required between the physician assistant and the physician providing oversight including specific information to enable the physician assistant to contact the physician providing oversight;
4. Description of the practice setting in which the physician assistant will work;
5. Description of the practice specialty in which the physician assistant will work; and
6. Description of practice limitations, if any, applicable to the physician assistant.

C. Both the physician providing oversight and the physician assistant shall sign and date the policies developed under subsection (B). The collaborating physician or entity shall provide a copy of the signed policies to the physician assistant and put a copy in the employment file of the physician assistant.

D. The collaborating physician or entity shall review the policies developed under subsection (B) at least annually and make necessary changes. The collaborating physician or entity shall sign and date the policies as evidence the required review was performed. If changes are made to the policies, the collaborating physician or entity shall ensure the requirements of subsection (C) are performed.

E. If a change made under subsection (D) involves a practice setting or specialty in which the physician assistant has not previously practiced collaboratively, the collaborating physician or entity shall ensure the physician assistant is provided additional training and oversight until the physician assistant acquires the necessary education, experience, and competence.

1. If the collaborating physician or entity determines it is in the best interest of public health and safety, the collaborating physician or entity shall require the physician assistant to enter a supervision agreement, as defined at A.R.S. § 32-2501, until the physician assistant acquires the education, experience, and competence necessary to practice in the practice setting or specialty in which the physician assistant had not previously practiced collaboratively.
2. The collaborating physician or entity shall ensure that all actions taken under this subsection, including additional training and oversight, entering a supervision agreement, and terminating a supervision agreement, are noted in the employment file of the physician assistant.

F. A physician assistant may be employed by and practice collaboratively with multiple collaborating physicians or entities. Each collaborating physician or entity shall comply with this Section.

G. When requested by the Board, a collaborating physician or entity shall provide a copy of the policies required under this Section to the Board.

32-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a regular license issued pursuant to this chapter.

2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

3. "Advisory letter" means a nondisciplinary letter to notify a physician assistant that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved program" means a physician assistant educational program accredited by the accreditation review commission on education for physician assistants, or one of its predecessor agencies, the committee on allied health education and accreditation or the commission on the accreditation of allied health educational programs.

5. "Board" means the Arizona regulatory board of physician assistants.

6. "Collaborating physician or entity" means a physician, physician group practice, physician private practice or licensed health care institution that employs or collaborates with a physician assistant who has at least eight thousand hours of clinical practice as certified by the board pursuant to section 32-2536 and does not require a supervision agreement and that designates one or more physicians by name or position who is responsible for the oversight of the physician assistant.

7. "Completed application" means an application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

8. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician assistant and the natural or adopted children, father, mother, brothers and sisters of the physician assistant's spouse.

9. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician assistant that the physician assistant's conduct violates state or federal law and may require the board to monitor the physician assistant.

10. "Limit" means a nondisciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be mentally or physically unable to safely engage in health care tasks.

11. "Medically incompetent" means that a physician assistant lacks sufficient medical knowledge or skills, or both, in performing delegated health care tasks to a degree likely to endanger the health or safety of patients.

12. "Minor surgery":

(a) Means those invasive procedures that may be performed by a physician assistant, that are consistent with the training and experience of the physician assistant, that are normally taught in courses of training approved by the board, that have been approved by the board as falling within the scope of practice of a physician assistant and that are consistent with the practice setting requirements of the physician assistant.

(b) Does not include a surgical abortion.

13. "Physician" means a physician who is licensed pursuant to chapter 13 or 17 of this title.

14. "Physician assistant" means a person who is licensed pursuant to this chapter.

15. "Regular license" means a valid and existing license that is issued pursuant to section 32-2521 to perform health care tasks.

16. "Restrict" means a disciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be medically incompetent or guilty of unprofessional conduct.

17. "Supervising physician" means a physician who holds a current unrestricted license, who supervises a physician assistant who has less than eight thousand hours of clinical practice and who assumes legal responsibility for health care tasks performed by the physician assistant.

18. "Supervision" means a physician's opportunity or ability to provide or exercise direction and control over the services of a physician assistant. Supervision does not require a physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.

19. "Supervision agreement" means a written or electronic signed agreement that both:

(a) Describes the scope of practice for a physician assistant who has less than eight thousand hours of clinical practice.

(b) Is between the physician assistant and a physician or the physician assistant's employer that employs or has on medical staff at least one physician who may provide oversight, as applicable, and who holds a current unrestricted license. For the purposes of this subdivision, "employer" means a physician, physician group practice, physician private practice or licensed health care institution.

20. "Unprofessional conduct" includes the following acts by a physician assistant that occur in this state or elsewhere:

(a) Violating any federal or state law or rule that applies to the performance of health care tasks as a physician assistant. Conviction in any court of competent jurisdiction is conclusive evidence of a violation.

(b) Claiming to be a physician or knowingly allowing another person to represent that person as a physician.

(c) Performing health care tasks that do not meet the supervision or collaboration requirements, as applicable, pursuant to section 32-2531.

(d) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while performing health care tasks or to the extent that judgment may be impaired and the ability to perform health care tasks detrimentally affected.

(e) Signing a blank, undated or predated prescription form.

(f) Committing gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(g) Representing that a manifestly incurable disease or infirmity can be permanently cured or that a disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(h) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in treating a disease, injury, ailment or infirmity.

(i) Prescribing or dispensing controlled substances or prescription-only drugs for which the physician assistant is not approved or in excess of the amount authorized pursuant to this chapter.

(j) Committing any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(k) Violating a formal order, probation or stipulation issued by the board.

(l) Failing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment.

(m) Failing to use and affix the initials "P.A." or "P.A.-C." after the physician assistant's name or signature on charts, prescriptions or professional correspondence.

(n) Procuring or attempting to procure a physician assistant license by fraud, misrepresentation or knowingly taking advantage of the mistake of another.

(o) Having professional connection with or lending the physician assistant's name to an illegal practitioner of any of the healing arts.

(p) Failing or refusing to maintain adequate records for a patient.

(q) Using controlled substances that have not been prescribed by a physician, physician assistant, dentist or nurse practitioner for use during a prescribed course of treatment.

(r) Prescribing or dispensing controlled substances to members of the physician assistant's immediate family.

(s) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(t) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-2532.

(u) Knowingly making any written or oral false or fraudulent statement in connection with the performance of health care tasks or when applying for privileges or renewing an application for privileges at a health care institution.

(v) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(w) Having a certification or license refused, revoked, suspended, limited or restricted by any other licensing jurisdiction for the inability to safely and skillfully perform health care tasks or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this paragraph.

(x) Having sanctions including restriction, suspension or removal from practice imposed by an agency of the federal government.

(y) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.

(z) Using the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or osteopathic physician in this state.

(aa) Failing to furnish legally requested information to the board or its investigator in a timely manner.

(bb) Failing to allow properly authorized board personnel to examine on demand documents, reports and records of any kind relating to the physician assistant's performance of health care tasks.

(cc) Knowingly making a false or misleading statement on a form required by the board or in written correspondence or attachments furnished to the board.

(dd) Failing to submit to a body fluid examination and other examinations known to detect the presence of alcohol or other drugs pursuant to an agreement with the board or an order of the board.

(ee) Violating a formal order, probation agreement or stipulation issued or entered into by the board or its executive director.

(ff) Except as otherwise required by law, intentionally betraying a professional secret or intentionally violating a privileged communication.

(gg) Allowing the use of the licensee's name in any way to enhance or allow the continuance of the activities of, or maintaining a professional connection with, an illegal practitioner of medicine or the performance of health care tasks by a person who is not licensed pursuant to this chapter.

(hh) Committing false, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative.

(ii) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the licensee has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and whether the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one physician assistant to another physician assistant or to a doctor of medicine or a doctor of osteopathic medicine within a group working together.

(jj) With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent or without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee, or without approval by the United States food and drug administration or its successor agency.

(kk) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes.

(ll) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a professional relationship with the person. This subdivision does not apply to:

(i) A physician assistant who provides temporary patient care on behalf of the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed

with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician assistant.

(mm) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the professional relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a patient.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(nn) Performing health care tasks under a false or assumed name in this state.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

A.R.S. 41-1033(F) & (G) Petition from Arizona State Association of Physician Assistants

1 message

Morgan, Craig <CMorgan@shermanhoward.com> Fri, Jul 5, 2024 at 8:56 AM
To: "simon.larscheidt@azdoa.gov" <simon.larscheidt@azdoa.gov>, "patricia.grant@azdoa.gov" <patricia.grant@azdoa.gov>, "grrc@azdoa.gov" <grrc@azdoa.gov>
Cc: "Rapp, Jake Tyler" <JRapp@shermanhoward.com>

Good morning.

The Arizona State Association of Physician Assistants (the “Association”) appreciates GRRC’s offer to submit a modified Rule for consideration. However, it remains the Association’s position that the Rule at issue is void for the reasons articulated in the Association’s Petition and during the various meetings we have had thus far. Accordingly, the Association declines to submit a proposed modified Rule at this time, on the expedited basis, and instead asks GRRC to declare void R4-17-402(B) through (G).

The Association believes that any rule change should occur through the normal rulemaking process, during which the Association looks forward to participating with the Board’s full consent and collaboration. However, the Association submits that *these proceedings* should focus on the addressing the issue raised in the Petition: whether R4-17-402(B) through (G) is void as a matter of law. The Association believes the Rule is void, and once GRRC so declares, the affected parties can utilize the more accommodating timeframe attendant to the rulemaking process to collaborate about what a new Rule will look like.

Thank you for your service, and thank you in advance for prompt resolution of the Petition.

Be well,

Craig

Craig Morgan

Member | He/Him/His

Sherman & Howard

Sherman & Howard L.L.C. | 2555 East Camelback Road, Suite 1050, Phoenix, Arizona 85016

T: 602.240.3062 | O: 602.240.3000 | M: 480-332-6321

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Arizona Regulatory Board of Physician Assistants
1740 W. Adams, Suite 4000 • Phoenix, Arizona 85007
Telephone: 480-551-2700 • Toll Free: 877-255-2212 • Fax: 480-551-2704
Website: www.azpa.gov

July 26,2024

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

RE: Rule R4-17-402, Physician Assistant Collaborative Practice

Dear Members of the Committee:

Please allow this to serve as an update in advance of the Council's upcoming study session. Pursuant to the Council's direction, ARBoPA has evaluated the Rule at issue to consider potential clarifications or simplifications to the language. ARBoPA contacted the Petitioner/ ASAPA's attorney to request that they provide the ARBoPA with a draft of modified rules addressing physician assistant collaborative practice for its consideration. ARBoPA was hoping to be able to reach a common ground with ASAPA which would satisfy both parties in this matter. The Petitioner declined the request and indicated that they would continue to ask that GRRC declare R4-17-402(B) through (G) void as a matter of law. The email exchange is attached. Although the rule language was considered at both a Committee and Board meeting, ASAPA chose not to attend.

The purposes of the contested portions of R4-17-402 are three-fold (1) to ensure that collaborating physicians or entities will be performing the substantial similarity and appropriate training/oversight analysis required by A.R.S. § 32-2536(B), (2) to create a uniform record to assist the involved parties in that analysis and (3) assisting the Board in enforcing this obligation set forth in statute through documentation of training and oversight provided by the parties. With those goals in mind, the Board has proposed the attached draft revised rules for the Council's consideration.

ARBoPA reiterates that the rules meet the requirements of A.R.S. § 41-1030. Rule R4-17-402 was enacted pursuant to a specific statutory mandate in A.R.S. § 32-2536(B) and the rulemaking exemption in HB2043 that provided ARBoPA authority to engage in rulemaking "for the purpose of [the] act." When interpreting a statute, courts look first to its language, to try to "give meaning to each word, phrase, clause and sentence so that no part of the legislation will be void, inert or trivial". *Cleckner v. Arizona Department of Health Services*, 246 Ariz. 40, 43, 433 P.3d 1200 (App. 2019). If statutory language is clear and unambiguous, then courts must give effect to the language and do not use the other rules of statutory construction. *Id*.

It is undisputed that the new statutory language adopted in HB2043 states that physician assistants certified for collaborative practice are not required to practice pursuant to a supervision agreement (A.R.S. § 32-2531(B)). However, "supervision agreement" is now a term defined by

statute (A.R.S. § 32-2501(19)) carrying with it minimum documentation requirements.[1] Nothing in rule R4-17-402 requires either supervision or a supervision agreement.

The clear language of § 32-2536 imposes an affirmative mandate on ARBoPA to adopt rules "establishing **additional** certification **standards or requirements**" to "ensure appropriate training and oversight" for physician assistants" who are moving to practice settings and specialties that are not substantially similar to their previous practice. The written documentation outlined in R4-17-402 constitutes the additional certification standards and requirements necessary to ensure that the appropriate training and oversight occurs Requiring the involved parties to maintain written documentation meets the agency's obligation to engage in rulemaking that imposes the least burden on the regulated parties necessary to meet this statutory obligation.

To accept the premise of Petitioner's argument would not only render the phrase "additional certification standards and requirements" meaningless, but it would also impose limitations on the agency's ability to implement this statute that is simply non-existent in the language as passed by the Legislature. Additionally, Petitioner's argument that ARBoPA is prohibited from requiring written policies is inconsistent with the language in § 32-2531(B) stating that the, "level of collaboration required by this subsection is determined by the policies of the practice setting at which the physician assistant is employed." Moreover, prohibiting ARBoPA from requiring written documentation of what is essentially a job description and completed training would impose an absurd result, especially in context of the obligation imposed on the agency by § 32-2536(B).

For all these reasons, ARBoPA respectfully requests that the Council find that Rule R4-17-402 meets the requirements of A.R.S § 41-1030, and deny the Petitioner's petition pursuant to A.R.S. §§ 41-1033(F) and (G). In the event that the Council finds that the rule could be revised for clarity and consistency, ARBoPA requests that the Council consider the proposed revisions as attached.

Respectfully submitted,

Patricia E. McSorley

Patricia E. McSorley
Executive Director
Arizona Regulatory Board of Physician Assistants

[1] For instance, supervision agreements are required to include a description of the physician assistant's scope of practice and specifications regarding a physician assistant's prescribing authority. See §§ 32-2501(19)(b) and 32-2532(A-B)

R4-17-402. Policies Regarding Collaboration with a Physician Assistant

A. Before employing and practicing collaboratively with a physician assistant, the collaborating physician or entity shall verify that the physician assistant is qualified under A.R.S. § 32-2536 and R4-17-401 to practice collaboratively. The collaborating physician or entity shall maintain evidence of the verification in the employment file of the physician assistant as long as the physician assistant is employed by the collaborating physician or entity.

B. As required under A.R.S. § 32-2531(B), a collaborating physician or entity shall develop written policies regarding collaboration for each physician assistant employed under subsection

(A). The policies, ~~which shall be individualized for the physician assistant's education, experience, and competencies,~~ shall specify:

1. The physician assistant's name, license number, and contact information;

2. The name or position of the physician responsible for providing oversight of the physician

assistant;

3~~. Description of the level of collaboration required between the physician assistant and the physician providing oversight including specific information to enable the physician assistant to contact the physician providing oversight;~~

A general description of the physician assistant's area of practice and process for collaboration with the health care professionals in the practice setting. The description may also include additional requirements specific to the physician assistant's practice, including additional levels of oversight or limitations on autonomous judgment, if any.

~~4. Description of the practice setting in which the physician assistant will work;~~

~~5. Description of the practice specialty in which the physician assistant will work; and~~

~~6. Description of practice limitations, if any, applicable to the physician assistant.~~

C. ~~Both the physician providing oversight and~~ Tthe physician assistant shall sign and date the policies developed under subsection

~~-~~(B). The collaborating physician or entity shall provide a copy of the signed policies to the physician assistant and put a copy in the employment file of the physician assistant.

D. The collaborating physician or entity shall ~~review the policies developed under subsection (B) at least annually and~~ make ~~necessary~~ changes or amendments to the policies as needed~~. The collaborating physician or entity shall sign and date the policies~~

~~as evidence the required review was performed. If changes are made to the policies, the collaborating physician or entity shall ensure the requirements of subsection (C) are performed.~~

E. ~~If a change made under subsection (D) involves a practice setting or specialty in which the physician assistant has not previously practiced collaboratively~~ , ~~t~~The collaborating physician or entity shall ensure the physician assistant is competent to practice in any new area that is not substantially similar to the previous practice area in which the physician assistant has practiced collaboratively. If necessary, the collaborating physician or entity shall ensure ~~provided~~ additional education training and oversight is provided until the physician assistant acquires the necessary ~~education, experience, and~~ competence.

1. If the collaborating physician or entity determines ~~it is in the best interest of public health and safety,~~ that a supervision agreement is warranted ,the collaborating physician or entity shall require the physician assistant to enter a supervision agreement, as defined at A.R.S. § 32-2501, until the physician assistant acquires the education, experience, and competence necessary to practice in the practice setting or specialty in which the physician assistant had not previously practiced collaboratively.

2. The collaborating physician or entity shall ensure that all actions taken under this subsection, including additional training and oversight, entering a supervision agreement, and terminating supervision agreement, are noted in the employment file of the physician assistant.

~~F. A physician assistant may be employed by and practice collaboratively with multiple collaborating physicians or entities. Each collaborating physician or entity shall comply with this Section.~~

G. When requested by the Board, a collaborating physician or entity shall provide a copy of the policies required under this Section to the Board.

Gmail

Pat Mcsorley <patricia.mcsorley@azmd.gov>

Modification of Physician Assistant Rules for Collaborative Practice

Pat Mcsorley <patricia.mcsorley@azmd.gov> Thu, Jul 11, 2024 at 4:11 PM
To: John Shaff <jshaffpa@gmail.com>, Susan Reina <susanreina@me.com>, mdibaise <mdibaise@cox.net>, Michelle Dibaise <michelle.dibaise@azpa.gov>

Response from ASAPA

---------- Forwarded message ---------
From: **Morgan, Craig** <CMorgan@shermanhoward.com>
Date: Fri, Jul 5, 2024 at 8:59 AM
Subject: RE: Modification of Physician Assistant Rules for Collaborative Practice
To: Pat Mcsorley <patricia.mcsorley@azmd.gov>
Cc: Carrie Smith <carrie.smith@azag.gov>, Raquel Rivera <raquel.rivera@azmd.gov>, Rapp, Jake Tyler <JRapp@shermanhoward.com>

Good morning. Please call me Craig.

Thank you for your email. The Arizona State Association of Physician Assistants (the "Association") appreciates GRRC's offer to submit a modified Rule for consideration. And the Association appreciates your email. However, it remains the Association's position that the Rule at issue is void for the reasons articulated in the Association's Petition and during the various meetings we have had thus far. Accordingly, the Association declines to submit a proposed modified Rule at this time, on the expedited basis, and instead has asked GRRC to declare void R4-17-402(B) through (G).

The Association believes that any rule change should occur through the normal rulemaking process, during which the Association looks forward to participating with the Board's full consent and collaboration. However, the Association submits that *these proceedings* should focus on the addressing the issue raised in the Petition: whether R4-17-402(B) through (G) is void as a matter of law. It makes for better policy to have the Board, working with the Association, craft a Rule with sufficient time and discussion rather than foist options upon GRRC under expedited time constraints. The Association believes the Rule is void, and once GRRC so declares, the affected parties can utilize the more accommodating timeframe attendant to the rulemaking process to collaborate about what a new Rule will look like.

Be well,

Craig

Craig Morgan

Member | He/Him/His

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From: alicia.cauthon@azmd.gov <alicia.cauthon@azmd.gov> **On Behalf Of** Pat Mcsorley
Sent: Wednesday, July 3, 2024 4:12 PM
To: Morgan, Craig <CMorgan@shermanhoward.com>
Cc: Carrie Smith <carrie.smith@azag.gov>; Raquel Rivera <raquel.rivera@azmd.gov>
Subject: Modification of Physician Assistant Rules for Collaborative Practice

Dear Mr. Morgan,

Based on the direction given by GRRC at yesterday's meeting, the Arizona Regulatory Board of Physician Assistants (ARBoPA), would like to work with you on behalf of ASAPA to modify the rules for collaborative practice .Since the next study meeting for GRRC is July 30, with submissions due on July 23, this presents a tight timeline. ARBoPA 's Joint Legislative and Rules Committee (JLRC) will meet on July 11 to discuss this matter further. I am hopeful that you will be able to provide the JLRC with a draft for this meeting for its consideration.

Thereafter, we anticipate that ARBoPA will have further dialogue with you with the goal of reaching a mutually agreed upon set of rules.

Sincerely,

Patricia McSorley

Executive Director

Arizona Medical Board

Arizona Regulatory Board of

Physician Assistants

--

Patricia McSorley

Executive Director

Arizona Medical Board

Arizona Regulatory Board of

Physician Assistants

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Jake Tyler Rapp
Direct Dial Number: 602.240.3042
E-mail: jrapp@shermanhoward.com

July 29, 2024

VIA E-MAIL ONLY

Governor's Regulatory Review Council
c/o Patricia Grant
c/o Simon Larscheidt
100 N. 15th Ave., Suite 302
Phoenix, AZ 85007
patricia.grant@azdoa.gov
simon.larscheidt@azdoa.gov
grrc@azdoa.gov

Re: A.R.S. 41-1033(F) & (G) Petition from Arizona State Association of Physician Assistants

Dear Council Members and Madam Chair:

We are in receipt of the Arizona State Regulatory Board of Physician Assistant's (the "Board") letter dated July 26, 2024.

The Arizona State Association of Physician Assistants (the "Association") submitted a Petition under A.R.S. Sec. 41-1033(F), (G), and A.A.C. R1-6-402. The Council is required to determine whether the regulations at issue are unlawful. *See* A.R.S. § 41-1033(H)(1)(b), (c). The regulations at issue must remain in effect until these proceedings are complete. A.R.S. § 41-1033(K). If the Council determines that the regulations at issue are unlawful, the regulations are void. *Id.* If the Board wants to engage in lawful rulemaking to repeal and replace the regulations at issue, it must wait until these proceedings are done. *Id.*

To the extent the Council considers the Board's recent letter and proposed new regulations, the Association will highlight one important point. Neither the letter nor the proposed regulations engage with the Petition's argument that HB 2043 clearly did away with writing requirements for Experienced Physician Assistants. *See* Petition at 4:7–18. The reason for the Board's omission is clear. There is no viable response. *Sharpe v. Ariz. Health Care Cost Containment Sys*., 220 Ariz. 488, 495, ¶ 20 (App. 2009) (An agency or board cannot "enact regulation nor make an order that would conflict with the proper interpretation of the statute."); *Cochise County v. Ariz. Health Care Cost Containment Sys*., 170 Ariz. 443, 445 (App. 1991) ("[T]he scope of an agency's power is measured by the statute and may not be expanded by agency fiat."); *In re Pima Cnty. Mental Health No. MH-2010-0047*, 228 Ariz. 94, 98, ¶ 15 (App. 2011) "[I]f an agency rule conflicts with

a statute, ***the rule must yield***." (emphasis added) (citation omitted)); *Washburn v. Pima Cnty.*, 206 Ariz. 571, 576, ¶ 11 (App. 2003) ("[W]e presume the legislature intends to change the law when it substantively changes the language of a statute.").

A final note on the Board's insinuations that the Association "has chosen not to attend[]" some Board meetings.

The Board asserts that the Association has refused to participate in commenting on its proposed new regulations. This is false. The Association's Past-President was present in those proceedings. Nobody was given the opportunity to speak on the new regulations during the Board's hearings. The way the hearings were set up, the call to the public was at the beginning of the meetings so the Association had no idea what the regulations were going to say. And the one meeting between the Association and the Board outside of regular meetings led nowhere. The Board ignored the Association's suggestions.

Regardless, none of these efforts by the Board matter for purposes of the Petition. A.R.S. § 41-1033(H)(1)(b), (c), (K). The Council must deal with the Petition. That is what matters.

The Council should grant the Petition and find the rules at issue are void.

Very truly yours,

jaketylerapp

Gregory W. Falls
Craig A. Morgan
Jake T. Rapp

JTR/jtr

J.

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION OF PETITION RELATED TO ARIZONA MEDICAL BOARD'S EXISTING AGENCY PRACTICE AND REGULATORY LICENSING REQUIREMENTS FOUND IN A.R.S. § 32-1428(A) and A.R.S. § 32-1431(B)

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: August 6, 2024

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

FROM: Council Staff

DATE: July 10, 2024

SUBJECT: **A.R.S. 41-1033(G) Petition Related to Arizona Medical Board Existing Agency Practice and Regulatory Licensing Requirement**

Summary

On May 20, 2024, Council staff received a petition ("Petition") from Doctor Herbert R. Jalowsky ("Petitioner") challenging the Arizona Medical Board's ("Board") existing agency practices and regulatory license requirements as they pertain to pro bono registration for a medical doctor under A.R.S. § 32-1428(A) and A.R.S. § 32-1431(B).

In 2017, Petitioner voluntarily requested from the Board a non-disciplinary practice limitation due to multiple concussions affecting his focus, memory and attention, which was issued by non-disciplinary consent decree in 2018. This resulted in a limited practice license that would not allow Petition to practice medicine until he receives Board permission to do so. *See* 2018 Jalowsky, Bomex Consent Agreement.

In 2020, Petitioner attempted to assist with administering the COVID-19 vaccine but was told that he could not due to the status of his license. In addition, he was informed that he did not qualify for a pro bono registration due to the active, but restricted, status of his license. Subsequently, the Petitioner requested his license be placed on an inactive status, which was granted by the Board, to allow for a pro bono registration as indicated in A.R.S. § 32-1431(B). *See* 13266 inactivation approval. Specifically, A.R.S. § 32-1431(B) states "[t]he [B]oard may grant pro bono registration pursuant to section 32-1428 to a physician who holds an inactive license under this section." Furthermore, A.R.S. § 32-1428(A)(1) states, "[t]he [B]oard may issue a pro bono registration to allow a doctor who is not a licensee to practice in this state for a

total of up to sixty days each calendar year if the doctor holds…an inactive license pursuant to section 32-1431." Petitioner then applied for his pro bono registration. However, the Petitioner alleges the Board has not acted on the application, either to approve or deny it, and, instead, his request has been tabled three times due to additional requests by the Board. Specifically, Petitioner states that the Board has requested that the Petitioner apply to activate his full unrestricted license and take the Special Purpose Examination (SPEX). Petitioner states that he meets all the statutory requirements of a pro bono registration and indicates, by not acting on his pro bono registration, the Board is "not following the laws and rules that govern them." *See* Petition at 5

Petitioner's Arguments

As indicated above, the Petitioner alleges, although he meets all statutory requirements for a pro bono registration, the Board has neither granted or denied his application. Instead, the Board has requested the Petitioner apply to activate his full unrestricted license and take the SPEX, which Petitioner alleges is not statutorily required. Petitioner has brought this Petition under A.R.S. § 41-1033 and states, for the foregoing reasons, the Board is "not following the laws and rules that govern them." As such, it appears the Petitioner has brought this petition under A.R.S. § 41-1033(G) and alleges the existing agency practice or regulatory licensing requirement that the Board require Petitioner to activate his full unrestricted license and take the SPEX to obtain his pro bono registration is not specifically authorized by statute, exceeds the agency's statutory authority, and is unduly burdensome.

Relevant Statutes

A.R.S. § 41-1033(G) allows a person to "petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern." On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section."

If the Council receives information pursuant to A.R.S. § 41-1033(G), and at least three Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the third council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the third council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement not more than five double-spaced pages to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

   See A.R.S. § 41-1033(H).

Analysis and Conclusion

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

In Council staff's view, the petition raises legitimate concerns about whether the Board's agency practices or regulatory licensing requirements surrounding pro bono registration are consistent with statute, unduly burdensome, and whether the current implementation of these practices and requirements are necessary to specifically fulfill a public health, safety or welfare concern. *See* A.R.S. § 41-1033(G). It is Council staff's recommendation that the Council request of the Chair that this petition be heard at a future Council Meeting.

05/20/2024
From: Herbert R. Jalowsky MD MBA
6840 North Chaparral Ave
Tucson AZ 85718
Herbertjalowsky@gmail.com
520-403-1764

To: Governor's Regulatory Review Council
grrc@azdoa.gov
602-542-2058

Dear Governor's Regulatory Review Council,

I am writing to you as I believe the Arizona Medical Board has failed to follow ARS 32-1428 with regard to Pro Bono registration. (pls see first attachment "pro bono registration"). I meet all requirements and they have not allowed me to register for my Pro Bono License,

(I bring this to your attention under: Arizona Revised Statute (ARS) § 41-1033 (second attachment titled "right to petition"))

I am asking you to review the facts surrounding my application for a Pro-Bono medical license with the (AMB) Arizona Medical Board. Arizona revised statutes regarding Pro-Bono licenses are noted below.

"32-1428. Pro bono registration

A. The board may issue a pro bono registration to allow a doctor who is not a licensee to practice in this state for a total of up to sixty days each calendar year if the doctor:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States ***or*** an inactive license pursuant to section 32-1431.

2. Has never had the license revoked or suspended.

3. Is not the subject of an unresolved complaint.

4. Applies for registration on a yearly basis as prescribed by the board.

5. Agrees to render all medical services without accepting a fee or salary or performs only initial or follow-up examinations at no cost to the patient and the patient's family through a charitable organization.

B. The sixty days of practice prescribed pursuant to subsection A of this section may be performed consecutively or cumulatively during each calendar year.

C. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board of each state that the applicant is licensed or has held a license, has never had a license revoked or suspended and is not the subject of an unresolved complaint. The board may accept the verification of the information required by subsection A, paragraphs 1, 2 and 3 of this section from each of the other state's regulatory board either electronically or by hard copy."

Indeed, I meet all the requirements for registering for a Pro-Bono license, yet the AMB has not acted to provide me with the Pro-Bono license, nor to deny it. They keep tabling it, and request that I change my request to an active license.

As with so many things in life, the above is the summarized, and exact facts of the case, yet there is a much longer story behind it.

I am a graduate of the U of Az medical class of 1979, with Board Certifications in Family Medicine and Geriatric Medicine. I've practiced in Arizona for the better part of four decades, without a single lawsuit nor adverse action by the Arizona Medical Board (AMB).

In 2017 I voluntarily requested of the AMB, a non-disciplinary practice limitation due to multiple concussions affecting my focus, memory and attention. This was documented on serial neuro-psych testing, and was found to be quite mild. However, it did concern me. My plan was a trial of rest (from full time practice) and exercise and see if this problem was progressive, stable or improving. At my request the AMB issued a non-disciplinary consent decree in 2018. Although I was allowed to keep my license active, it was a *restricted* license such that I was not allowed to practice medicine. (see attachment "2018 Jalowsky Bomex consent agreement").

Throughout my years in practice, I have done volunteer medicine in a variety of "in-need" low-income practices both in Arizona as well as lower 9th ward of Louisiana after Hurricane Katrina. Additionally, over the past 5 years I am serving as a Court Appointed Special Advocate as part of the CASA program, helping children taken from their parents, who are placed in the Department of Child Safety.

When Covid hit in 2020, and immunizations subsequently became available, I wanted to help out by volunteering to administer these immunizations. I checked with ABM and was told that I could **not** volunteer to inject folks with the new vaccine.

At that point I looked into a Pro-Bono license, but was told since I had an active but restricted license, I did not meet the requirements for the Pro-Bono license as my license was active but *restricted*.

ARS 32-1428 also provides for have an *inactive* licensee to obtain the Pro-Bono license, but by definition, since my license was active, I didn't qualify. (I was not told that there was a simple administrative path to convert to an inactive license).

Instead of suggesting that I inactivate my then current license, which would have then met Pro Bono requirements, the AMB *staff* suggested

to me that I apply to get the voluntary self-restriction removed from my current active but restricted license. This set up a prolonged course of communications back and forth, that lasted several years. Ultimately, I decided it was more work that I wished to expend to get my unrestricted license activated.

With regards to my focus, memory and attention I had two subsequent neuro-psych tests performed which showed that my condition had **not** progressed, and the psychologist that ABM had mandated for me to see stated he thought I **could** practice medicine safely. (see attachment "Blackwood original letter").

The process of trying to activate my license became a tortured process. ABM offered for me to take a competency exam after I enroll in a PACE program, (see attachment: CaseFileDocumentation.aspx-17.pdf) where I would go to San Diego for a week, and be observed practicing medicine, at a cost of $19,000. Subsequently the ABM told me that I would need to take the SPEX test to get my unrestricted license back. (The SPEX test is equivalent to the test that foreign medical graduates must pass to practice in the US, and is similar to part 1 of the Medical Boards that graduating medical students pass)

In navigating the license melee with the ABM, I discovered that there was a way to inactivate my medical license, through a relatively simple administrative request by ABM staff. (see 13266 inactivation approval) I completed this process and finally succeeded in having an inactive medical license. (An inactive license is not the same as letting a medical license expire, and an inactive license requires AMB approval (indeed the approval came from the executive director Patricia McSorley) and she specifically stated that I could now apply for a Pro Bono license.

So, at this point I requested my Pro-Bono license registration from the board. It was tabled three times, not approved nor denied. The AMB repeatedly requested that I apply to activate my full unrestricted

license, and take the SPEX test. I never wished to get an unrestricted active license, and only wanted, from the very beginning to get a Pro-Bono registration.

The support staff and legal counsel all but told the members of the AMB this during their recorded board meeting when discussing my case, but it apparently was not well received by the board who went into executive session to discuss this privately.

Additionally, I had requested that one of the Board Members recuse herself as she and I had acrimonious business dealings over a decade ago, and they denied this recusal on two occasions.

It is my belief that the ABM has acted with good intention, but they are not following the laws and rules that govern them.

In summary, I currently meet all requirements for a Pro-Bono license, and the board has declined to act on this. The intervening application for the unrestricted active license, and the tussle that ensued was a fruitless endeavor that could have been avoided had I been informed about the path to inactivation of my medical license, which would then qualify me for my Pro-Bono status.

I have been a good physician, and citizen of our great state, and would like to continue to give back to my community, which in turn brings me happiness.

In summary, I've practiced for 4 decades without a blemish. I am a Superior Court Assigned Special Advocate. I've donated my time as a medical volunteer throughout my career. I've respected the Arizona Board of Medical Examiners, as my mentor Dr. Steve Spencer was on the board when I was a med student and I have been an active supporter of Governor Hobbs.

I humbly request the Governor’s council to allow me to do volunteer medicine through the mechanism of the Pro-Bono license.

I remain available for any follow up queries that you may have.

Respectfully,

Herbert Jalowsky MD MBA

MD Application Status Update
Dispensing Registration
Locum Tenens Application
MD Education Permit
Postgraduate Training Permit Registration
Pro Bono Registration
Reactivation Application
Teaching License Application
Temporary License
Data Waiver Eligibility Application
Fingerprint Requirements
Transitional Training Permit
Telehealth Registration
Dental Anesthesia Registration

32-1428 - Pro bono registration

32-1428. Pro bono registration

A. The board may issue a pro bono registration to allow a doctor who is not a licensee to practice in this state for a total of up to sixty days each calendar year if the doctor:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States or an inactive license pursuant to section 32-1431.

2. Has never had the license revoked or suspended.

3. Is not the subject of an unresolved complaint.

4. Applies for registration on a yearly basis as prescribed by the board.

5. Agrees to render all medical services without accepting a fee or salary or performs only initial or follow-up examinations at no cost to the patient and the patient's family through a charitable organization.

B. The sixty days of practice prescribed pursuant to subsection A of this section may be performed consecutively or cumulatively during each calendar year.

C. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board of each state that the applicant is licensed or has held a license, has never had a license revoked or suspended and is not the subject of an unresolved complaint. The board may accept the verification of the information required by subsection A, paragraphs 1, 2 and 3 of this section from each of the other state's regulatory board either electronically or by hard copy.

Right to Petition Governor's Regulatory Review Council

Info

Arizona Revised Statute (ARS) § 41-1033 provides that a person may petition Governor's Regulatory Review Council (GRRC) to request a review of a final rule based on the person's belief that the final rule does not meet requirements prescribed in A.R.S. § 41-1030 or whether an existing agency practice or substantive policy statement constitutes a rule.

View ARS § 41-1033...

View ARS § 41-1030...

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

HERBERT R. JALOWSKY, M.D.

Holder of License No. 13266
For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-17-1171A

ORDER FOR PRACTICE LIMITATION AND CONSENT TO THE SAME

(NON-DISCIPLINARY)

CONSENT AGREEMENT

Herbert R. Jalowsky, M.D. ("Physician"), elects to permanently waive any right to a hearing and appeal with respect to this Order for Practice Limitation; admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of this Order by the Board.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Physician is the holder of License No. 13266 for the practice of allopathic medicine in the State of Arizona.

3. Physician has recognized that he has a medical condition that may limit his ability to safely engage in the practice of medicine.

4. There has been no finding of unprofessional conduct against Physician.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Physician.

ORDER

IT IS HEREBY ORDERED THAT:

1. Physician's practice is limited in that he shall not practice medicine in the State of Arizona and is prohibited from prescribing any form of treatment including prescription medications until Physician applies to the Board and receives permission to do so. The Board may require, at the physician's expense, any combination of staff approved assessments, evaluations, treatments, examinations or interviews it finds necessary to assist in determining whether Physician is able to safely resume such practice.

2. The Board retains jurisdiction and may initiate a separate disciplinary action based on the facts and circumstances that form the basis for this practice limitation or any violation of this Order.

DATED this 18th day of April, 2018.

ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Patricia E. McSorley
Executive Director

CONSENT TO ENTRY OF ORDER

1. Physician has read and understands this Order for Practice Limitation and Consent to the Same and the stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Physician acknowledges he has the right to consult with legal counsel regarding this matter.

2. Physician acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

3. By consenting to this Order, Physician voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Order in its entirety as issued, and waives any other cause of action related thereto or arising from said Order.

4. The Order is not effective until approved and signed by the Executive Director.

5. All admissions made by Physician are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Physician. Therefore, said admissions by Physician are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.

6. Upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Physician may not revoke the consent to the entry of the Order. Physician may not make any modifications to the document. Any modifications to this original document are ineffective and void unless mutually approved by the parties.

7. This Order is a public record that will be publicly disseminated as a formal ***non-disciplinary*** action of the Board.

8. If any part of the Order is later declared void or otherwise unenforceable, the remainder of the Order in its entirety shall remain in force and effect.

9. Any violation of this Order constitutes unprofessional conduct and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter.") and 32-1451.

Herbert R. Jalowsky MD
HERBERT R. JALOWSKY, M.D.

DATED: March 21 2018

EXECUTED COPY of the foregoing mailed this 18th day of April, 2018 to:

Herbert R. Jalowsky, M.D.
Address of Record

ORIGINAL of the foregoing filed this 18th day of April, 2018 with:

Arizona Medical Board
1740 West Adams, Suite 4000
Phoenix, Arizona 85007

Mary Baker
Board staff

Arizona Medical Board
1740 W. Adams, Phoenix, AZ 85007 • website: www.azmd.gov
Phone (480) 551-2700 • Toll Free (877) 255-2212 • Fax (480) 551-2707

Governor

Douglas A. Ducey

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Physician Member

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Public Member/RN

Gary R. Figge, M.D.
Physician Member

Pamela E. Jones
Public Member

Eileen M. Oswald, MPH
Public Member

Executive Director

Patricia E. McSorley

January 25, 2022

Herbert Jalowsky, MD
Via email: herbertjalowsky@yahoo.com

RE: License # 13266

Dear Dr. Jalowsky:

The Arizona Medical Board (Board) is in receipt of your recent request for an inactive license. We have reviewed your request and determined that you do meet the requirements pursuant to A.R.S. § 32-1431 to have your license placed in an inactive status. Please be aware that effective the date of this letter you will not be able to practice medicine until you convert your inactive license to an active license pursuant to A.R.S. §32-1431 (D) or apply for pro bono registration pursuant to A.R.S. §32-1428.

Thank you for your past service to the community of Arizona.

Sincerely,

Patricia E. McSorley
Executive Director

NEUROPSYCHOLOGY ASSOCIATES, P.C.
1515 EAST MISSOURI AVENUE, #110
PHOENIX, ARIZONA 85014
H. Daniel Blackwood, Ph.D.. ABPP
PHONE: (602) 230-8325 b o d r a c o n m e d i n c h n i c a l N e u r o p s y c h o .O g y
Appointments available in Prescott
FAX: (602) 274-7402
Examinee: Date of Birth: Referred by:
Place ofExamination: Date of Examination:
Herbert Jalowsky January 3, 1954 Arizona Medical Board Case No. MD-20-1086A
Phoenix Office March 17, 2021
INDEPENDENT NEUROPSYCHOLOGICAL EVALUATION
Dr. Jalowsky is a 67-year-old physician ordered by the Arizona Medical Board to undergo neuropsychologicalevaluation to assist the Board in its dealings with Dr. Jalowsky in Case No. MD-20-1086A.
Dr. Jalowsky was provided with a written statement indicating that this is an independent examination ordered by his licensing board, that this is a public procedure in t h e sense that the usual confidentiality between patient and psychologist does not apply, that the results of the examination are the property of the ordering party, and that he would not be provided directly with the results, with an interpretation of the results, or with any diagnostic opinions or therapeutic recommendations. He signed a statement indicating that he had read the information and that he agreed to participate in the examination to the best ofhis ability.
During the examination, COVID-19 screening was employed prior to contact,and precautions were employed in the office. Masks were worn, gloves and hand sanitizer were available, six-foot-distance was maintained as much as possible, sneeze guards were in place a n do r air purifiers were in operation
History from Records
Dr. Jalowsky underwent neuropsychological evaluations with Scott Belanger, PsyD, in Tucson in September 2015 and April 2016. In his report of May 3, 2016, Dr. Belanger stated there were areas of "modest decline" in psychomotor speed, fine motor dexterity, complex attention, and learning/memory. (I do not see any actual declines in the areas of memory and psychomotor speed to which Dr. Belanger refers.) Dr. Belanger rendered diagnoses ofmild neurocognitive disorder and major depressive disorder. Interim Order forNeuropsychological Evaluation dated January 7, 2021, in MD-20- 1086A, refers to Case No. MD-17-1171A, in which it was noted that Dr. Jalowsky's employer had informed him that he could no longer work as a result of diagnosis of mild cognitive impairment. Reference is made to the neuropsychological examinations conducted by Dr. Belanger and to neurology records listing diagnoses of REM sleep disorder and difficulty with falling. Dr. Jalowsky had disclosed some errors in
blackwood@neuropsychology-az.com
www.reuropsychology-az.com

judgment concerning patient care. Reference is made to cognitive decline between September 2015 and April 2016. In MD-20-1086A, Dr. Jalowsky was requesting termination of the Order for Practice Limitation and Consent to Same entered in MD- 17-1171A.
History from Interview
Atthe time of current contact Dr.Jalowsky presented the following information. He is 67 years old, born January 3, 1954, New Jersey, moving with his family to Phoenix at the age of 15. He grew up with both parents and two brothers. He reports good childhood health and a good childhood in general.

Dr. Jalowsky graduated from Arcadia High School in 1972. He attended Prescott College for a year and then moved to the University of Arizona, where he earned a bachelor's degree and completed medical school before completing a family medicine residency in Kansas City. He then returned to Tucson, where he practiced in family medicine over the years. He also has a CAQ in geriatrics and has done some hospice work.

Dr. Jalowsky is been married once, for about 41 years, and has two grown children. Dr. Jalowsky has no military service.

Dr. Jalowsky has been arrested on two occasions in the remote past, once for gambling and once for trespassing.

Surgical history is positive for cryoablation for atrial fibrillation, hernia repair, left carpal tunnel procedure, and bilateral ulnar nerve procedures.

Dr.Jalowsky reports a history of chronic depression, on medication for over 20 years He is currently taking no antidepressant medication.

Dr. Jalowsky commented that his REM sleep disturbance appears to have resolved. His problem with falling has improved.

Current medications include Klonopin, amlodipine, carvedilol, Lipitor, irbesartan, dexmethylphenidate ("for focus"), 81 mg ASA, pantoprazole, melatonin, and tadalafil

Dr. Jalowsky stated that he has had no lawsuits concerning his practice and has had few Board complaints in general over the years, all dismissed.

In discussing his current involvement with the Board, Dr. Jalowsky noted that he has suffered three concussions over the years, most recently in a motor vehicle accident in 2011. After that accident his wife noted irritability, increase in sleep. He noted that it was taking longer for him to get his records done. His workload decreased from up to

40 patients per day down to 10 to 15 patients per day. He was "hanging on by my nails." He began to notice small mistakes. His wife and children commented thath e did not appear to be himself. He sought medical attention and underwent neurological workup, with generally negative results. He took three m o n t h s off on FMLA. When the governing board ofhis large practice became aware of his medical records, they told him to retire. He stated that he experienced increased depression. He asked the Medical Board to put his case "on hold," but he was told that that was not an option. He ultimately maintained his license, but was not allowed to practice.

In the interim, Dr. Jalowsky has participated in physical therapy, has had treatment for chronic pain, has lost 30 pounds, is participated in counseling, has begun use of an adaptive-servo machine when sleeping.

Dr. Jalowsky reports no significant cognitive problems at this time. He commented that he has always had some expressive language lapses, with intermittent word finding difficulties, paraphasias.

Dr. Jalowsky sees his primary care physician about every six months. He is seeing a pulmonologist to address his sleep difficulties. He is not seen aneurologist in the past year. He has not seen a counselor in over a year. He most recently saw someone for supportive treatment while discontinuing his antidepressant medication.

In discussing why he wants the Board to reinstate an activelicense, Dr. Jalowsky stated that he would like to be able to volunteer, to be able to prescribe, and be able to work in an advocacy position to improve healthcare delivery. He still has a relationship with Arizona Community Physicians, his previous practice organization, and he would like to work toward introducing that practice model to

other communities.
During the course of the current evaluation Dr. Jalowsky was pleasant and cooperative, alert, attentive, and responsive. Mood appeared euthymic and affect calm and appropriate. Speech was fluent, articulate, and well-modulated. He exhibited a
sense of humor. Eye contact was appropriate. He appeared to put forth a good effort on the various assessment tasks, monitoring his performance well and responding appropriately to success and difficulty. He was generally systematic in his approach to tasks. No gross sensory-motor abnormalities were apparent. He wears progressive lenses. He has bilateral hearing aids, which he has not used much during the pandemic. He appeared to have no difficulty hearing in the controlled testing environment.
Tests Administered: Aphasia Screening/Mental Status Exam, Boston Naming Test- 30, Controlled Oral Word Association Tests, Clock Drawing Test, Wechsler Memory Scale-Revised (WMS-R) (Stories), Hopkins Verbal Learning Test-Revised (HVLT-R), Brief Visual Memory Test-Revised (BVMT-R), Hopkins Adult Reading Test, Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV), Modified Wisconsin Card Sorting Test, Trail Making Test, Cognitive Estimation Test, Rey Complex Figure, PAI
N e u r o p s v c h o l o g v A s s o c i a t e s . P . c 1 5 1 5 E a s t M i s s o u r i A v e n u e . # 1 1 0
PhoenixAZ 85014

TEST RESULTS
Note: Various labels and scales are applied to neuropsychological results, as follows. Individual scores are adjusted for age, sex, education, race, and estimated historical intelligence where possible.
ScoreLabel
T-Score
Standard Score
Scaled Score
%lleRank Excepaonally High ≥70
≥16
> 9 8
Above Average 64-69
120-129
15
91-97 Migh-Average
57-63 110-119 12-14 75-90 Average
44_56 8-11 25-74 LOw-Average
37-43 80-89
Below Average
30-36 70-79
4-5 2-8 Excetnay Low
<70 § 4
"floor"= lowestpossiblescoreonameasure
"ceiling"a highestpossiblescoreona measure
Dr. Jalowsky was able to provide pertinent personal information and to name current public figures. He was oriented to time and place.
Basic language functions appear adequate for typical dailyconversation. Demonstration of limbmovements and ofuse of objects appears reasonably intact, as do repetition and basic auditory comprehension as sampled by "yes-no" questions. Confrontation naming is in the high-average range, as he produced 30 correct responses on the Boston Naming Test-30, at a T-score of 58. Generation of

words in response to specific cues is in the average range, as he produced 32 words in the two trials of the letter condition, at a T-score of 46, and 23 words in the category of "animal," at aT-score of 54. Handwriting is reasonably legible. Graphic constructional skills are adequate for simple geometric figures. In drawing the face of a clock, he was able to place the numbers in the proper sequence and able to place the hands in the proper positions to indicate a designated time.
Immediaterecall of paragraph-length narrative material is in the average range, as he produced 27 elements of the stories from the WMS-R, at a T-score of 45. His
subsequent retention is in the average to low-average range, as he performed about as well as would be expected based upon his immediate recall, producing 18 elements in the delay condition, at a T-score of 38.
Further investigation of verbal learning with the HVLT elicits below average
performance in terms of total number of words produced over the three acquisition trials (20),at a T-score of 35. His subsequent retention is in the low-average, as he retained 67% of the originally registered material (six of nine words) following a 25- minute interval, at aT-score of 38. Recognition recall is in the exceptionally lowrange, as he correctly identified seven words, with no false positive responses, at a T-score of 29.
Neuropsychology Associates. P . c 1515EastMissouriAvenue.#110
PhoenixAZ 85014

Independent Neuropsychological Examination HerbertJalowsk
March 17, 2021 ragesoro
Acquisition of visual-spatial material over repeated trials is in the low-average range, as he produced 17 elements over the three acquisition trials BVMT-R, at a T-score of 40. His retention of the originally registered material is in the exceptionally lowrange as he retained 50% of the originally registered material following a delay. Recognition recall is also in the exceptionally low range, as he correctly identified for of the six target items, with no false-positive responses, at a T-score of 28.
Rough estimate of historical intelligence based upon word recognition and other variables is in the above-average range, as he produced an estimated IQ equivalent score of 122-130 on the CNNS.
Current intellectual performances are in the X range overall. Specific scores are as follows.
Subtest Similarites
Vocabulary intormarion
DigitSpan
A r i t h m e r i s
ACS
Subtest ACS Block Design
Matrix Reasoning Vienal Puzzles
S u m b o Search Coding
Domain StandardscOl VerbalComprehensionIndex 118
Within the verbal realm, verbal abstraction is in the average range, while vocabulary level and general fund of information about the world are in the above average range
Within the visual-spatial realm, abstract spatial construction is in the average range, while nonverbal inductive reasoning and other visualization are in the exceptionally high range. Immediate auditory working memory is in the high-average range.
Processing speed in a paper-and-pencil format is in the above average range.
Problem-solving in a trial-and-error format, as sampled by the Modified Wisconsin Card Sorting Test, is in the high-average range, as he achieved all six categories, making one error, at a T-score of 62.
The ability to maintain multiple lines of thought in a time-limited format is within normal limits, as he performed as well on Part B of the Trail Making Test as he did on Part A. He performed in the average range on Part A, at a T-score of50, completing the task in 29 seconds. He performed in the

high-average range on Part B, completing the task in 56 seconds, producing a T-score of 57.
Planning and organization when dealing with more complex visual-spatial material are in the low-average range, as he produced 31 elements of the Rey Complex Figure, at a T-score of 39
He produced a score of 4 on the Cognitive Estimation Test, at a T-score of 43, reflecting low-average ability to "size up"situations and produce reasonable estimates about various aspects of the world.
General behavioral and personality factors were sampled with the PAI. The validity scales indicate that Dr. Jalowsky produced a valid profile. The resulting clinical profile is within normal limits. There are no indications of any psychiatric disturbance
Neuropsychology Associates, P.C
1515 East Missouri Avenue, #110 Phoenix AZ85014

involving mood, anxiety, clarity of thought, or interpersonal relationships. He is likely to be generally independent in his thinking. He reports a low level of acute situational stressandgoodsupportiromthosearoundhim
Summary
Dr. Jalowsky is a 67-year-old physician ordered by the Arizona Medical Board to undergo neuropsychological evaluation to assist the Board in its dealings with Dr. Jalowsky in Case No. MD-20-1086A.
Dr. Jalowsky's overall neurocognitive performances are in the average range for an individual of his background, with many performances in the above average to exceptionally high range. He exhibits no consistent pattern of decline or improvement over the past five years. Any differences in performances between the most recent examination in 2016 and his current examination most probably reflect normal variability. General reasoning abilities, both verbal and nonverbal, are above average, executive functions are well within normal limits, and there are no language disturbances. Memory remains an area of relative weakness. His auditory-verbal memory is within normal limits, nevertheless, while his recall of geometric visual- spatial information is poor.
The results of a structured behavioral questionnaire do not point to any current psychiatric difficulties for Dr. Jalowsky.
Thus, the results of this examination do not point to any cognitive difficulties which would preclude Dr. Jalowsky from carrying out clinical activities. By his report, he was having difficulty maintaining a full-time workload prior to stopping his practice. Given the steps to address physical and mental health factors he has taken since leaving practice, his ability in this regard may have improved. Some degree of monitoring and supervision as he re-enters practice would most probably be appropriate.
I hope these findings are helpful to the Board in its dealings with D.r Jalowsky. I will be happy to elaborate or clarify any of the above comments if needed.
H .DanielBlackwood, Ph.D.
Neuropsychology Associates, P.C
1515EastMissouriAvenue#110 PhoenixA785014

Re: Arizona Medical Board MD-20-1086A - Interim Order for Competency Evaluation

1 message

Erinn Downey <erinn.downey@azmd.gov> Tue, Apr 20, 2021 at 9:55 AM
To: Herbert Jalowsky <herbertjalowsky@yahoo.com>

Hi Dr. Jalowsky,

A competency evaluation is for a physician who hasn't practiced in some time and for whom there is a concern about return to practice due to the time elapsed. For information on what this type of exam entails, the best place to look is on the website for either PACE or CPEP. Here is the link for the description on PACE's website. http://www.paceprogram.ucsd.edu/Assessment/Assessment.aspx

These types of evaluations are costly and can take a few months for us to receive the final report. If you don't wish to go forward with the evaluation, please let me know and we can either move your case forward with the information we have now (which will likely result in the denial of your request to lift your limitation) or you can withdraw your request.

Regards,

Erinn Downey, CMBI
Physician Health Program Manager
Arizona Medical Board & Regulatory
Board of Physician Assistants
1740 W. Adams, Ste. 4000
Phoenix, AZ 85007
Direct: 480.551.2732
Fax: 480.551.2702
Email: erinn.downey@azmd.gov

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On Mon, Apr 19, 2021 at 1:52 PM Herbert Jalowsky <herbertjalowsky@yahoo.com> wrote:

> Could you please clarify me what a physician assessment competency evaluation is and what it consists of?
> Thank you
> Respectfully
> Herbert Jalowsky
>
> Sent from my iPhone
>
> > On Apr 19, 2021, at 12:05 PM, Erinn Downey <erinn.downey@azmd.gov> wrote:
> >
> > Hi Dr. Jalowsky,
> >
> > We have received Dr. Blackwood's report (attached to this email). The Board's Medical Consultant and Executive Director reviewed it and found that you require a competency evaluation. Attached is the Interim Order for Competency / Re-Entry Evaluation.
> >
> > Below are the Board approved facilities for competency evaluations:
> >
> > • Physician Assessment and Clinical Education (PACE) - (619) 543-6770. The application for PACE can be printed from their web page at www.paceprogram.ucsd.edu.
> >
> > • Center for Personalized Education for Physicians (CPEP) - (303) 577-3232 or via email at cpep@cpepdoc.org.

Thank you,

Erinn Downey, CMBI
Physician Health Program Manager
Arizona Medical Board & Regulatory
Board of Physician Assistants
1740 W. Adams, Ste. 4000
Phoenix, AZ 85007
Direct: 480.551.2732
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Email: erinn.downey@azmd.gov

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<Jalowsky - Dr. Blackwood's Report.pdf>
<Jalowsky - Interim Order for Competency Re-Entry Evaluation.pdf>

affirmative request of the physician and approval by the Board, and Dr. Rowlett's request for termination shall be accompanied by a recommendation from his PHP Contractor stating that monitoring is no longer required.

4. MD-20-0964A, ERIK P. CASTLE, M.D., LIC. #36421
   Dr. Krahn recused from this case.

   RESOLUTION: Accept the Consent Agreement for Decree of Censure.

5. MD-19-0692A, STEPHEN E. LINDSTROM, M.D., LIC. #7585

   RESOLUTION: Accept the Consent Agreement for Surrender of License.

R. LICENSE APPLICATIONS

i. CONSIDERATION AND POSSIBLE ACTION TO APPROVE OR DENY LICENSE APPLICATION, OR TAKE OTHER ACTION

MOTION: Dr. Figge moved to grant the license in item numbers 1-5.
SECOND: Ms. Oswald.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

1. MD-21-0749A, PATRICK H. KNIGHT, M.D., LIC. #N/A

   RESOLUTION: License granted.

2. MD-22-0184A, KATHLEEN L. MCDONALD, M.D., LIC. #N/A
   Dr. McDonald addressed the Board during the Public Statements portion of the meeting.

   RESOLUTION: License granted.

3. MD-22-0229A, THEODORE FELDMAN, M.D., LIC. #N/A

   RESOLUTION: License granted.

4. MD-21-0237A, HUGO G. BLAKE, M.D., LIC. #N/A

   RESOLUTION: License granted.

5. MD-22-0268A, PATRICK W. BLAKE, M.D., LIC. #N/A

   RESOLUTION: License granted.

ii. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING APPLICANT'S REQUEST FOR WAIVER OF DOCUMENTATION REQUIREMENT

MOTION: Dr. Krahn moved to grant the waiver and grant the license in item numbers 1, 3, 4 and 5.
SECOND: Dr. Beyer.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

1. SUZANNE NUMAN, M.D., LIC. #N/A

   RESOLUTION: Request for waiver and license granted.

2. HERBERT R. JALOWSKY, M.D., LIC. #N/A

Dr. Figge stated that he knows of the physician but it will not affect his ability to adjudicate the case.

Dr. Gillard inquired about the April 18, 2018 Consent for a Practice Limitation and whether or not it has been mitigated.

Ms. Smith informed the Board that an ED memo was provided that contains the requirements for a probono registration. Dr. Jalowsky's previous Arizona license expired, The requirements for probono registration and the language in the statute does not give the Board the discretion to consider the issues that gave rise to the Practice Limitation.

Dr. Gillard commented that the practice limitation was not lifted the Board cannot grant a license if there may be other issues.

Dr. Beyer inquired about the physician having an active license in another state.

Ms. Dunavant confirmed that the physician does not hold an active license in another jurisdiction which is the reason for the waiver.

Dr. Gillard noted that the waiver request is for the Louisiana temporary license.

Ms. Dunuvant clarified that the waiver is for the temp license. The physician does not have an active license in another state and has an inactive Arizona license.

Ms. Smith confirmed that he meets the requirement for a probono registration with the inactive Arizona license.

Dr. Gillard opined that this should be sent back to be looked at further regarding the qualifications.

Ms. McSorley commented that staff shared the same concerns but per the statute the physician meets the very specific requirements. The Practice Limitation was not lifted but he does hold an inactive license.

Ms. Smith requested that the Board refer this matter for further investigation to look into the practice limitation further.

MOTION: Dr. Gillard moved to return this matter for further investigation.
SECOND: Dr. Beyer.
Dr. Figge opined that this physician is looking for a loophole to practice and takes issue with incompetent care.

VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

3. ANGELA F. PERRY, M.D., LIC. #N/A
Dr. Perry addressed the Board during the Public Statements portion of the meeting.

RESOLUTION: Request for waiver and license granted.

4. SURINDERJEET S. SANDHU, M.D., LIC. #N/A

RESOLUTION: Request for waiver and license granted.

5. SAMUEL S. SONG, M.D., LIC. #N/A

RESOLUTION: Request for waiver and license granted.

6. TRACY D. TERRELL, M.D., LIC. #N/A
Dr. Terrell addressed the Board during the Public Statements portion of the meeting.

Dr. Gillard commented that no information about the application or education has been provided.

Ms. McSorley confirmed that this physician meets the qualifications.

MOTION: Dr. Gillard moved to grant the waiver request and the license application.
SECOND: Ms. Oswald.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

iii. CONSIDERATION AND POSSIBLE ACTION TO APPROVE OR DENY PRO BONO LICENSE APPLICATION, OR TAKE OTHER ACTION

1. HERBERT R. JALOWSKY, M.D., LIC. #N/A

Dr. Gillard and Dr. Figge stated that they know the physician, but it will not affect their ability to adjudicate the case.

Dr. Gillard noted that this case was sent back to address the practice limitation concern expressed by Board members. Dr. Gillard commented that having read the physician's response he does not have a concern regarding cognitive problem. Dr. Gillard recommended that the physician request a sponsorship from the Board to take the SPEX exam.

MOTION: Dr. Gillard moved to allow the physician to take the SPEX exam with the FSMB and sponsorship by the AZ Medical Board, if passes grant the pro bono license.
SECOND: Dr. Figge.
Dr. Figge spoke in favor of the motion to ensure the physician is safe to practice.

MOTION: Ms. Bain moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).
SECOND: Ms. Jones.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

The Board entered into Executive Session at 7:40 p.m.
The Board returned to Open Session at 8:02 p.m.
No legal action was taken by the Board during Executive Session.

MOTION WITHDRAWN.

MOTION: Dr. Gillard moved to table this matter to allow staff for further input.
SECOND: Dr. Figge.
Dr. Beyer spoke against the motion as he is comfortable moving forward without the practice limitation. The concern was regarding whether the physician is safe to practice after being out of practice for some time. Dr. Beyer noted that a Pro Bono license to practice medicine is limited and spoke in favor of terminating the practice limitation.

Ms. Smith clarified that if the Board feels the physician is safe to practice, the Board may terminate the practice limitation and grant the pro bono license. If the Board wishes to further evaluate the physician's ability to safely practice medicine, he would need to request termination of the practice limitation so that the Board can then request the evaluation pursuant to the consent agreement.

Dr. Farmer commented that there are different procedural requirements for a pro bono license and noted that there are two separate issues facing the Board- the concern regarding cognitive functioning and the physician's lapse in time from

practice. Dr. Farmer disagreed with the statement that a pro bono license is more contained, and that a pro bono license still allows a physician to use the full prescribing authority and many other practices. Dr. Figge noted that there are a limited of days you can practice and there is no charge but a physician with a pro bono license is still required to meet the stand of care of medicine. Dr. Figge agreed that there is no longer a cognitive issue, but a competency question given the time out of practice.

VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald. The following Board member voted against the motion: Dr. Beyer.
VOTE: 9-yay, 1-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

*****END OF CONSENT AGENDA*****

OTHER BUSINESS

O. REQUEST FOR TERMINATION OF BOARD ORDER

1. MD-18-0410A, MICHAEL J. ROSEN, M.D., LIC. #21267

Dr. Gillard noted that the physician has completed the required courses per the Board order.

MOTION: Dr. Gillard moved to grant the request to terminate the June 3, 2020 Board Order.
SECOND: Ms. Jones
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

2. MD-20-0201A, SIRISHA VADALI, M.D., LIC. #60302

Dr. Gillard noted that the physician is compliant and that the Monitor is in favor of termination.

MOTION: Dr. Gillard moved to grant the request to terminate the August 13, 2020 Board Order.
SECOND: Dr. Krahn.
VOTE: The following Board members voted in favor of the Dr. Farmer, Dr. Gillard, Dr. Krahn, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Figge, Ms. Jones and Ms. Oswald. The following Board member abstained: Ms. Bain.
VOTE: 9-yay, 0-nay, 1-abstain, 0-recuse, 0-absent.
MOTION PASSED.

P. APPEAL OF EXECUTIVE DIRECTOR ACTION OR TAKE OTHER ACTION

1. MD-21-0743A, MICHAEL P. RIDGE, M.D., LIC. #15513
Counsel Scott Hergenroether participated telephonically on behalf of the physician.

Mr. Hergenroether stated that Dr. Ridge had submitted an appeal of an interim order issued by the Executive Director in this matter. The request has now been amended to accept staff's recommendation. Mr. Hergenroether noted that this case arose from patient's complaint regarding a GI examination. The patient stated that Dr. Ridge exposed her breast. Dr. Ridge strongly denies the allegation but does apologize for the offense the patient took when he recommended the COVID vaccination. Dr. Ridge is

Jones, Dr. Moschonas and Ms. Oswald. The following Board member was absent: Ms. Dorrell.
VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

1. MD-22-0858A, MARK T. HENDERSON, M.D., LIC. #N/A

   RESOLUTION: License granted.

2. MD-22-0851A, ANDREW S. CRUZ, M.D., LIC. #N/A

   RESOLUTION: License granted.

3. MD-23-0110A, CLAUDE B. MINOR, M.D., LIC. #N/A

   RESOLUTION: License granted.

4. MD-23-0131A, NOREEN C. FAULKNER, M.D., LIC. #N/A

   RESOLUTION: License granted.

ii. CONSIDERATION AND POSSIBLE ACTION TO APPROVE OR DENY LICENSE APPLICATION, OR TAKE OTHER ACTION WITH STAFF RECOMMENDATION

1. THIS CASE HAS BEEN PULLED FROM THE AGENDA.
2. HERBERT R. JALOWSKY, M.D., LIC. #N/A

   Dr. Farmer noted that this issue has been considered before and decided that there needs to be an action by the physician which he has refused to do.

   MOTION: Ms. Bain moved to deny the license.
   SECOND: Dr. Krahn.
   Dr. Gillard noted that the physician has said that he had issues with a Board member and requested that that Board member recuse. Dr. Gillard further noted that the physician has to request to have his practice limitation lifted. Dr. Farmer confirmed that the physician has been advised to request the lifting of the practice limitation and that even if the physician did request it there would still need to be a discussion regarding the time lapse from practice.

   MOTION: Dr. Bethancourt moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).
   SECOND: Dr. Figge.
   VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Dr. Artz, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Dr. Figge, Ms. Jones, Dr. Moschonas and Ms. Oswald. The following Board member was absent: Ms. Dorrell.
   VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

   The Board entered into Executive Session at 8:55 p.m.
   The Board returned to Open Session at 9:11 p.m.
   No legal action was taken by the Board during Executive Session.

   Ms. Bain stated for the record that she does not know this physician and is not aware of the physician outside of this matter.
   Ms. Bain withdrew her motion and Dr. Krahn withdrew her second.
   MOTION WITHDRAWN.

   Dr. Gillard noted that a denial would be reported to the NPDB. Dr. Gillard noted that the physician did request the license and completed the evaluation but expressed

concern that the physician does not understand that the practice limitation needs to be lifted.

MOTION: Dr. Gillard moved to table the matter until such time that Dr. Jalowsky submits the appropriate request to lift the practice limitation as instructed.
SECOND: Dr. Krahn.
Dr. Farmer noted that Board staff has been more than clear about what is required and the fact that he cannot understand the process is concerning as well as the length of time from practice. Dr. Gillard noted that a physician can go to the FSMB and request to take the SPEX exam.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Dr. Artz, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Dr. Figge, Ms. Jones, Dr. Moschonas and Ms. Oswald. The following Board member was absent: Ms. Dorrell.
VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

iii. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING LICENSE REACTIVATION AND RECOMMENDED ADVISORY LETTER

1. MD-22-0860A, ANDREW J. MCDONNELL, M.D., LIC. #30220

MOTION: Dr. Gillard moved to Reactivate the license and issue an Advisory Letter for practicing medicine in other states while maintaining an inactive Arizona license. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
SECOND: Dr. Bethancourt.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Dr. Artz, Dr. Bethancourt, Dr. Beyer, Dr. Figge, Ms. Jones, Dr. Moschonas and Ms. Oswald. The following Board member abstained: Ms. Bain. The following Board member was absent: Ms. Dorrell.
VOTE: 10-yay, 0-nay, 1-abstain, 0-recuse, 1-absent.
MOTION PASSED.

iv. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING APPLICANT'S REQUEST FOR WAIVER OF DOCUMENTATION REQUIREMENT

1. THIS CASE HAS BEEN MOVED TO AGENDA ITEM N. ii
2. THOMAS A. SHANG, M.D., LIC. #N/A

MOTION: Dr. Gillard moved to grant the waiver and grant the license.
SECOND: krahn
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Dr. Artz, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Dr. Figge, Ms. Jones, Dr. Moschonas and Ms. Oswald. The following Board member was absent: Ms. Dorrell.
VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

v. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING LICENSURE BY ENDORSEMENT PURSUANT TO A.R.S. § 32-1426(B) AND R4-16-201(F), OR TAKE OTHER ACTION

1. MOHAMMED I. AWAAD, M.D., LIC. #N/A
Dr. Gillard summarized that the physician has no board certifications but he has five state licenses without actions, 48 years of practice and a note that he did have

32-1428. Pro bono registration

A. The board may issue a pro bono registration to allow a doctor who is not a licensee to practice in this state for a total of up to sixty days each calendar year if the doctor:

1. Holds an active and unrestricted license to practice medicine in a state, territory or possession of the United States or an inactive license pursuant to section 32-1431.

2. Has never had the license revoked or suspended.

3. Is not the subject of an unresolved complaint.

4. Applies for registration on a yearly basis as prescribed by the board.

5. Agrees to render all medical services without accepting a fee or salary or performs only initial or follow-up examinations at no cost to the patient and the patient's family through a charitable organization.

B. The sixty days of practice prescribed pursuant to subsection A of this section may be performed consecutively or cumulatively during each calendar year.

C. For the purpose of meeting the requirements of subsection A of this section, an applicant shall provide the board the name of each state in which the person is licensed or has held a license and the board shall verify with the applicable regulatory board of each state that the applicant is licensed or has held a license, has never had a license revoked or suspended and is not the subject of an unresolved complaint. The board may accept the verification of the information required by subsection A, paragraphs 1, 2 and 3 of this section from each of the other state's regulatory board either electronically or by hard copy.

32-1431. Inactive license; application; practice prohibitions

A. A person holding a current active license to practice medicine in this state may request an inactive license from the board if both of the following are true:

1. The licensee is not presently under investigation by the board.

2. The board has not commenced any disciplinary proceeding against the licensee.

B. The board may grant an inactive license and waive the renewal fees and requirements for continuing medical education specified by section 32-1434 if the licensee provides evidence to the board's satisfaction that the licensee has totally retired from the practice of medicine in this state and any state, territory and district of the United States or any foreign country and has paid all of the fees required by this chapter before the request. The board may grant pro bono registration pursuant to section 32-1428 to a physician who holds an inactive license under this section.

C. During any period in which a medical doctor holds an inactive license, that person shall not engage in the practice of medicine or continue to hold or maintain a drug enforcement administration controlled substances registration certificate, except as permitted by a pro bono registration pursuant to section 32-1428. Any person who engages in the practice of medicine while on inactive license status is considered to be a person who practices medicine without a license or without being exempt from licensure as provided in this chapter.

D. The board may convert an inactive license to an active license if the applicant pays the renewal fee and presents evidence satisfactory to the board that the applicant possesses the medical knowledge and is physically and mentally able to safely engage in the practice of medicine. The board may require any combination of physical examination, psychiatric or psychological evaluation or successful passage of the special purpose licensing examination or interview it finds necessary to assist it in determining the ability of a physician holding an inactive license to return to the active practice of medicine.

41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.

2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider revising, repealing or making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for rejection to the petitioner.

2. Initiate rulemaking proceedings in accordance with this chapter.

3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The petitioner's appeal may not be more than five double-spaced pages.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030. A petition submitted under this subsection may not be more than five double-spaced pages.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. A petition submitted under this subsection may not be more than five double-spaced pages. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that alleges an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or does not meet the guidelines prescribed in subsection G of this section, or if the council receives an appeal under subsection E of this section, and at least three council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receiving the third council member's request, the council shall determine whether any of the following applies:

(a) The agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receiving the third council member's request, the council shall notify the agency that the matter has been or will be placed on the council's agenda for consideration on the merits.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement of not more than five double-spaced pages to the council that addresses whether any of the following applies:

(a) The existing agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

I. At the hearing, the council shall allocate the petitioner and the agency an equal amount of time for oral comments not including any time spent answering questions raised by council members. The council may also allocate time for members of the public who have an interest in the issue to provide oral comments.

J. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

K. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council determines that the agency practice, substantive policy statement or regulatory licensing requirement exceeds the agency's statutory authority, is not authorized by statute or constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement, rule or regulatory licensing requirement shall be void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the council shall modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. If an agency decides to further pursue a practice, substantive policy statement or regulatory licensing requirement that has been declared void or has been modified or revised by the council, the agency may do so only pursuant to a new rulemaking.

L. A council decision pursuant to this section shall be made by a majority of the council members who are present and voting on the issue. Notwithstanding any other law, the council may not base any decision concerning an agency's compliance with the requirements of section 41-1030 in issuing a final rule or substantive policy statement on whether any party or person commented on the rulemaking or substantive policy statement.

M. A decision by the council pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

N. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.