

NOTICE OF PROPOSED EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING

PREAMBLE

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

R9-10-113	Amend
R9-10-230	Amend
R9-10-233	Amend
R9-10-407	Amend
R9-10-507	Amend
R9-10-1306	Amend

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

Authorizing Statutes: A.R.S. §§ 36-132(A)(1) and 36-136(G)
Implementing Statutes: A.R.S. §§ 36-405 and 36-406

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

Notice of Docket Opening: 27 A.A.R. 1233, August 13, 2021
Notice of Proposed Expedited Rulemaking: 27 A.A.R. 1411, September 10, 2021
Notice of Termination of Rulemaking: 28 A.A.R. XXX, [to be entered by Register editor]
Notice of Docket Opening: 28 A.A.R. XXX, to be entered by Register editor]

- 4. The agency’s contact person who can answer questions about the rulemaking:**

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

In order to ensure public health, safety, and welfare, Arizona Revised Statutes (A.R.S.) §§ 36-405 and 36-406 require the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules for licensing health care institutions in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. A.C.C. Title 9, Chapter 10, Article 1 contains the rules that apply to more than one class of health care institution. The Department has requirements related to tuberculosis screening in health care institutions in A.A.C. R9-10-113, citing to guidelines of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC). The CDC has recently updated the recommendations for tuberculosis screening in a manner that removed the requirement for annual screening if certain conditions are met. Health care institutions have requested that the Department change the rule to incorporate by reference the 2019 CDC recommendations. After receiving an exception from the rulemaking moratorium pursuant to Executive Order 2021-02, the Department began revising A.A.C. R9-10-113 to address these concerns and making related cross-reference changes in other Sections in the Chapter, but was unable to submit a Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council within the timeframe required in statute. The Department terminated the rulemaking, obtained another exception from the rulemaking moratorium pursuant to Executive Order 2022-01, and opened a new rulemaking. The changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but reduce a burden due to outdated requirements without compromising health and safety.

6. 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.

- 7. 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

- 8. The preliminary summary of the economic, small business, and consumer impact:**

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

- 9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**

Not applicable

- 10. Where, when, and how persons may provide written comment to the agency on the proposed expedited rule under A.R.S. § 41-1027(C):**

Close of record: Monday, March 7, 2022, 4:00 p.m.

A person may submit written comments on the proposed expedited rules no later than the close of record to either of the individuals listed in item 4.

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

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

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

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

Federal laws do not apply to the rule.

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

No such analysis was submitted.

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

None

13. **The full text of the rule follows:**

TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 1. GENERAL

Section

R9-10-113. Tuberculosis Screening

ARTICLE 2. HOSPITALS

Section

R9-10-230. Infection Control

R9-10-233. Environmental Standards

ARTICLE 4. NURSING CARE INSTITUTIONS

Section

R9-10-407. Admission

**ARTICLE 5. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH
INTELLECTUAL DISABILITIES**

Section

R9-10-507. Admission

ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY

Section

R9-10-1306. Admission Requirements

ARTICLE 1. GENERAL

R9-10-113. Tuberculosis Screening

- A.** ~~A health care institution's chief administrative officer shall ensure that the health care institution complies with one of the following if tuberculosis screening is required by this Chapter at the health care institution:~~
- ~~1. Screens for infectious tuberculosis according to subsection (B); or~~
 - ~~2. Establishes, documents, and implements a tuberculosis infection control program that complies with the Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health care Settings, 2005, published by the U.S. Department of Health and Human Services, Atlanta, GA 30333 and available at <http://www.cdc.gov/mmwr/PDF/RR/rr5417.pdf>, incorporated by reference, on file with the Department, and including no future editions or amendments and includes:~~
 - ~~a. Conducting tuberculosis risk assessments, conducting tuberculosis screening testing, screening for signs or symptoms of tuberculosis, and providing training and education related to recognizing the signs and symptoms of tuberculosis; and~~
 - ~~b. Maintaining documentation of any:~~
 - ~~i. Tuberculosis risk assessment;~~
 - ~~ii. Tuberculosis screening test of an individual who is employed by the health care institution, provides volunteer services for the health care institution, or is admitted to the health care institution; and~~
 - ~~iii. Screening for signs or symptoms of tuberculosis of an individual who is employed by the health care institution, provides volunteer services for the health care institution, or is admitted to the health care institution.~~
- B.** ~~For each individual required to be screened for infectious tuberculosis, a health care institution's chief administrative officer shall obtain from the individual:~~
- ~~1. On or before the date specified in the applicable Section of this Chapter, one of the following as evidence of freedom from infectious tuberculosis:~~
 - ~~a. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention (CDC) administered within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution that includes the date and the type of tuberculosis screening test;~~
~~or~~

- ~~b. If the individual had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the individual is free from infectious tuberculosis signed by a medical practitioner dated within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution; and~~
- ~~2. Every 12 months after the date of the individual's most recent tuberculosis screening test or written statement, one of the following as evidence of freedom from infectious tuberculosis:~~
 - ~~a. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the CDC administered to the individual within 30 calendar days before or after the anniversary date of the most recent tuberculosis screening test or written statement that includes the date and the type of tuberculosis screening test; or~~
 - ~~b. If the individual has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the individual is free from infectious tuberculosis signed by a medical practitioner dated within 30 calendar days before or after the anniversary date of the most recent tuberculosis screening test or written statement.~~

A. If tuberculosis screening is required by this Chapter at a health care institution, the health care institution's chief administrative officer shall ensure that the health care institution establishes, documents, and implements tuberculosis infection control activities that:

- 1. Are consistent with recommendations in Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019, published by the U.S. Department of Health and Human Services, Atlanta, GA 30333, available at <https://www.cdc.gov/mmwr/volumes/68/wr/mm6819a3.htm>, incorporated by reference, on file with the Department, and including no future editions or amendments; and
- 2. Include:
 - a. For each individual who is employed by the health care institution, provides volunteer services for the health care institution, or is admitted to the health care institution and who is subject to the requirements of this Section, baseline screening, on or before the date specified in the applicable Article of this Chapter, that consists of:
 - i. Assessing risks of prior exposure to infectious tuberculosis,

- ii. Determining if the individual has signs or symptoms of tuberculosis, and
- iii. Obtaining documentation of the individual's freedom from infectious tuberculosis according to subsection (B)(1);
- b. If an individual may have a latent tuberculosis infection, as defined in A.A.C. R9-6-1201:
 - i. Referring the individual for assessment or treatment; and
 - ii. Annually obtaining documentation of the individual's freedom from symptoms of infectious tuberculosis, signed by a medical practitioner, occupation health provider, as defined in A.A.C. R9-6-801, or local health agency, as defined in A.A.C. R9-6-101;
- c. Annually providing training and education related to recognizing the signs and symptoms of tuberculosis to individuals employed by or providing volunteer services for the health care institution;
- d. Annually assessing the health care institution's risk of exposure to infectious tuberculosis;
- e. Reporting, as specified in A.A.C. R9-6-202, an individual who is suspected of exposure to infectious tuberculosis; and
- f. If an exposure to infectious tuberculosis occurs in the health care institution, coordinating and sharing information with the local health agency, as defined in A.A.C. R9-6-101, for identifying, locating, and investigating contacts, as defined in A.A.C. R9-6-101.

B. A health care institution's chief administrative officer shall:

- 1. For an individual for whom baseline screening and documentation of freedom from infectious tuberculosis is required by subsection (A)(2)(a), obtain one of the following as evidence of freedom from infectious tuberculosis:
 - a. Documentation of a negative Mantoux skin test or other tuberculosis screening test that:
 - i. Is recommended by the U.S. Centers for Disease Control and Prevention (CDC),
 - ii. Was administered within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution, and
 - iii. Includes the date and the type of tuberculosis screening test;
 - b. If the individual had a history of tuberculosis or documentation of latent

tuberculosis infection, as defined in A.A.C. R9-6-1201, compliance with subsection (A)(2)(b); or

c. If the individual had a positive Mantoux skin test or other tuberculosis screening test according to subsection (B)(1)(a) and does not have history of tuberculosis or documentation of latent tuberculosis infection, as defined in A.A.C. R9-6-1201, a written statement:

i. That the individual is free from infectious tuberculosis, signed by a medical practitioner or local health agency, as defined in A.A.C. R9-6-101; and

ii. Dated within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution; and

2. As part of the annual assessment of the health care institution's risk of exposure to infectious tuberculosis according to subsection (A)(2)(d), ensure that documentation is obtained for each individual required to be screened for infectious tuberculosis that:

a. Indicates the individual's freedom from symptoms of infectious tuberculosis; and

b. Is signed by a medical practitioner, occupation health provider, as defined in A.A.C. R9-6-801, or local health agency, as defined in A.A.C. R9-6-101.

ARTICLE 2. HOSPITALS

R9-10-230. Infection Control

An administrator shall ensure that:

1. An infection control program that meets the requirements of this Section is established under the direction of an individual qualified according to policies and procedures;
2. An infection control program has a procedure for documenting:
 - a. The collection and analysis of infection control data,
 - b. The actions taken relating to infections and communicable diseases, and
 - c. Reports of communicable diseases to the governing authority and state and county health departments;
3. Infection control documents are maintained for at least 12 months after the date of the document;
4. Policies and procedures are established, documented, and implemented:
 - a. To prevent or minimize, identify, report, and investigate infections and communicable diseases that include:
 - i. Isolating a patient;
 - ii. Sterilizing equipment and supplies;
 - iii. Maintaining and storing sterile equipment and supplies;
 - iv. Using personal protective equipment such as gowns, masks, or face protection;
 - v. Disposing of biohazardous medical waste; and
 - vi. Moving and processing soiled linens and clothing;
 - b. That specify communicable diseases, medical conditions, or criteria that prevent an individual, a personnel member, or a medical staff member from:
 - i. Working in the hospital,
 - ii. Providing patient care, or
 - iii. Providing environmental services;
 - c. That establish criteria for determining whether a medical staff member is at an increased risk of exposure to infectious tuberculosis based on:
 - i. The level of risk in the area of the hospital premises where the medical staff member practices, and
 - ii. The work that the medical staff member performs; and

- d. That establish the frequency of tuberculosis screening for an individual determined to be at an increased risk of exposure;
5. Tuberculosis screening is performed:
- a. ~~As part of a tuberculosis infection control program that complies with the Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-care Settings according to R9-10-113(2); or~~
 - b. ~~Using a screening method described in R9-10-113(1), as follows:~~
 - i. ~~For a personnel member, on or before the date the personnel member begins providing services at or on behalf of the hospital and at least once every 12 months thereafter or more frequently if the personnel member is determined to be at an increased risk of exposure based on the criteria in subsection (4)(c);~~
 - ii. ~~Except as required in subsection (4)(d), for a medical staff member, at least once every 24 months; and~~
 - iii. ~~For a medical staff member at an increased risk of exposure based on the criteria in subsection (4)(c), at the frequency required by policies and procedures, but no less frequently than once every 24 months;~~
5. Tuberculosis screening is performed for a personnel member or medical staff member:
- a. On or before the date the personnel member or medical staff member begins providing services at or on behalf of the hospital, and
 - b. As part of a tuberculosis infection control program according to R9-10-113;
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. A personnel member washes hands or uses a hand disinfection product after each patient contact and after handling soiled linen, soiled clothing, or potentially infectious material;
8. An infection control committee is established according to policies and procedures and consists of:
- a. At least one medical staff member,
 - b. The individual directing the infection control program, and
 - c. Other personnel identified in policies and procedures; and
9. The infection control committee:

- a. Develops a plan for preventing, tracking, and controlling infections;
- b. Reviews the type and frequency of infections and develops recommendations for improvement;
- c. Meets and provides a quarterly written report for inclusion by the quality management program; and
- d. Maintains a record of actions taken and minutes of meetings.

R9-10-233. Environmental Standards

An administrator shall ensure that:

- 1. An individual providing environmental services who has the potential to transmit infectious tuberculosis to patients, as determined by the infection control risk assessment criteria in R9-10-230(4)(c), provides evidence of freedom from infectious tuberculosis:
 - a. ~~Using a screening method described in R9-10-113(1), on~~ On or before the date the individual begins providing environmental services at or on behalf of the hospital, ~~and at least once every 12 months thereafter; or~~
 - b. According to ~~R9-10-113(2)~~ R9-10-113;
- 2. The hospital premises and equipment are:
 - a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control infection or illness; and
 - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
- 3. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
- 4. The hospital maintains a tobacco smoke-free environment;
- 5. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14, and policies and procedures;
- 6. Equipment used to provide hospital 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; and
- 7. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair.

ARTICLE 4. NURSING CARE INSTITUTIONS

R9-10-407. Admission

An administrator shall ensure that:

1. A resident is admitted only on a physician's order;
2. The physician's admitting order includes the nursing care institution services required to meet the immediate needs of a resident, such as 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 ensure the resident's immediate needs for nursing care institution services are met;
4. A resident's needs do not exceed the medical services and nursing services available at the nursing care institution as established in the nursing care institution's scope of services;
5. Before or at the time of admission, a resident or the resident's representative:
 - a. Receives a documented agreement with the nursing care institution that includes rates and charges,
 - b. Is informed of third-party coverage for rates and charges,
 - c. Is informed of the nursing care institution's refund policy, and
 - d. Receives written information concerning the nursing care institution's policies and procedures related to a resident's health care directives;
6. 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;
7. Except as specified in subsection (8), 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;
8. A resident who transfers from a nursing care institution to another nursing care institution is not required to be rescreened for tuberculosis ~~or provide another written statement by a physician, physician assistant, or registered nurse practitioner as specified in R9-10-113(1) R9-10-113~~ if:

- a. Fewer than 12 months have passed since the resident was screened for tuberculosis ~~or since the date of the written statement~~, and
 - b. The documentation of freedom from infectious tuberculosis required in subsection (7) accompanies the resident at the time of transfer; and
9. Compliance with the requirements in subsection (6) is documented in the resident's medical record.

**ARTICLE 5. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH
INTELLECTUAL DISABILITIES**

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 ~~or provide another written statement by a physician, physician assistant, or registered nurse practitioner~~ as specified in R9-10-113 if:
 - a. Fewer than 12 months have passed since the resident was screened for tuberculosis ~~or since the date of the written statement~~, and
 - b. The documentation of freedom from infectious tuberculosis required in subsection (9) accompanies the resident at the time of transfer.

ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY

R9-10-1306. Admission Requirements

- A. An administrator shall ensure that, before a patient is admitted to the behavioral health specialized transitional facility, a court of competent jurisdiction has ordered the patient to be:
1. Detained under A.R.S. § 36-3705(B) or § 36-3713(B); or
 2. Committed under A.R.S. § 36-3707.
- B. An administrator shall ensure that, at the time a patient is admitted to the behavioral health specialized transitional facility:
1. The administrator receives a copy of the court order for the patient to be detained at or committed to the behavioral health specialized transitional facility,
 2. The patient's possessions are taken to the bedroom to which the patient has been assigned, and
 3. The patient is provided with a written list and verbal explanation of the patient's rights and responsibilities.
- C. Within seven calendar days after a patient is admitted to the behavioral health specialized transitional facility, a medical director shall ensure that:
1. A medical history is taken from and a physical examination performed on the patient;
 2. Except as specified in subsection (C)(3), a patient provides evidence of freedom from infectious tuberculosis as required in R9-10-113;
 3. A patient is not required to be ~~retested~~ rescreened for tuberculosis ~~or provide another written statement by a physician, physician assistant, or registered nurse practitioner~~ as specified in ~~R9-10-113(1)~~ R9-10-113 if:
 - a. Fewer than 12 months have passed since the patient was ~~tested~~ screened for tuberculosis ~~or since the date of the written statement~~, and
 - b. The documentation of freedom from infectious tuberculosis required in subsection (C)(2) accompanies the patient at the time of the patient's admission to the behavioral health specialized transitional facility; and
 4. An assessment for the patient is completed:
 - a. According to the behavioral health specialized transitional facility's policies and procedures;
 - b. That includes the patient's:
 - i. Legal history, including criminal justice record;

- ii. Behavioral health treatment history;
 - iii. Medical conditions and history; and
 - iv. Symptoms reported by the patient and referrals needed by the patient, if any; and
- c. That includes:
- i. Recommendations for further assessment or examination of the patient's needs,
 - ii. The physical health services or ancillary services that will be provided to the patient until the patient's treatment plan is completed; and
 - iii. The signature of the personnel member conducting the assessment and the date signed.