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AHCCCS (R-18-1104)

Title 9, Chapter 22, Article 7, Standard for Payments

Amend: R9-22-721

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

DATE: December 21, 2018

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

FROM: Council Staff

MEETING: January 8, 2018

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R-18-1104)**
Title 9, Chapter 22, Article 7, Standards for Payments

Amend: R9-22-721

This rulemaking, from the Arizona Health Care Cost Containment System Administration (AHCCCS or Administration), seeks to amend one rule in A.A.C. Title 9, Chapter 22, Article 7. The rules in Article 7 relate to standards of payments.

The Administration indicates that it is engaging in this rulemaking to clarify the term of "Behavioral Health Inpatient Facility." In 2018, the Arizona legislature enacted A.R.S. § 36-2905.03 which provides that non-contracted behavioral health inpatient facilities will be reimbursed at 90% of the contracted rate. This rulemaking is intended to clarify which facilities would be impacted by the statute.

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

As noted above, the Administration cites to A.R.S. § 36-2905.03 as general authority for the rule. In addition, the Administration cites to A.R.S. § 36-2905.01, which grants the Administration authority to develop, by rule, a formula by which hospitals are reimbursed for having graduate medical education programs that are approved by the Administration, as specific authority.

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

No. The rule does not establish a new fee or contain a fee increase.

3. Summary of the agency’s economic impact analysis:

In this rulemaking, the Administration is clarifying which facilities are considered Behavioral Health Inpatient Facilities (BHIFs). In 2018, statutory changes require that non-contracting BHIFs receive reimbursements that are 90% of the reimbursement rate for a contractor. The economic impact is predominantly created by the statute, and this rule simply provides clarity for which stakeholders are affected.

4. 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 rulemaking is required to clarify a recent statutory change. The Administration indicates that this rulemaking will increase the efficiency of the AHCCCS program. BHIFs that choose to not contract will see reductions in reimbursement rates. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Administration, BHIFs, AHCCCS members, and the General Fund. The Administration will benefit from this rulemaking because it will incentivize BHIFs to contract with Managed Care Organizations (MCOs). The Administration notes that contracting increases efficiency and quality of health care. Currently, the rate of contracting BHIFs is low. BHIFs that do not contract with an MCO will see 10% lower reimbursements relative to their contracting counterparts. BHIFs can eliminate this reduction by contracting with an MCO. The Administration indicates that AHCCCS members will benefit from this rulemaking because health care outcomes improve with increased contracting. The Administration estimates that this rulemaking will reduce General Fund expenditures by roughly \$1 million per year.

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

Yes. The Administration received one written comment from Mr. David Carnahan, CEO of Quail Run Behavioral Health. The comment and the Administration’s response is provided on pages 3 through 5 of the Notice of Final Rulemaking. Council staff believes the Administration has adequately addressed the comment.

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

No. No substantive changes were made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. The Administration indicates that that the rule is not more stringent than 42 CFR 438.6, related to special contract provisions for payments.

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

No. The rule does not require issuance of a permit or license.

10. 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?

No. The Administration indicates that it did not rely on any study for the rulemaking.

11. Conclusion

The Administration requests the usual 60-day delayed effective date for the rule. Staff recommends approval of the rulemaking.

September 18, 2018

Governor's Regulatory Review Council
100 N. 15th Ave, Suite 305
Phoenix, AZ 85007

To the Council:

The Arizona Health Care Cost Containment System (AHCCCS) Administration is submitting the attached regular rule package for your consideration:

- **R9-22-721.** Behavioral Health Inpatient Facilities

AHCCCS is providing the following information as required in A.A.C. R1-6-104:

- a. The rulemaking record was closed on September 4, 2018 following a period for public comment and an oral proceeding. The close of record date was 5 p.m., September 4, 2018.
- b. The rulemaking does not relate to a 5-year-review.
- c. The rulemaking contains no new fees.
- d. The rulemaking contains no fee increase.
- e. Documents enclosed:
 - Cover Letter;
 - Notice of Final Rulemaking, including the preamble, table of contents for the rule and text of the rule;
 - Economic, small business, and consumer impact statement;
 - Documentation from the Governor's Office of approval to proceed with the rule package.
- f. There was one comment submitted by the public concerning the proposed rule.
- g. The rules contain no materials incorporated by reference.
- h. The adopted rules do not require a permit.

- i. The rule is not more stringent than federal law and the citation to the statutory authority does not exceed the requirements of federal law.
- j. A person has not submitted an analysis to the agency that compares the rule's impact of the competitiveness of businesses in this state to the impact on businesses in other states.
- k. The AHCCCS Administration has not notified the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees (FTE's) since none were required as a result of this rulemaking as required by A.R.S. § 41-1055.
- l. The AHCCCS Administration has requested and received approval to proceed with this rulemaking from the Governor's Office in reference to the rulemaking moratorium described under Executive Order 2018-02.

I certify that the information provided in number 7 of the Preamble is accurate. The agency selected an effective date of 60 days from the date of filing with the Secretary of State as specified in A.R.S. §41-1032(A). I respectfully request that the Council consider and approve the adopted rules.

Sincerely,



Matthew Devlin
Assistant Director

Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

PREAMBLE

1. Articles, Parts, or Sections Affected

R9-22-721

Rulemaking Action:

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. § 36-2905.03

Implementing statutes: A.R.S. § 36-2905.01

3. The effective date of the rule:

The agency requests a regular 60-day delayed effective date.

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

Notice of Rulemaking Docket Opening: 24 A.A.R. 2094, July 27, 2018.

Notice of Proposed Rulemaking: 24 A.A.R. 2066, July 27, 2018.

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

Name: Nicole Fries

Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
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:

During the 2018 legislative session, the Arizona legislature enacted A.R.S. § 36-2905.03 which provided that non-contracted behavioral health inpatient facilities (BHIF's) would be reimbursed at 90% of the contracted rate. This rulemaking is an effort to codify and clarify which facilities this statute applies to.

AHCCCS intends to encourage contracting between providers and all contractors to best serve AHCCCS members who require inpatient stays, regardless of whether the BHIF is contracted. The amended rule will encourage competition among BHIF's and Contractors, expand provider networks, promote administrative efficiencies, and authorize AHCCCS to more efficiently and effectively reimburse BHIF's for inpatient stays. Current federal and state statutory provisions do not prohibit such a change. The proposed rulemaking will also limit AHCCCS Program expenditures to BHIF's in this State by extending applicability of the 90% reimbursement to all AHCCCS Contractors responsible for payments to non-contracted BHIF's. As a result, the rulemaking supports payments to BHIF's that are consistent with efficiency, economy, and quality of care, promoting the fiscal health of the State.

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

A study was not referenced or relied upon when revising these regulations.

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

This rulemaking does not diminish a previous grant of authority of a political subdivision.

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

This rulemaking creates greater opportunities for contracts between contractors and behavioral health inpatient facilities. Based on these changes, the economic impact of this rulemaking will be a savings due to paying 90% of the reimbursement rate BHIF's stays if they are non-contracting. Since the rulemaking may incentivize urban hospitals to contract at a greater rate, exact savings going forward cannot be predicted; however, it is estimated to be over \$2 million less per year.

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

No changes between the proposed rulemaking and the final rulemaking have been made.

11. An agency’s summary of the public or stakeholder comments made about the rule making and the agency response to the comments:

Name and Position of Commenter	Date of Comment	Text of Comment	AHCCCS Response
David G. Carnahan – CEO of Quail Run Behavioral Health	09/04/18	As a Behavioral Health Hospital Administrator, I have serious concerns that the recently implemented 10% discount for non-contracted urban hospitals unfairly targets facilities that have not been afforded the opportunity to be granted “in-network” contracts with Regional Behavioral Health Authorities (RBHAs). Quail Run Behavioral Health (QRBH) is a 102-bed hospital which opened in September of 2014. We offer inpatient and outpatient treatment to adolescents, adults and geriatrics. We are in-network with most major behavioral health care insurance plans which includes both the northern and southern RBHA’s (Health Choice Integrated Care and Cenpatico Integrated Care). We are located in Maricopa county and fifty percent of our patient population are covered by AHCCCS insurance plans. Year to date, our facility has provided inpatient treatment to 1090 patients covered by MMIC. Despite the obvious need for our services, MMIC has been unwilling to contract with us to be granted in-network status. I have personally reached out to their contracting department on several occasion since we opened, and each time have been told that they	AHCCCS appreciates Mr. Carnahan bringing this situation to the Administration’s attention. The Administration is currently examining the particulars of the situation and is working toward a resolution that will benefit both providers, like Mr. Carnahan, and Managed Care Organizations, as well as reaching the ultimate goal of providing the best services for AHCCCS members, while containing costs. Since the rate is designated in statute and this rulemaking was promulgated to provide specificity and consistency in AHCCCS rules, there is no current

	<p>do not have a need for additional in-network providers.</p> <p>Valley Hospital (VH) is a 120-bed inpatient facility which is affiliated with QRBH as we are managed by Universal Health Services (UHS). Forty percent of their inpatient population is covered by AHCCCS. Year to date, VH has provided inpatient treatment to 994 patients covered by MMIC. VH has also previously expressed a desire to be in-network with MMIC however, their request for a contract has not been granted.</p> <p>When combined, QRBH and VH together provided inpatient treatment to well over 2000 MMIC members in an 8-month period.</p> <p>According to Article R9-22-718, Paragraph #5: AHCCCS intends to encourage contracting between providers and all contractors (see highlight).</p> <p>“5. 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 will amend and clarify rules to provide a wider breadth of providers who may be reimbursed under the Urban Hospital Inpatient Reimbursement Program. In particular, this rulemaking is requested to allow AHCCCS to remove the exceptions for Tribal Regional Behavioral Health Authorities (TRBHA’s) and the Arizona Department of Health Services, Division of Behavioral Health Services (ADHS/BHS), currently interpreted as extending to Regional Behavioral Health</p>	<p>amendment to the rule in response to Mr. Carnahan’s comment, however the Administration is including Mr. Carnahan in these conversations and developments as we work to resolve the issue.</p>
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		<p>Authorities (RBHA's) as well because RBHA's were subcontractors of ADHS/DBHS at the time the rule was last amended. Since the transfer of ADHS/DBHS duties and responsibilities to AHCCCS (Arizona Laws 2015, Chapter 195), RBHA's and TRBHA's contract directly with AHCCCS, and therefore, the provisions of the rule will be revised to include them in the definition of contractor for purposes of the Urban Hospital Reimbursement Program. In addition, the requirement for the Contractor to be an Urban Contractor no longer achieves the objectives AHCCCS intended. Instead, AHCCCS intends to encourage contracting between providers and all contractors to best serve AHCCCS members who require inpatient stays, regardless of whether the Contractor is urban or rural. Therefore, the Urban Contractor requirement will also be removed from the rule. Also, the rule will explicitly authorize inpatient psychiatric hospitals to be included in the Urban Hospital Reimbursement Program subject to the 95% discount."</p> <p>In light of MMIC's unwillingness to contract with QRBH, I would respectfully request that the proposed rule be temporarily suspended for urban in-patient behavioral health providers that have attempted to contract with the RBHA while AHCCCS determines whether there is an adequate number of in-patient behavioral health beds for enrollees.</p> <p>With the transition to AHCCCS Complete Care effective October 1, 2018, QRBH and VH are</p>	
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		making every effort to become an in-network providers with all plans offered in Maricopa and the surrounding counties.	
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12. Other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules.

There are no other matters prescribed by statute applicable to rulemaking specific to this agency, to these specific rules, or to this class of rules.

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

The rules do not require the provider to obtain a permit or a general permit.

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 must comply with 42 CFR 438.6 and are 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 such analysis was submitted.

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

The rules do not include any incorporation by reference of materials as specified in statute.

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

The rules were not previously made, amended or repealed as emergency rules.

15. The full text of the rules follow:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARD FOR PAYMENTS

Section

R9-22-721. Reserved

ARTICLE 7. STANDARD FOR PAYMENTS

R9-22-721. ~~Reserved~~Behavioral Health Inpatient Facilities

- A. "Behavioral health inpatient facility" means a health care institution, other than Arizona State Hospital, that meets the following requirements:
1. Provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to:
 - a. Have a limited or reduced ability to meet the individual's basic physical needs;
 - b. Suffer harm that significantly impairs the individual's judgment, reason, behavior, or capacity to recognize reality;
 - c. Be a danger to self;
 - d. Be a danger to others;
 - e. Be persistently or acutely disabled as defined in A.R.S. § 36-501; or
 - f. Be gravely disabled; and
 2. Is one of the following facility types:
 - a. Psychiatric hospitals;
 - b. Mental health residential treatment centers;
 - c. Secure residential treatment centers with 17 or more beds;
 - d. Non-secure residential treatment centers with 1-16 beds;
 - e. Non-secure residential treatment centers with 17 or more beds;
 - f. Sub-acute facilities with 1-16 beds;
 - g. Sub-acute facilities with 17 or more beds.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-712.35, R9-22-712.61, R9-22-712.71

1. Identification of rulemaking.

This final rulemaking by the AHCCCS Administration is an effort to codify and clarify which facilities this statute applies to. During the 2018 legislative session, the Arizona legislature enacted A.R.S. § 36-2905.03 which provided that non-contracted behavioral health inpatient facilities (BHIF's) would be reimbursed at 90% of the contracted rate. The amended rule will encourage competition among BHIF's and Contractors, expand provider networks, promote administrative efficiencies, and authorize AHCCCS to more efficiently and effectively reimburse BHIF's for inpatient stays. Current federal and state statutory provisions do not prohibit such a change. The proposed rulemaking will also limit AHCCCS Program expenditures to BHIF's in this State by extending applicability of the 90% reimbursement to all AHCCCS Contractors responsible for payments to non-contracted BHIF's. As a result, the rulemaking supports payments to BHIF's that are consistent with efficiency, economy, and quality of care, promoting the fiscal health of the State.

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

AHCCCS intends to encourage contracting between providers and all contractors to best serve AHCCCS members who require inpatient stays, regardless of whether the BHIF is contracted.

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

It is expected that the change in contracting will incentivize behavioral health inpatient facilities to contract with Managed Care Organizations at a much greater rate, which they were not doing at a very high rate prior to this rulemaking

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

It is anticipated that there will be a large increase in contracting following this rulemaking and then it will taper to a lower frequency depending on how often new facilities enter the Managed Care regions.

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

The State, taxpayers, and providers will directly benefit from this rulemaking as the payment model will reward efficient utilization of services. In addition, patients are expected to experience improved care while the State

and taxpayers will be positively affected by the more efficient delivery of health care services and the reduced growth in the cost of care.

3. **Cost benefit analysis.**

a. **Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:**

i. **Cost:**

The Administration estimates that some behavioral health inpatient facilities may see a decrease in reimbursement rates if they are not contracted with a Managed Care Organization.

ii. **Benefit:**

The AHCCCS Administration, taxpayers, and providers will directly benefit from this rulemaking due to the savings estimate of \$1 million to the State General Fund.

iii. **Need for additional Full-time Employees:**

The Administration does not anticipate the need to hire full-time employees as a result of this rulemaking.

b. **Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

This rulemaking does not directly affect political subdivisions.

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

The Administration anticipates a minimal economic impact on public and private employment.

5. **Statement of probable impact of the proposed rule on small businesses. The statement shall include:**

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

There are no small businesses affected by the rulemaking.

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

This rulemaking does not impose compliance requirements.

c. **Description of methods prescribed in section A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not use each method:**

i. **Establishing less stringent compliance or reporting requirements in the rule for small businesses:**

This rulemaking does not impose compliance or reporting requirements on small businesses.

ii. Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;

This rulemaking does not impose compliance or reporting requirements on small businesses.

iii. Consolidate or simplify the rule's compliance or reporting requirements for small businesses;

This rulemaking does not impose compliance or reporting requirements on small businesses.

iv. Establish performance standards for small businesses to replace design or operational standards in the rule; and

This rulemaking does not establish performance standards for small businesses.

v. Exempting small businesses from any or all requirements of the rule.

Exempting small businesses is not applicable to this rulemaking.

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

It is anticipated that private persons and consumers of medical services provided by behavioral health inpatient facilities will benefit from an improved patient care experience, improved health outcomes, and increased contracting between their Managed Care Organizations and behavioral health inpatient facilities.

6. Statement of the probable effect on state revenues.

It is anticipated that the rulemaking will not affect state revenues.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The Administration did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.

The Administration did not rely on any data for this rulemaking.

Arizona Health Care Cost Containment System - Administration

includes a catastrophic reinsurance program for members diagnosed with specific medical conditions.

- B. The Administration shall specify in contract guidelines for claims submission, processing, payment, and the types of care and services that are provided to a member whose care is covered by reinsurance.
- C. When the Administration determines that a contractor does not follow the specified guidelines for care or services and the care or services could have been provided at a lower cost according to the guidelines, the Administration shall reimburse the contractor as if the care or services had been provided as specified in the guidelines.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

R9-22-721.	Reserved
R9-22-722.	Reserved
R9-22-723.	Reserved
R9-22-724.	Reserved
R9-22-725.	Reserved
R9-22-726.	Reserved
R9-22-727.	Reserved
R9-22-728.	Reserved
R9-22-729.	Reserved

Editor's Note: Amendments to Section R9-22-730 were filed as a final exempt rulemaking. AHCCCS provided an opportunity for public comment on the amended rules under Laws 2013, 1st Special Session, Ch. 10. A proposed exempt rulemaking was published in the Arizona Administrative Register at 21 A.A.R. 1041 (Supp. 15-3).

Editor's Note: Amendments to Section R9-22-730 were filed as a final exempt rulemaking. AHCCCS provided an opportunity for public comment on the amended rules under Laws 2013, 1st Special Session, Ch. 10. A proposed exempt rulemaking was published in the Arizona Administrative Register at 21 A.A.R. 491 (Supp. 15-2).

R9-22-730. Hospital Assessment

- A. For purposes of this Section, the following terms are defined as provided below unless the context specifically requires another meaning:
1. "2011 Medicare Cost Report" means:
 - a. The Medicare Cost Report for the hospital fiscal year ending in calendar year 2011 as reported in the CMS Healthcare Provider Cost Reporting Information System (HCRIS) release dated December 31, 2012; or
 - b. For hospitals not included in that CMS HCRIS report, the "as filed" Medicare Cost Report for the hospital fiscal year ending in calendar year 2011 submitted by the hospital to the Administration.
 2. "2011 Uniform Accounting Report" means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of December 19, 2012.
 3. "2012 Uniform Accounting Report" means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of August 2, 2013.
 4. "Quarter" means the three month period beginning January 1, April 1, July 1, and October 1 of each year.

- B. Beginning January 1, 2014, each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning July 1, 2017, the assessment shall be calculated by multiplying the number of discharges reported on the hospital's 2011 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges" by the following rates based on the hospital's peer group:
1. \$483.00 per discharge for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
 2. \$483.00 per discharge for hospitals designated as type: hospital, subtype: critical access hospital.
 3. \$120.75 per discharge for hospitals designated as type: hospital, subtype: long term.
 4. \$120.75 per discharge for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2011 Medicare Cost Report.
 5. \$386.50 per discharge for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2012 Uniform Accounting Report.
 6. \$434.75 per discharge for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2012 Uniform Accounting Report.
 7. \$483.00 per discharge for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C. Peer groups for the four quarters beginning July 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website April 1, 2017.
- D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2011 Medicare Cost Report, are assessed a rate of \$120.75 for each discharge from the psychiatric sub-provider as reported in the 2011 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2011 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2011 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F. Notwithstanding subsection (B), for any hospital that reported more than 28,200 discharges on the hospital's 2011 Medicare Cost Report, discharges in excess of 28,200 are assessed a rate of \$48.25 for each discharge in excess of 28,200. The initial 28,200 discharges are assessed at the rate required by subsection (B).
- G. Assessment notice. On or before the 15th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notifica-

36-2905.01. Inpatient hospital reimbursement program; large counties

A. Notwithstanding any other law, beginning on October 1, 2003, pursuant to this chapter the administration shall establish and operate a program for inpatient hospital reimbursement in each county with a population of more than five hundred thousand persons.

B. Beginning on October 1, 2003, the director shall require contractors to enter into contracts with one or more hospitals in these counties and to reimburse those hospitals for services provided pursuant to this chapter based on the reimbursement levels negotiated with each hospital and specified in the contract and under the terms on which the contractor and the hospital agree and under all of the following conditions:

1. The director may review and approve or disapprove the reimbursement levels and the terms agreed on by the contractor and the hospital.
2. If the contractor implements an electronic claims submission system it may adopt procedures requiring documentation of the system.
3. Payment received by a hospital from a contractor is considered payment in full by the contractor. 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.

C. If a contractor and a hospital do not enter into a contract pursuant to subsection B of this section, the reimbursement level for inpatient services provided on dates of admission on or after October 1, 2003 for that hospital is the reimbursement level prescribed in section 36-2903.01 multiplied by ninety-five per cent.

D. For outpatient hospital services provided under the program prescribed in this section, a contractor may reimburse a hospital either pursuant to rates and terms negotiated in a contract between the contractor and the hospital or pursuant to section 36-2903.01, subsection G, paragraph 3.

E. Contracts established pursuant to this section shall specify that arbitration may be used in lieu of the grievance and appeal procedure prescribed in section 36-2903.01, subsection B, paragraph 4 to resolve any disputes arising under the contract.

36-2905.03. Behavioral health inpatient facilities; lack of contract; reimbursement

If a behavioral health inpatient facility, as defined in rule by the director of the department of health services, and a contractor or regional behavioral health authority do not enter into a contract, the reimbursement level for behavioral health services provided on dates of admission on or after July 1, 2018 for that behavioral health inpatient facility is the capped fee-for-service schedule adopted by the administration, multiplied by ninety percent.

ARIZONA STATE RETIREMENT SYSTEM (R-19-0101)

**Title 2, Chapter 8, Article 5, Purchasing Service Purchase; Article 7, Contributions Not Withheld;
Article 11, Transfer of Service Credit**

Amend: R2-8-501; R2-8-502; R2-8-503; R2-8-504; R2-8-505; R2-8-506; R2-8-507; R2-8-508;
R2-8-509; R2-8-510; R2-8-511; R2-8-512; R2-8-513; R2-8-513.01; R2-8-513.02;
R2-8-514; R2-8-519; R2-8-520; R2-8-521; R2-8-701; R2-8-702; R2-8-703; R2-8-704;
R2-8-705; R2-8-706; R2-8-707

Repeal: R2-8-515; R2-8-709

New Article: Article 11

New Section: R2-8-1101; R2-8-1102; R2-8-1103

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

DATE: December 21, 2018

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

FROM: Council Staff

MEETING: January 8, 2018

SUBJECT: ARIZONA STATE RETIREMENT SYSTEM (R-19-0101)
Title 2, Chapter 8, Article 5, Purchasing Service Purchase; Article 7, Contributions Not Withheld; Article 11, Transfer of Service Credit

Amend: R2-8-501; R2-8-502; R2-8-503; R2-8-504; R2-8-505; R2-8-506;
R2-8-507; R2-8-508; R2-8-509; R2-8-510; R2-8-511; R2-8-512;
R2-8-513; R2-8-513.01; R2-8-513.02; R2-8-514; R2-8-519;
R2-8-520; R2-8-521; R2-8-701; R2-8-702; R2-8-703; R2-8-704;
R2-8-705; R2-8-706; R2-8-707

Repeal: R2-8-515; R2-8-709

New Article: Article 11

New Section: R2-8-1101; R2-8-1102; R2-8-1103

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona State Retirement System (ASRS), seeks to amend 26 rules, repeal two rules, and create one new article containing three new rules in A.A.C. Title 2, Chapter 8. The ASRS indicates that the rulemaking is necessary to reflect the agency's new electronic system for processing service purchases, contributions not withheld, and transfer requests. The ASRS is proposing the following changes:

- Section 501 - *Definitions*: Definitions are modified to reflect changes made throughout the rules.
- Section 502 - *Request to Purchase Service Credit and Notification of Cost*: The rule is largely rewritten to reflect the ASRS' new electronic system.
- Section 503 - *Requirements Applicable to All Service Credit Purchases*: Amendments are made to make the rule more concise.
- Section 504 - *Service Credit Calculation for Purchasing Service Credit*: Subsections (B) and (C) are added. Subsection (C) provides that certain ASRS members cannot purchase more than five years of service credit for leave of absence service, military service, and other public service.

- Section 505 - *Restrictions on Purchasing Overlapping Service Credit; Transfers*: Subsection (B) is repealed to make the rule more concise.
- Section 506 - *Cost Calculation for Purchasing Service Credit*: Technical corrections are made.
- Section 507 - *Required Documentation and Calculations for Forfeited Service Credit*: Subsections (B) and (C) are added. Subsection (C) provides that if an eligible ASRS member has more than one return of contributions, that member may elect to purchase forfeited service for any return of contributions and the ASRS will apply the service credit to the member's account.
- Section 508 - *Required Documentation and Calculations for Leave of Absence Service Credit*: The rule is largely rewritten to reflect the ASRS' new electronic system and to more clearly state certain requirements of employers.
- Section 509 - *Required Documentation and Calculations for Military Service Credit*: Amendments are made to make the rule more concise. In addition, subsection (D), providing that the ASRS must cancel a member's request to purchase service credit for military service if the ASRS has not received complete and correct documents within 30 days of the request, is added.
- Section 510 - *Required Documentation and Calculations for Presidential Military Call-up Service Credit*: In subsection (A), additional information is required for inclusion on a military call-up form.
- Section 511 - *Required Documentation and Calculations for Other Public Service Credit*: Amendments are made to make the rule more concise. In addition, subsection (C), providing that the ASRS must not accept after-tax monies for the purchase of service credit for other public service with a territory, commonwealth, overseas possession, or insular area pursuant to A.R.S. § 38-743, is added.
- Section 512 - *Purchasing Service Credit by Check, Cashier's Check, or Money Order*: Amendments are made to make the rule more concise.
- Section 513 - *Purchasing Service Credit by Irrevocable Payroll Deduction Authorization*: The rule is largely rewritten to reflect the ASRS' new electronic system.
- Section 513.01 - *Irrevocable Payroll Deduction Authorization and Transfer of Employment to a Different ASRS employer*: Clarifying changes are made.
- Section 513.02 - *Termination Date*: Technical corrections are made.
- Section 514 - *Purchasing Service Credit by Direct Rollover*: The rule is largely rewritten to specify the information required for an eligible ASRS member to purchase service credit.
- Section 515 - *Purchasing Service Credit by Trustee to Trustee Transfer*: The rule is repealed.
- Section 519 - *Purchasing Service Credit by Termination Pay Distribution*: The rule is largely rewritten.
- Section 520 - *Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable Payroll Deduction Authorization*: Subsection (E), providing that the ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an irrevocable payroll deduction authorization (PDA), is added.

- Section 521 - *Adjustment of Errors*: Amendments are made to make the rule more concise.
- Section 701 - *Definitions*: Clarifying changes are made.
- Section 702 - *General Information*: Amendments are made to make the rule more concise.
- Section 703 - *ASRS Employer's Discovery of Error*: If an employer determines that any amount of contributions have not been withheld for a member for a period of eligible service, employers will be required to submit a Verification of Contributions Not Withheld form.
- Section 704 - *Member's Discovery of Error*: The rule is largely rewritten to reflect the ASRS' new electronic system.
- Section 705 - *ASRS' Discovery of Error*: Clarifying changes are made.
- Section 706 - *Determination of Contributions Not Withheld*: Clarifying changes are made.
- Section 707 - *Submission of Payment*: Clarifying changes are made.
- Section 709 - *Nonpayment of Contributions*: The rule is repealed.
- Section 1101 - *Definitions*: The rule, providing definitions related to transfer of service credit, is newly made.
- Section 1102 - *Required Documentation and Calculations for Transfer in Service Credit*: The rule is newly made.
- Section 1103 - *Transferring Service to Other Retirement Plans*: The rule is newly made.

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

Yes. The ASRS cites to both general and specific authority for the rules.

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

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

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

The ASRS is amending its rules to better support its new electronic processes. The electronic processes are not accurately supported in the existing rules. In the last fiscal year, the ASRS processed approximately 1,503 service purchases and 11,814 refunds. These included transfers into and out of the ASRS. Rule changes will make the use of the electronic processes clearer and more effective. With the revisions, the rules will clearly explain how and when a member may request a service purchase, a CNW correction, or a transfer. It will also clarify the requirements for employers or other retirement systems.

4. 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 ASRS states that this is the least costly and least intrusive method for clarifying the new electronic processes without imposing any additional requirements on the public.

5. What are the economic impacts on stakeholders?

Key stakeholders are the ASRS, members, and employers. The ASRS specifies that the rulemaking supports stakeholders because it provides direction on using the electronic processes. The ASRS states that no new full-time staff will be needed to implement these changes. No other stakeholders or impacts are identified.

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

Not applicable. The ASRS indicates that it received no written comments and no comments were made at the October 23, 2018 oral proceeding.

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

No. No substantive changes were made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. The ASRS indicates that no federal laws are directly applicable 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?

No. The rules do not require a permit or license.

10. 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?

No. The ASRS indicates that it did not review any study for the rulemaking.

11. Conclusion

The ASRS accepts the usual 60-day delayed effective date for the rules. Council staff recommends approval of the rulemaking.



ARIZONA STATE RETIREMENT SYSTEM

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Paul Matson
Director

November 1, 2018

Ms. Nicole A. Ong, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration
Chapter 8. State Retirement System Board**

Dear Ms. Ong:

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

1. Close of record date: The rulemaking record was closed on October 23, 2018 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
 - a. Cover letter signed by the Board's Assistant Director;
 - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
 - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,


Dave King
Assistant Director

NOTICE OF FINAL RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. Articles, Parts, and Sections
Affected

<u>Rulemaking Action</u>	
R2-8-501	Amend
R2-8-502	Amend
R2-8-503	Amend
R2-8-504	Amend
R2-8-505	Amend
R2-8-506	Amend
R2-8-507	Amend
R2-8-508	Amend
R2-8-509	Amend
R2-8-510	Amend
R2-8-511	Amend
R2-8-512	Amend
R2-8-513	Amend
R2-8-513.01	Amend

R2-8-513.02	Amend
R2-8-514	Amend
R2-8-515	Repeal
R2-8-519	Amend
R2-8-520	Amend
R2-8-521	Amend
R2-8-701	Amend
R2-8-702	Amend
R2-8-703	Amend
R2-8-704	Amend
R2-8-705	Amend
R2-8-706	Amend
R2-8-707	Amend
R2-8-709	Repeal
Article 11	New Article
R2-8-1101	New Section
R2-8-1102	New Section
R2-8-1103	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. § 38-714(E)

Implementing statutes: A.R.S. §§ 38-701 et seq., 38-921, and 38-922

3. The effective date for the rules:

a.

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

Not applicable

b.

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

Not applicable.

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

Notice of Docket Opening: 24 A.A.R. 2635, September 21, 2018

Notice of Proposed Rulemaking: 24 A.A.R. 2595, September 21, 2018

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

Name: Jessica A.R. Thomas, Rules Writer

Address: Arizona State Retirement System

3300 N. Central Ave., Ste. 1400

Phoenix, AZ 85012-0250

Telephone: (602) 240-2039

E-Mail: JessicaT@azasrs.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 ASRS needs to amend its rules in order to reflect its new electronic processes.

The ASRS has recently developed an electronic system for processing service purchase, contributions not withheld, and transfer requests. As such, the ASRS needs

to update its rules to reflect and clarify its new electronic processes.

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

No study was reviewed.

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

Not applicable.

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

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer-partner political subdivision and political subdivision entities, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because they merely clarify how a member or employer may submit electronic requests for service purchase, contributions not withheld, and transfer of service credit. Such clarification will increase understandability of how the ASRS shall process such requests, which will increase the effectiveness and efficiency of the administration of the ASRS, thus, reducing the regulatory burden and the economic impact.

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

None

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

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on October 23, 2018.

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

None

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

The rules do not require a permit.

b.

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

There are no federal laws applicable to these rules.

- **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:

No materials are incorporated by reference.

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

Not applicable.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
ARTICLE 5. PURCHASING SERVICE PURCHASE

Section

R2-8-501. Definitions

R2-8-502. Request to Purchase Service Credit and Notification of Cost

R2-8-503. Requirements Applicable to All Service Credit Purchases

R2-8-504. Service Credit Calculation for Purchasing Service Credit

R2-8-505. Restrictions on Purchasing Overlapping Service Credit; ~~Transfers~~

R2-8-506. Cost Calculation for Purchasing Service Credit

R2-8-507. Required Documentation and Calculations for Forfeited Service Credit

R2-8-508. Required Documentation and Calculations for Leave of Absence Service

Credit

R2-8-509. Required Documentation and Calculations for Military Service Credit

R2-8-510. Required Documentation and Calculations for Presidential Military Call-up

Service

Credit

R2-8-511. Required Documentation and Calculations for Other Public Service Credit

R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order

R2-8-513. Purchasing Service Credit by Irrevocable ~~Payroll Deduction~~
~~Authorization~~PDA

R2-8-513.01. Irrevocable ~~Payroll Deduction Authorization~~PDA and Transfer of
Employment to

a Different ~~ASRS employer~~Employer

R2-8-513.02. Termination Date

R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer

~~R2-8-515. Purchasing Service Credit by Trustee-to-Trustee Transfer~~ Repealed

R2-8-519. Purchasing Service Credit by Termination Pay ~~Distribution~~

R2-8-520. Termination of Employment and Request Return of Retirement Contributions
or

Death of Member While Purchasing Service Credit by an Irrevocable ~~Payroll~~
~~Deduction Authorization~~PDA

R2-8-521. Adjustment of Errors

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

R2-8-701. Definitions

R2-8-702. General Information

R2-8-703. ~~ASRS Employer's~~ Employer's Discovery of Error

R2-8-704. Member's Discovery of Error

R2-8-705. ASRS' Discovery of Error

R2-8-706. Determination of Contributions Not Withheld

R2-8-707. Submission of Payment

~~R2-8-709. Nonpayment of Contributions Repealed~~

ARTICLE 11. TRANSFER OF SERVICE CREDIT

Article 11. Transfer of Service Credit

R2-8-1101. Definitions

R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit

R2-8-1103. Transferring Service to Other Retirement Plans

ARTICLE 5. PURCHASING SERVICE CREDIT

R2-8-501. Definitions

The following definitions apply to this Article unless otherwise specified:

1. “Active duty” means full-time duty in a branch of the United States uniformed service, other than ~~active reserve duty~~Active Reserve Duty.
- ~~2.~~ “~~Active duty termination date~~” means ~~the day a member:~~
 - ~~a.~~ Separates from active military duty;
 - ~~b.~~ Is released from active duty related hospitalization or one year after initiation of active duty related hospitalization, whichever date is earlier; or
 - ~~c.~~ Dies as a result of active military duty.
- ~~3.~~2. “Active reserve duty” means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
- ~~4.~~3. “Actuarial present value” means an amount in today’s dollars of a member’s future retirement benefit calculated using appropriate actuarial assumptions and the:
 - a. Eligible Member’s current years of credited serviceCurrent Years of Credited Service to the nearest month;
 - b. Eligible Member’s age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this

~~Article to the nearest day;~~

- c. Amount of ~~service credit~~Service Credit the member wishes to purchase ~~to the nearest month, except for the calculation in R2-8-506(A)(2);~~ and
- d. Member's current annual compensation.

~~5.4.~~ "Authorized representative" means an individual who has been delegated the authority to act on behalf of a ~~custodian~~Custodian, ~~trustee~~Trustee, ~~plan administrator~~Plan Administrator, ~~or, if applicable, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.~~

~~6.5.~~ "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of ~~service credit~~Service Credit for which an Irrevocable ~~Payroll Deduction Authorization~~PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase ~~service credit~~Service Credit for which the member has not yet paid.

~~7.6.~~ "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.

~~8.7.~~ "Direct rollover" means distribution of ~~eligible funds~~ Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).

~~9.8.~~ "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).

- ~~10.9.~~ “Eligible member” means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745. ~~an active member of the Plan or a Plan member who is receiving benefits under the Long Term Disability Program established by A.R.S. Title 38, Chapter 5, Article 2.1.~~
- ~~11.~~ “Forms of payment” means ~~check, cashier’s check, money order, Irrevocable Payroll Deduction Authorization, direct rollover, indirect IRA rollover, indirect rollover, trustee-to-trustee transfer, IRA rollover and termination pay distribution.~~
- ~~12.10.~~ “Forfeited service” means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
- ~~13.~~ “Immediate family member” means:
- ~~a. A member’s spouse or life partner;~~
 - ~~b. A member’s natural, step, or adopted sibling;~~
 - ~~c. A member’s natural, step, or adopted child;~~
 - ~~d. A member’s natural, step, or adoptive parent; or~~
 - ~~e. An individual for whom the member has legal guardianship.~~
- ~~14.~~ “Indirect IRA rollover” means ~~funds already distributed to the eligible member from a retirement plan listed in A.R.S. § 38-747(H)(3) that are then paid by the eligible member to the ASRS as a contribution for the benefit of the eligible member.~~
- ~~15.11.~~ “IRC” means the same as “Internal Revenue Code” in A.R.S. §

38-711(18).

~~16.12.~~ “~~Irrevocable Payroll Deduction Authorization~~PDA” means an irrevocable “Payroll Deduction Authorization” contract between an ~~eligible member~~Eligible Member, an ~~ASRS employer~~Employer, and the ASRS that requires the ~~ASRS employer~~Employer to withhold payments from a ~~member’s~~ an Eligible Member’s pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.

~~17.~~ “~~Life partner~~” means ~~an individual who lives with a member as a spouse, but without being legally married.~~

~~13.~~ “Leave of absence service” means an approved leave of absence without pay as specified in A.R.S. § 38-744.

~~14.~~ “LTD” means the same as in R2-8-301.

~~18.15.~~ “Military Call-up service” means a member is called to ~~active duty~~Active Duty in a branch of the United States ~~uniformed services~~Uniformed Services.

~~19.16.~~ “Military service” means ~~active duty~~Active Duty or ~~active reserve duty~~Active Reserve Duty with any branch of the United States ~~uniformed services~~Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.

~~20.17.~~ “Military service record” means a United States ~~uniformed services~~Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:

- a. The member's full name;
- b. The member's Social Security number;
- c. Type of discharge the member received; and
- d. Active ~~duty~~Duty dates, if applicable; or
- e. Active ~~reserve-duty~~Reserve Duty dates, if applicable; and
- f. Point history for ~~reserve-duty~~Active Reserve Duty dates, if applicable.

~~21.~~18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).

~~22.~~19. "PDA pay-off ~~invoice~~letter" means written correspondence from the ASRS to ~~a member~~ an Eligible Member that specifies the amount necessary to be paid by the ~~member~~Eligible Member to complete an Irrevocable ~~Payroll Deduction Authorization~~PDA and to receive the total credited service specified in the Irrevocable ~~Payroll Deduction Authorization~~PDA.

~~23.~~20. "Plan ~~Administrator~~administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).

~~24.~~21. "Service credit" means ~~forfeited service~~Forfeited Service ~~under A.R.S. § 38-742~~, ~~leave of absence~~Leave of Absence Service ~~under A.R.S. § 38-744~~, ~~military service~~Military Service and Military Call-up ~~service~~Service under A.R.S. § 38-745, and ~~other public service~~Other Public Service ~~under A.R.S. § 38-743~~ that an ~~eligible member~~ Eligible Member may purchase.

~~25.~~22. "SP invoice" means a written correspondence from the ASRS informing

an ~~eligible member~~ Eligible Member of the amount of money required to purchase a specified amount of ~~service credit~~ Service Credit.

~~26.23.~~ “Termination pay ~~distribution~~” means an ~~ASRS employer’s~~ Employer’s payment to the ASRS of an ~~eligible member’s~~ Eligible Member’s ~~termination pay~~ received as a result of terminating employment to purchase service credit Service Credit as specified in A.R.S. § 38-747(B) (2).

~~27.24.~~ “Three full calendar months” means the first day of the first full month through the last day of the third consecutive full month.

~~28.25.~~ “Transfer employment” means to terminate employment with one ~~ASRS employer~~ Employer with which a ~~member~~ an Eligible Member has an Irrevocable ~~Payroll Deduction Authorization~~ PDA:

- a. After accepting an offer to work for a new ~~ASRS employer~~ Employer; ~~or~~
- b. While working as an active member for a different ~~ASRS employer~~ Employer; or
- c. Before returning to work with any Employer within 120 days of terminating employment.

~~29.26.~~ “~~Trustee-to-trustee~~ Trustee-to-Trustee transfer” means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program ~~listed in R2-8-515(A)~~ from which, at the time of the transfer, a member is not eligible to receive a distribution.

~~30.~~27. “Uniformed services” means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard ~~Reserves~~Reserve, and the Commissioned Corps of the Public Health Service.

~~31.~~28. “Window credit” means overpayments made on previously purchased ~~service credit~~Service Credit by ~~eligible~~ members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

R2-8-502. Request to Purchase Service Credit and Notification of Cost

A. An ~~eligible member~~ Eligible Member may request to purchase Service Credit~~service credit~~ verbally, in writing, or electronically. The ~~eligible member~~ Eligible Member shall ~~provide~~ verify at the time of request, the following information for the Eligible Member:

- ~~The eligible member’s name;~~Name;
- ~~The eligible member’s mailing address;~~Mailing address;
- Date of birth;
- Marital status;
- Gender;
- Primary email address;
- Primary phone number; and

- ~~Designate which~~Which category of ~~service credit~~ Service Credit the eligible member Eligible Member is requesting to purchase.

B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:

1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per Arizona Revised Statutes Section 38-793; and
2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment(s) will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.

B. ~~The ASRS shall send a letter acknowledging the request to purchase service credit to the mailing address provided by the eligible member. The ASRS shall provide, with the acknowledgment letter, any form specified in this Article that corresponds to the category of service credit the eligible member requests to purchase and indicate in the acknowledgment letter the deadline for providing supporting documentation of service credit to the ASRS.~~

C. ~~Except as provided in R2-8-519(A), the eligible member shall provide~~

~~documentation of service credit as required by this Article within 90 days of the eligible member's request to purchase service credit. If the ASRS has not received complete and correct documents within 90 days of the request to purchase service credit, the ASRS shall cancel the eligible member's request to purchase service credit. The eligible member may make a new request to purchase service credit.~~

D.C. Upon receipt of the documentation required by this Article from the ~~eligible member~~Eligible Member and if the ~~eligible member's~~Eligible Member's request to purchase ~~service credit~~ Service Credit meets the requirements of this Article, the ASRS shall provide the following to the ~~eligible member~~Eligible Member:

1. A SP ~~invoice~~Invoice stating the cost to purchase the amount of ~~service credit~~ Service Credit the member is eligible to purchase ~~and the date payment is due~~;
2. A ~~Service Purchase Payment Request~~ requesting the following information:
 - a. ~~The member's name~~;
 - b. ~~The member's Social Security number~~;
 - c. ~~The member's mailing address~~;
 - d. ~~The member's daytime telephone number~~;
 - e. ~~ID number listed on the SP invoice~~;
 - f. ~~Either the number of years or partial years of service credit the member wishes to purchase or the cost for the number of years or~~

~~partial years of service the member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice;~~

- ~~g. If the member elects to pay for the service credit by trustee-to-trustee transfer, IRA rollover, distributed rollover contribution, or direct rollover, the anticipated number of rollovers or transfers;~~
- ~~h. If the member elects to pay by Irrevocable Payroll Deduction Authorization, the amount of money the member wishes to pay per pay period;~~
- ~~i. If the member elects to pay for the service credit by check, the check number and amount of the check;~~
- ~~j. If the member elects to pay any cost remaining at retirement or termination of employment with a termination pay distribution, the retirement date or last date of work;~~
- ~~k. The member's signature and date of the signature; and~~

~~3. Other forms the member may need to complete the request for service credit purchase.~~

~~2. Instructions for electing method of payment; and~~

~~3. The date payment election is due.~~

C. An Eligible Member who requests to purchase Service Credit pursuant to this section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.

D. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:

1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

R2-8-503. Requirements Applicable to All Service Credit Purchases

- A.** To purchase ~~service credit~~ Service Credit at the amount provided in an SP ~~invoice~~Invoice, an ~~eligible member~~Eligible Member shall purchase the ~~service credit~~ Service Credit by check or money order, or request an Irrevocable ~~Payroll Deduction Authorization~~PDA, Direct Rollover rollover, Trustee-to-Trustee Transfer, ~~transfer~~ or ~~termination pay distribution~~Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected~~on the SP invoice~~.
- B.** An ~~eligible member~~Eligible Member may purchase all of the ~~service credit~~ Service Credit or a portion of the ~~service credit~~ Service Credit. If the ~~eligible member~~Eligible Member wishes to purchase only a portion of the ~~service credit~~

Service Credit, the ~~eligible member~~Eligible Member shall specify, ~~on the Service Purchase Payment Request form identified in R2-8-502(D)(2):~~

1. ~~The dollar amount the eligible member wishes to purchase, up to the amount specified on the SP invoice, or~~ Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
2. ~~The number of years or partial years the eligible member wishes to purchase, not exceeding the years or partial years specified on the SP invoice. The cost for the number of years or partial years of Service Credit~~ the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.

~~C.~~ ~~If the eligible member elects to purchase only a portion of the service credit, the cost and amount of service credit the eligible member identifies on the Service Purchase Payment Request form is only an estimate and may be more or less than the actual cost or amount of service credit purchased by the eligible member.~~

~~D.~~ ~~The eligible member shall not request to purchase additional service credit based on the SP invoice until the member has completed the purchase of the previously requested portion of service credit or cancel the request as specified in subsection (F).~~

~~E.~~C. The ASRS shall not consider more than one active request at a time from a member to purchase ~~service credit~~ Service Credit in a single category. The categories are:

1. ~~Leave of absence;~~Absence Service;

2. Military ~~service~~,Service;
3. Presidential Call-up ~~service~~,
- 4.~~3~~. Forfeited ~~service~~,Service; and
- 5.~~4~~. Other ~~public service~~.Public Service.

F.D. An ~~eligible member~~Eligible Member may cancel an active request by notifying the ASRS in writing to purchase a specific category of service credit verbally or in writing, and submit a new request in the same category of service credit for a different amount of service credit.

G.E. If an ~~eligible member~~Eligible Member is entitled to a ~~window credit~~Window Credit, the ~~eligible member~~Eligible Member may apply the ~~window credit~~Window Credit to purchase ~~service credit~~ Service Credit. To apply a ~~window credit~~Window Credit to a purchase of ~~service credit~~ Service Credit, the ~~eligible member~~Eligible Member shall make a request to the ASRS in writing by the ~~due date~~ payment election is due as specified on the SP ~~invoice~~Invoice and include the following information:

1. The amount the ~~member~~Eligible Member wants to apply, and
2. The ~~member's~~ Eligible Member's dated signature, and
3. The ~~date of the member's~~ signature.

H. ~~The amount of service credit an eligible member may purchase and the benefits an eligible member may receive are subject to the limitations prescribed in A.R.S. § 38-747(E).~~

I.F. On or before the due date specified on the SP Invoice, an Eligible Member may

~~request an extension of a due date for purchasing Service Credit. ASRS shall extend the time for an eligible member to respond to an SP invoice as follows:~~

- ~~1. If the member notifies the ASRS of an ASRS error, the time is extended 30 days after the date the ASRS sends notification to the eligible member that the ASRS has corrected the error;~~
- ~~2. If an ASRS internal review is made of the member's service credit purchase request, the time is extended 30 days after the date ASRS sends notification to the member that the review is completed;~~
- ~~3. If the member appeals an issue regarding the SP invoice under Article 4 of this Chapter, the time is extended 30 days after the date ASRS sends notification to the member that a decision on the appeal has been made; or~~
- ~~4. If an unforeseeable event occurs that is outside of the member's control, such as an incapacitating illness of the member or death of an immediate family member, and the member notifies the ASRS of the event, the ASRS shall extend the time by up to six months, after a review of the unforeseeable event to determine the length of the extension.~~

R2-8-504. Service Credit Calculation for Purchasing Service Credit

- ~~An eligible member~~Eligible Member who purchases ~~service credit~~ Service Credit shall receive one month of credited service for one or more days of service in a calendar month.
- Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit

shall receive a proportionate amount of credited service based on the length of the Eligible Member's service year.

- Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:

- Leave of Absence Service;
- Military Service; and
- Other Public Service.

R2-8-505. Restrictions on Purchasing Overlapping Service Credit; ~~Transfers~~

~~A.~~ The ASRS shall not permit an ~~eligible member~~Eligible Member to purchase ~~service credit~~ Service Credit that, when added to credited service earned in any plan year, results in more than:

1. One year of credited service in any plan year, or
2. One month of credited service in any one calendar month.

~~B.~~ ~~The restrictions in subsection (A) do not apply to service credit that an eligible member transfers from another retirement system to the ASRS as authorized in A.R.S. § 38-730 or A.R.S. Title 38, Chapter 5, Article 7, whether the eligible member requests the transfer before or after purchasing other service credit.~~

R2-8-506. Cost Calculation for Purchasing Service Credit

- A. For ~~Service Credit for Leave of Absence Service, leave of absence service credit, military service~~Military Service credit, and ~~other public service credit~~ Other Public Service, the ASRS shall calculate, as of the date of the request to purchase ~~service credit~~ Service Credit:
1. The ~~actuarial present value~~Actuarial Present Value of the future retirement benefit for the ~~member~~Eligible Member including the ~~service credit~~ Service Credit that the ~~eligible member~~Eligible Member requests to purchase, and
 2. The ~~actuarial present value~~Actuarial Present Value of the future retirement benefit for the ~~member~~Eligible Member without the ~~service credit~~ Service Credit that the ~~eligible member~~Eligible Member requests to purchase.
- B. The cost for purchasing the ~~service credit~~ Service Credit that the ~~member~~Eligible Member requests to purchase is the difference between the ~~actuarial present value~~Actuarial Present Value in subsection (A)(1) and the ~~actuarial present value~~Actuarial Present Value in subsection (A)(2).

R2-8-507. Required Documentation and Calculations for Forfeited Service Credit

- A. An ~~eligible member~~Eligible Member who requests to purchase ~~service credit~~ Service Credit for ~~forfeited service~~Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
1. The ~~eligible member's~~:

- a. ~~Full name and, if applicable, other names used while working for an ASRS employer for which the eligible member is requesting to purchase service credit;~~
- b. Mailing address;
- c. Telephone number, if applicable;
- d. Social Security number;

~~2.1.~~ The name of each ASRS employer an Employer, if known, for which the ~~eligible member~~Eligible Member is requesting to purchase ~~service credit~~ Service Credit for ~~forfeited service;~~Forfeited Service; and

3. The year the ~~eligible member~~ began working for each ASRS employer and the year the ~~eligible member~~ left each employment, if known; and

~~4.2.~~ The year and month the ~~eligible member~~Eligible Member believes the ASRS returned retirement contributions ~~to the member.~~

B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.

C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.

B.D. The amount the ~~eligible member~~Eligible Member shall pay to purchase ~~service~~

~~credit~~ Service Credit for previously ~~forfeited service~~ Forfeited Service is the amount of retirement contributions that the ASRS returned ~~to the eligible member~~, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the ~~interest~~ Assumed Actuarial Investment Earnings Rate ~~rate determined by the Board~~ as specified in A.R.S. § ~~38-742~~ R2-8-118(A).

R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit

A. ~~An eligible member~~ Eligible Member ~~may request~~ who requests to purchase ~~service credit~~ Service Credit for Leave of Absence Service ~~an approved leave of absence from an ASRS employer~~ under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes: ~~To request to purchase service credit for an approved leave of absence the eligible member shall provide to the ASRS:~~

1. ~~An Approved Leave of Absence form that includes:~~

a. 1. The following information completed by the ~~eligible member~~ Eligible Member:

i.a. ~~The eligible member's full name and, if applicable, other names used while working for the ASRS employer;~~ The start date and end date of the approved leave of absence;

ii.b. ~~The eligible member's Social Security number;~~ The date the

Eligible Member returned to work or a statement of why employment was not resumed;

~~iii.c. The eligible member's mailing address;~~The name of the Employer;

~~iv.d. The eligible member's daytime telephone number;~~Whether the Eligible Member participated in another public retirement system during this leave of absence; and

e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and

2. Acknowledgement of the following statements of understanding:

~~v.a. A statement that the The eligible member~~Eligible Member understands that up to one year of leave of absence service credit Service Credit may be purchased for each approved leave of absence, if the eligible memberEligible Member returns to work for the employerEmployer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;

~~vi. A statement that the eligible member understands that the~~

~~ASRS uses the actuarial present value calculation method to determine the cost of the service purchase request;~~

~~vii.b. A statement that the The eligible memberEligible Member authorizes the ~~ASRS employer~~Employer to provide any necessary personal information to ASRS in order to process this request; and~~

~~viii. The member's dated signature; and~~

~~b. The following information completed by the ASRS employer;~~

~~i. The beginning date and ending date of the approved leave of absence;~~

~~ii. The date the eligible member returned to work or a statement of why employment was not resumed;~~

~~iii. Name of the employer;~~

~~iv. The authorized employer representative's name;~~

~~v. The authorized employer representative's telephone number and, if applicable, fax number; and~~

~~vi. The authorized employer representative's dated signature verifying that the approved leave of absence benefited or was in the best interest of the employer; and~~

~~2. A copy of the guidelines referenced in A.R.S. § 38-744, if applicable.~~

~~c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the~~

approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and

3. The Eligible Member's dated signature.

B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this section.

C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.

D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:

1. The Employer has verified all the dates for the approved leave of absence period are correct; and

2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.

~~B.E.~~ The amount the memberEligible Member shall pay to purchase service-credit

Service Credit for an approved leave of absence is determined as provided in R2-8-506.

R2-8-509. Required Documentation and Calculations for Military Service Credit

A. An ~~eligible member~~Eligible Member ~~may request~~ who requests to purchase Service Credit for military service~~Military Service credit~~ under A.R.S. § 38-745(A) and (B). ~~To request to purchase military service credit, the eligible member shall provide to the ASRS:~~

1. ~~The items listed in R2-8-507(A)(1);~~
- 2.1. A copy of the ~~eligible member's~~Eligible Member's ~~military service record~~Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
- 3.2. A ~~completed, signed, dated, and notarized~~ Affidavit of Military Service form that contains:
 - a. ~~The member's full name;~~
 - b.a. ~~The member's Social Security number;~~Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
 - e.b. The branch of the ~~uniformed services~~Uniformed Services the ~~member~~Eligible Member was in;
 - d.c. Whether the ~~member~~Eligible Member was ~~on active duty~~Active Duty or active reserve duty; Active Reserve Duty;

- ~~e.d.~~ The years and months by fiscal year that the member was in active duty or active reserve duty for which the member wishes to purchase service credit; The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
- ~~f.e.~~ Acknowledgement that the member~~Eligible Member~~ has attached;will submit to the ASRS:
- ~~i.~~ Proof of honorable discharge separation for each type of ~~military service~~Military Service listed on the form; and
 - ~~ii.~~ The member's Eligible Member's ~~military service record~~Military Service Record that supports all of the service listed on the affidavit; form;
- ~~g.f.~~ Acknowledgement of the following statements of understanding;The following statements of understanding initialed by the member:
- ~~i.~~ I understand that any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per Arizona Revised Statutes Section 38-793;
 - ~~ii.~~ I understand this transaction is subject to audit and if any errors or misrepresentations are discovered as a result of

~~this audit, my total credited service with the ASRS will be adjusted as necessary and if I am retired, my retirement benefit will also be adjusted;~~

~~iii.i. I understand~~ The Eligible Member understands that the service listed on this affidavit form does not include time that ~~the Eligible Member~~ either volunteered or was ordered into ~~active duty~~Active Duty ~~military~~ service as part of a ~~Presidential~~ military call-up while employed by an Employer.~~Call-up~~. This service is purchased under ~~Presidential~~ Military Call-up Service and requires a ~~Presidential~~ Military Call-up form to be completed by ~~you~~ the Eligible Member's employer~~Employer~~; and

~~iv.ii. I understand~~ The Eligible Member understands that any time ~~I have~~ the Eligible Member has listed on this affidavit form for Reserve or National Guard time reflects the months that ~~the Eligible Member~~ attended at least one drill or assembly for each month listed.

- B.** The amount the ~~eligible member~~Eligible Member pays to purchase Service Credit ~~for military service~~Military Service~~credit~~ is determined as provided in R2-8-506.
- C.** The ASRS determines the amount of ~~service credit~~ Service Credit an ~~eligible member~~Eligible Member receives for ~~active duty~~Active Duty and ~~active reserve duty~~Active Reserve Duty time by the time listed on the ~~Affidavit of Military~~

Service form, if the service listed is supported by the information contained in the ~~member's~~Eligible Member's ~~military service record.~~Military Service Record.

- D.** If the ASRS has not received complete and correct documents pursuant to this section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.

R2-8-510. Required Documentation and Calculations for ~~Presidential~~ Military Call-up Service Credit

- A.** An ~~eligible member~~Eligible Member ~~or the eligible member's beneficiary~~ who meets the requirements under A.R.S. § 38-745(~~C~~)D shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for ~~Presidential~~ Military Call-up ~~service~~Service under A.R.S. § 38-745(~~C~~) ~~through (I)~~ (D) through (K). In order to determine the amount of contributions the ~~ASRS employer~~ Employer owes to purchase ~~service credit~~ Service Credit for ~~Presidential~~ Military Call-up ~~service,~~Service, the ~~eligible member's~~Eligible Member's ~~ASRS employer~~ Employer shall provide to the ASRS a copy of the ~~eligible member's~~Eligible Member's ~~Military Service Record~~Military Service Record and a completed ~~Presidential~~ Military Call-up form that includes the following:

1. The ~~member's~~Eligible Member's full name;
2. The ~~member's~~Eligible Member's Social Security number;
3. The start date of ~~Presidential~~ Military Call-up Service;
4. The end date of ~~Presidential~~ Military Call-up Service;
5. ~~Whether the member received paid leave while on Presidential Call-up;~~

- ~~6.5.~~ 6.5. The date the ~~member~~Eligible Member returned to work for the ~~ASRS employer;~~ Employer;
- ~~7.6.~~ 7.6. The salary for each pay period in each fiscal year while the ~~member~~Eligible Member ~~is was~~ on ~~Presidential Call-up;~~military call-up, including any salary increases the ~~eligible member~~Eligible Member would have received had the ~~member~~Eligible Member not left ~~employment~~work due to ~~Presidential Call-up, if applicable;~~military call-up;
- ~~8.~~ 8. ~~The ASRS employer's name and address;~~
- ~~9.7.~~ 9.7. The name of a contact individual for the ~~ASRS employer~~ Employer, and that individual's business ~~and fax~~ telephone numbers;
- ~~10.8.~~ 10.8. The contact individual's dated signature ~~and date of signature;~~
- ~~11.9.~~ 11.9. If applicable, the ~~earlier of:~~
- a. ~~The date~~dates that the ~~member~~Eligible Member was hospitalized and released from the hospital for ~~injuries sustained~~ as a result of participating in a ~~Presidential Call-up;~~military call-up. ~~or~~
- b. ~~The date that the member was hospitalized for one year for injuries sustained as a result of participating in a Presidential Call-up; and~~
10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
12. Acknowledgement of the following statements of understanding:

- All the dates and payroll information for the Military Call-up Service are correct;
 - The Eligible Member:
 - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization;
 - or
 - ii. Was disabled and unable to return to work; or
 - iii. Died during or as a result of Active Duty.
 - The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
 - The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
 - The contact individual has the legal power to bind the Employer in transactions with the ASRS.
12. ~~A copy of the member's death certificate, if applicable.~~

- B. An ~~ASRS employer~~ Employer shall make the request to purchase ~~service credit~~Service Credit for ~~Presidential Military Call-up service~~Service within 30 days after the ~~member's active duty termination date~~, earlier of the dates listed in A.R.S. § 38-745(E).
- C. The ASRS calculates the amount the ~~ASRS employer~~ Employer pays to purchase ~~Presidential Military Call-up service~~Service pursuant to A.R.S. § 38-745(G) by multiplying the ~~eligible member's~~Eligible Member's salary per pay period at the time ~~active duty~~Active Duty commences, by the contribution rate in effect for the period of ~~active duty~~Active Duty, ~~and by the years or partial years of service elapsing from the active duty commencement date through the active duty termination date.~~ Included in the calculation are any salary increases the ~~member~~Eligible Member would have received if the ~~member~~Eligible Member had not left work to participate in a ~~Presidential Call-up~~military call-up.
- D. The ASRS shall send the ~~ASRS employer~~ Employer a statement of cost for purchase of the Service Credit for Presidential Military Call-up service ~~credit~~, Service based on the calculation in subsection ~~(B)~~(C). Within 90 days from the date on the ASRS statement of cost, the ~~ASRS employer~~ Employer shall pay to the ASRS the amount on the statement. If the ~~ASRS employer~~ Employer fails to make full payment within ~~the~~ 90 days, interest shall accrue on the unpaid balance at the ~~assumed actuarial investment earnings rate approved by the Board~~Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus

interest pursuant to A.R.S. § 38-735(C).

- E. If an ~~ASRS employer~~ Employer ~~deducts~~ remits retirement ~~and~~ or long-term disability contributions ~~from~~ on behalf of an ~~eligible member's pay~~ Eligible Member while the ~~eligible member~~Eligible Member is on ~~Presidential Call-up service,~~military call-up, the Employer shall reverse the contributions ~~ASRS shall return the contributions to the ASRS employer~~ after the ASRS receives the information in subsection (A).
- F. If an ~~ASRS employer~~ Employer ~~deducts~~ remits retirement contributions ~~from~~ on behalf of an ~~eligible member's pay~~ Eligible Member while the ~~eligible member~~Eligible Member is on ~~Presidential Call-up service,~~military call-up, and the ~~eligible member~~Eligible Member does not return to the ~~ASRS employer~~ Employer after separation from active ~~military service~~Military Service, the ASRS shall apply the retirement contributions to the ~~member's~~Eligible Member's credited service.

R2-8-511. Required Documentation and Calculations for Other Public Service Credit

- A. An ~~eligible member~~Eligible Member who requests to purchase ~~other public service credit~~ Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed ~~Affidavit of~~ Affidavit of Other Public Service form, signed and dated by the ~~member~~Eligible Member, ~~and notarized~~, that includes the following:

1. ~~The member's full name;~~
2. ~~The member's Social Security number;~~
3. ~~Other names used by the member during employment with the other public service employer, if applicable;~~
- 4.1. ~~The name and mailing address of the other public service~~Other Public Service employer;
- 5.2. ~~The position the member~~Eligible Member held while working for the ~~other public service~~Other Public Service employer;
- 6.3. ~~A contact name and telephone number of an individual in the other public service employer's human resources department who can verify employment, if known~~The start date and end date of the Eligible Member's employment with the Other Public Service employer;
- 7.4. ~~The actual months and years the member worked and wishes to purchase;~~The actual months and years the Eligible Member was employed with the Other Public Service employer; The years and months by fiscal year of
- 8.5. ~~If the other public service employer was a non-ASRS employer, a A~~ statement of whether the ~~member~~Eligible Member participated in the ~~non-ASRS~~ Other Public Service employer's retirement plan;
- 9.6. ~~If the member~~Eligible Member participated in ~~the Other Public Service employer's a non-ASRS public service employer's~~ the Other Public Service retirement plan, the name of the retirement plan, identifying whichever one of the following applies:

- a. The approximate date the ~~member~~Eligible Member took a return of retirement contributions;
- b. The plan is non-contributory and the ~~member~~Eligible Member is not eligible for benefits from the plan; or
- c. That, if not using all of the retirement contributions as a ~~pre-tax~~ rollover, the ~~member~~Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the ~~member~~Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP ~~invoice~~Invoice; and

10. 7. Acknowledgement that:

- a. ~~Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793;~~
- b. ~~The service purchase transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's total credited service with the ASRS, or if the member is already retired, adjustments to the member's credited service will affect the member's retirement benefit; and~~
- e. ~~If~~if an audit determines that the ~~member~~Eligible Member is eligible for a benefit from the ~~other public service~~Other Public

Service employer's retirement plan, the ~~member~~Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the ~~service credit~~ Service Credit purchase listed on this application will be revoked and any funds paid to purchase the ~~service credit~~ Service Credit will be refunded to the member.

- B. The amount the ~~member~~Eligible Member shall pay to purchase ~~other public service credit~~ Service Credit for Other Public Service is determined as provided in R2-8-506.
- C. Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order

- A. An ~~eligible member~~Eligible Member may purchase ~~service credit~~ Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B. ~~Within 30 days of the issue date on the SP invoice or PDA pay-off letter~~ By the due date specified by the method of payment the Eligible Member elected, the ~~member~~Eligible Member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2) and a check, cashier's check, or money order made to the order

~~of the Arizona State Retirement System payable to the ASRS in the amount to purchase the requested service credit. Service Credit.~~

- ~~C. If an eligible member purchases service credit by check, cashier's check, or money order in conjunction with one or more rollovers, trustee-to-trustee transfers, or termination pay, the member shall make payment within 30 days after the date the ASRS sends written confirmation that the ASRS received the final rollover, trustee-to-trustee transfer, or termination pay payment.~~

R2-8-513. Purchasing Service Credit by Irrevocable Payroll Deduction Authorization PDA

- ~~A. An eligible member Eligible Member may purchase service credit Service Credit by Irrevocable Payroll Deduction Authorization PDA.~~
- ~~B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).~~
- ~~**C.B.** If the eligible member Eligible Member elects to pay for service credit Service Credit by Irrevocable Payroll Deduction Authorization PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following: ASRS shall prepare an Irrevocable Payroll Deduction Authorization and send it to the eligible member for signature. The member shall ensure that the ASRS receives the signed Irrevocable Payroll Deduction Authorization within 30 days after the date on the~~

~~Irrevocable Payroll Deduction Authorization. The signed Irrevocable Payroll Deduction Authorization becomes irrevocable upon receipt by the ASRS.~~

1. Acknowledgements:

- a. This Irrevocable PDA is binding and irrevocable;
- b. This Irrevocable PDA shall remain in effect until the earlier of:
 - i. The authorized payroll deductions are completed; or
 - ii. The Eligible Member terminates employment.
- c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
- d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
- e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
- f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
- g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
- h. The ASRS shall not transfer, refund, or disburse the administrative

interest that the ASRS charges pursuant to subsection (B)(1)(e);
and

2. Statements of Understanding:

- a. It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
- b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
- c. The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
- d. The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
- e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
 - i. Terminating employment;
 - ii. Terminating LTD without returning to work with an Employer; or
 - iii. The effective ASRS retirement date;
- f. The Eligible Member must complete a purchase of the remaining

balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;

- g. It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
- h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
- i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.

C. By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.

D. At the time the ~~eligible member~~Eligible Member signs ~~elects~~ the Irrevocable Payroll Deduction AuthorizationPDA, the ~~eligible member~~Eligible Member may elect to use ~~termination pay~~Termination Pay towards the balance of the Irrevocable Payroll Deduction AuthorizationPDA if the ~~eligible member~~Eligible Member terminates employment. If the ~~eligible member~~Eligible Member elects to use Termination Pay, chooses this option, the ~~eligible member~~Eligible Member shall complete the ~~Termination Pay Addendum to the Irrevocable Payroll~~

~~Deduction Authorization and return~~ submit the Irrevocable PDAit to the ASRS along with the remainder of the Irrevocable Payroll Deduction Authorization that ~~includes:~~ with the following information:

1. A statement that the ~~member:~~Eligible Member:
 - a. Understands and agrees that the ~~member~~Eligible Member must continue working at least ~~three full calendar months~~Three Full Calendar Months after the date of submission of the form before ~~termination pay~~Termination Pay may be used on a pre-tax basis;
 - b. Understands that if the ~~termination payment~~Termination Pay exceeds the balance owed on the Irrevocable ~~Payroll Deduction Authorization~~PDA, the overage will be returned to the ASRS ~~employer~~Employer to be distributed to the ~~member;~~ and Eligible Member;
 - e. ~~Elects to irrevocably agree to have termination pay that may be payable to the member upon termination of employment sent to the ASRS on a pre-tax basis and used toward any remaining balance of the Irrevocable Payroll Deduction Authorization if all scheduled payroll deductions have not been completed upon termination of service; and~~
 - c. Understands that the election to use Termination Pay is binding and irrevocable;
 - d. The Eligible Member's Termination Pay must be received and

processed before the ASRS will accept any other form of payment;

- e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
- f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
- g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
- h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and

- 2. ~~A statement~~ Whether the Eligible Member is electing that either all termination pay ~~Termination Pay~~ or a specified amount of termination pay ~~Termination Pay~~ is to be applied to the balance of the Irrevocable Payroll Deduction Authorization. ~~PDA.~~

E. The ASRS shall:

- 1. Charge interest on the unpaid balance at the ~~assumed actuarial investment earnings rate approved by the Board~~ Assumed Actuarial Investment Earnings Rate in effect at the time the ~~authorization was entered into;~~ Eligible Member submitted the request to purchase service as specified in R2-8-118(A);

2. Limit the payroll deduction time period to a maximum of ~~20 years;~~520 payments; and
 3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 ~~year~~years of ~~service credit~~ Service Credit per payroll period, whichever is greater.
- F. The ASRS ~~shall transmit the Irrevocable Payroll Deduction Authorization to the active member's ASRS employer, and the ASRS employer~~ Employer shall implement the payroll deduction on the first pay period after receiving the ~~Irrevocable Payroll Deduction Authorization.~~PDA.
- G. If a deduction is not made under an Irrevocable ~~Payroll Deduction Authorization~~PDA within six months after the ~~member~~Eligible Member ~~signs~~ submits the authorization, the authorization lapses and the ~~member~~Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H. A period of leave of absence, ~~long term disability~~LTD, or ~~Presidential Call-up~~ military call-up shall not cancel the Irrevocable ~~Payroll Deduction Authorization.~~PDA. The ~~ASRS employer~~ Employer shall resume deductions immediately upon the ~~member's~~ Eligible Member's return to that ~~employment.~~Employer. The period during which the ~~member~~Eligible Member is on leave of absence, on ~~long term disability~~LTD, or leaves work because of a ~~Presidential Call-up~~ military call-up is not included in the ~~20-year~~ payment time limitation under subsection ~~(E)(2)-(D)(2).~~ If the ~~member~~Eligible Member does not

return to active working status, whether due to termination of employment or retirement, the ~~member~~Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable ~~Payroll Deduction Authorization~~PDA at the time of termination or retirement as specified in this Section.

I. Deductions made pursuant to an Irrevocable ~~Payroll Deduction Authorization~~PDA continue until the:

1. Irrevocable ~~Payroll Deduction Authorization~~PDA is completed;
2. Eligible Member retires, whether or not the ~~member~~Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and ~~38-764(J)~~; ~~or 38-764(I)~~;
3. Eligible Member terminates all ASRS employment without transferring employment; ~~or~~
4. Date of the Eligible Member's death.

J. If a ~~member~~an Eligible Member retires or terminates employment from all ASRS ~~employers~~ Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable ~~Payroll Deduction Authorization~~PDA, the ASRS shall cancel the Eligible Member's~~member's~~ Irrevocable PDA~~purchase of service credit is canceled~~ unless the ~~member~~Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount in writing during the period 14 days before to within 14 days after the earlier of either termination or retirement or termination from all ASRS employment of the intent to purchase the remaining amount due in a lump sum.

- K.** When the ~~member~~Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable ~~Payroll Deduction Authorization~~PDA, the ASRS shall send the ~~member~~Eligible Member a PDA ~~pay-off~~ Pay-off Invoice ~~letter to the mailing address given by the member~~ through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the ~~member~~Eligible Member ~~and reduce the amount owed by any excess interest that the member has paid~~.
- L.** ~~Within 30 days of the date of the PDA pay-off letter~~ By the date payment election is due, the ~~member~~Eligible Member shall ensure that the ASRS receives the ~~completed SP Payment Request form with the information specified in R2-8-502(C)~~R2-8-502(D)(2).
- M.** The ~~member~~Eligible Member may purchase the remaining ~~service credit~~ Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
1. ~~By check, cashier's check, or money order made out to the ASRS under any method specified in R2-8-512;~~
 2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer ~~within 90 days of the date of~~ by the due date specified on the PDA pay-off letter; Pay-off Invoice; or
 3. By ~~termination pay distribution~~ Termination Pay under R2-8-519, if the ~~member~~Eligible Member authorized this option at the time the

~~member~~Eligible Member signed the Irrevocable Payroll Deduction Authorization.PDA.

R2-8-513.01. Irrevocable ~~Payroll Deduction Authorization~~PDA and Transfer of Employment to a Different ~~ASRS employer~~Employer

- A. If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an ~~An~~ Irrevocable Payroll Deduction AuthorizationPDA continues if a member transfers employment.
- B. If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an ~~An~~ Irrevocable Payroll Deduction Authorization ends if a member terminates employment without having accepted an offer to work for a new ASRS employer, and the member is not already an active member working for a different ASRS employer. The member shall then pay off the Irrevocable Payroll Deduction Authorization as specified in R2-8-513(J).PDA.
- C. Notwithstanding subsection (B), iff a retirement contribution is due from the ~~a~~ new ASRS employer Employer within 120 days from the ~~member's~~Eligible Member's termination date with the previous ~~employer~~ Employer, there is a rebuttable presumption that there is a transfer of employmentthe ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment. If a retirement

~~contribution is not received within 120 days, the Irrevocable Payroll Deduction Authorization terminates.~~

- D.** If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

R2-8-513.02 Termination Date

For the purpose of an Irrevocable ~~Payroll Deduction Authorization, PDA,~~ the date a ~~member~~an Eligible Member is considered terminated from an ~~ASRS employer~~Employer is:

1. For a ~~member~~an Eligible Member terminating employment, the ~~member's~~Eligible Member's last pay period end date with that ~~ASRS employer;~~Employer;
2. For a ~~member~~an Eligible Member on ~~Presidential Call-up~~military call-up who does not return to the same ~~ASRS employer;~~Employer:
 - a. ~~Ninety 90~~ days from the date of separation from ~~Presidential Call-up service;~~military call-up;
 - b. ~~Ninety 90~~ days from the date released from the hospital, if injured while on ~~Presidential Call-up service;~~military call-up; or
 - c. The date the ~~member~~Eligible Member has been hospitalized for ~~one year~~two years for injuries sustained as a result of participating in a ~~Presidential Call-up; or~~military call-up.

- d. ~~The date of the member's death as a result of participating in a Presidential Call-up;~~
3. For ~~a member~~ an Eligible Member on leave of absence without pay who does not return to the same ~~ASRS employer~~ Employer, the date the ~~ASRS employer~~ Employer required the ~~member~~ Eligible Member to return to work;
 4. For ~~a member~~ an Eligible Member who is unable to work because of a disability, the later of:
 - a. The date the ~~member's~~ Eligible Member's request for long-term disability benefits are denied;
 - b. The date the ~~member~~ Eligible Member no longer has ~~sick leave and annual leave;~~ leave with pay available; or
 - c. For ~~a member~~ an Eligible Member on long-term disability who does not return to the same ~~ASRS employer~~ Employer or ~~transfer employment;~~ Transfer Employment, the date long-term disability benefits are terminated.

R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer

- A. An ~~eligible member~~ Eligible Member may purchase ~~service credit~~ Service Credit or ~~pay off an Irrevocable Payroll Deduction Authorization~~ by direct rollover at retirement or termination of employment without transferring employment. Direct

Rollover or Trustee-to-Trustee Transfer pursuant to this Article.

- B.** By the due date specified by the method of payment the Eligible Member elected,
~~By the due date specified on the SP invoice, the member~~Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
~~Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).~~
- C.** ~~Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.~~
- D.** ~~The member shall ensure that the ASRS receives the Direct Rollover/Transfer Certification to Purchase Service Credit form completed by the member and the plan making the distribution within 90 days after the issue date of the SP Invoice.~~
- C.** An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
1. The name of the financial institution or plan;
 2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
 3. Acknowledgement of the following information:
 - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided

to the ASRS with the payment.

- The only fund types that the ASRS accepts are:
 - 401(a);
 - 401(k) pre-tax only;
 - 403(b);
 - Governmental 457 pre-tax only;
 - 403(a) pre-tax only;
 - 408 Traditional IRA pre-tax only;
 - 408(k) SEP IRA pre-tax only;
 - 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
- The ASRS shall not accept the following fund types:
 - i. Roth funds;
 - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (3)(b);
 - Inherited IRA;
 - Coverdale Education Savings Account funds;
 - Hardship distributions;
 - Funds not includable in gross income;

- Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70½;
- One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
- One of a series of substantially equal periodic payments made for 10 years or more;
- After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
- The funds must be sent as a Direct Rollover from a plan listed in subsection (3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (3)(b) to be reissued directly to the ASRS.
- It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.

- If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
- The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.

E.D. ~~The information requested on the~~ An Eligible Member who chooses to purchase Service Credit pursuant to this section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:

1. The Eligible Member's full name;
2. ~~Member's~~ The last 4 digits of the Eligible Member's Social Security number;
3. ~~Member's mailing address;~~
4. ~~Member's daytime telephone number;~~
5. ~~The amount of each rollover or transfer, if applicable;~~
6. ~~The account number of each plan, if applicable;~~
- 7.3. ~~The member's~~ Eligible Member's signature certifying that the

~~member~~Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase ~~service credit~~,Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information~~sheets~~;

8. ~~The date the member signs the form;~~
- 9.4. ~~The authorized representative's~~Authorized Representative's name and title;
10. ~~The authorized representative's address;~~
- 11.5. ~~The authorized representative's~~Authorized Representative's telephone number; and
- 12.6. Certification by the ~~authorized representative~~Authorized Representative's dated signature that:
 - a. The plan is either:
 - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
 - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
 - iii. An annuity contract described in IRC § 403(b); or

- iv. An IRA described in A.R.S. § 38-747(H)(3);
- b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable section of the ~~Internal Revenue Code~~IRC;
- c. The ~~authorized representative~~Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable section of the ~~Code~~IRC; and
- d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a ~~trustee-to-trustee transfer~~Trustee-to-Trustee Transfer; and

13. ~~The date and signature of the authorized representative.~~

~~F. The ASRS shall provide the member with written notification regarding the eligibility of the rollover.~~

G.E. The ~~member~~Eligible Member shall contact the ~~plan administrator~~Plan Administrator to have the funds distributed and transferred to the ASRS. ~~Except as provided in subsection (H), unless~~Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase ~~service credit as specified in R2-8-502(C).~~ Service Credit.

~~H.~~ At the written request of the member, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan at the written request of the member, if:

- ~~1.~~ The member has followed the procedure in this Article for requesting to purchase service credit,
- ~~2.~~ The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
- ~~3.~~ The eligible plan has not provided to the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
- ~~4.~~ The member makes the written request for extension before expiration of the 90 days.

~~I.F.~~ The member Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.

~~J.G.~~ If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the ~~member~~ Eligible Member.

~~R2-8-515. Purchasing Service Credit by Trustee to Trustee Transfer~~ Repealed

~~A.~~ An eligible member may purchase service credit or pay off an Irrevocable Payroll Deduction Authorization at retirement or termination of employment without

- ~~transferring employment by a trustee-to-trustee transfer if the member participates~~
- ~~in:~~
- ~~1. A deferred compensation plan described in IRC § 457 that is maintained~~
~~by:~~
 - ~~a. The state of Arizona;~~
 - ~~b. A political subdivision, agency, or instrumentality of the state of Arizona; or~~
 - ~~c. A political subdivision entity of the state of Arizona;~~
 - ~~2. An annuity contract described in IRC § 403(b); or~~
 - ~~3. A retirement program qualified under IRC § 401(a) or 403(a).~~
- ~~**B.** By the due date specified on the SP invoice, the ASRS shall receive from the member the completed Service Purchase Payment Request form described in R2-8-502(D)(2).~~
- ~~**C.** Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.~~
- ~~**D.** The member shall ensure that the member and the plan administrator complete the Direct Rollover/Transfer Certification to Purchase Service Credit form, containing all of the applicable information identified in R2-8-514(E), and ensure that the ASRS receives the form within 90 days after the issue date on the SP Invoice.~~
- ~~**E.** The ASRS shall provide the member with written notification regarding the~~

eligibility of the transfer.

- F.** ~~The member shall contact the plan administrator to have the funds transferred to the ASRS. Except as provided in subsection (G), unless the ASRS receives the check for the correct amount from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).~~
- G.** ~~The ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan at the written request of the member, if:~~

 - 1. ~~The member has followed the procedure under this Article for requesting to purchase service credit,~~
 - 2. ~~The member has responded to the ASRS correspondence within the time-frame set forth in this Article,~~
 - 3. ~~The eligible plan has not provided to the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and~~
 - 4. ~~The member makes the written request for extension before expiration of the 90 days.~~
- H.** ~~The member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.~~
- I.** ~~If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member and notify the~~

member of the correct amount due.

R2-8-519. Purchasing Service Credit by Termination Pay Distribution

- A. To purchase service credit Service Credit using ~~termination pay distribution~~ Termination Pay, an ~~eligible member~~ Eligible Member shall, ~~no more than six months before the date the eligible member plans to retire or terminate employment, request to purchase service credit as specified in R2-8-502 and specify that the member wants to use termination pay distribution to pay for the service credit. Upon receipt of the acknowledgement letter identified in R2-8-502, the eligible member shall provide documentation for service credit as required by this Article, within 30 days of the eligible member's request to purchase service credit.~~ elect to use Termination Pay by the date payment election is due.
- B. ~~Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide a:~~
1. ~~SP invoice stating the cost to purchase the requested amount of service credit and the date the payment is due, and~~
 2. ~~Service Purchase Payment Request form as described in R2-8-502(D)(2).~~
- B.** An Eligible Member who elects to use Termination Pay pursuant to this section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the

Eligible Member elects and submits Termination Pay as a method of payment.

~~C.~~ By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form.

~~D.C.~~ Upon receipt of the Service Purchase Request form, if the member indicates the member wishes to purchase service credit by termination pay distribution, the ASRS shall send the member a Termination Pay Authorization for the Purchase of Service Credit form to complete and return within the time limitation specified in subsection (E) that includes: An Eligible Member who elects to use Termination Pay pursuant to this section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:

1. Member's full name,
2. Member's Social Security number,
3. Member's daytime telephone number,
4. The Request ID number listed on the SP invoice,
- 5.1. The Name name of the ASRS employer, Employer that will be submitting the Termination Pay to the ASRS;
- 6.2. Whether the ~~member~~Eligible Member elects to use all ~~termination pay~~Termination Pay or a specific amount of ~~termination pay to purchase service credit;~~Termination Pay;
- 7.3. Signature of the ~~member~~Eligible Member, certifying that the ~~member~~Eligible Member understands that:

- a. The ~~member~~Eligible Member is required to continue working at least ~~three full calendar months~~Three Full Calendar Months after the date the ~~member~~Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before ~~termination pay~~Termination Pay may be used on a pre-tax basis;
- b. If the ~~member~~Eligible Member terminates employment more than six months after the date on the SP ~~invoice~~Invoice, the ~~member~~Eligible Member may purchase the ~~service credit~~ Service Credit at a newly calculated rate and possibly at a higher cost;
- c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form ~~is~~are binding and irrevocable;
- d. The ~~member's~~Eligible Member's ~~employer~~Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the ~~member~~Eligible Member does not have the option of receiving the funds directly from the ~~employer~~Employer;
- e. ~~The ASRS shall apply service credit to the member's account upon the receipt of payments authorized by the member by the Termination Pay Authorization for the Purchase of Service Credit form;~~ The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;

- ~~f.~~ ~~If the member elects to purchase with termination pay only a portion of the service credit that the member is entitled to purchase, the member may be eligible to use other forms of payment to purchase additional service credit. However, using other forms of payment to purchase additional service credit does not alter, amend, or revoke the terms of the Termination Pay Authorization for the Purchase of Service Credit form;~~
- ~~g.f.~~ It is the member's Eligible Member's responsibility to ensure that the member's Eligible Member's employer Employer properly deducts termination pay Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
- ~~h.g.~~ The amount of termination pay Termination Pay the member Eligible Member elects is irrevocable pursuant to § 414(h) (2) of the IRC; allowed to apply to purchase service credit is subject to federal laws.
- h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
- i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and

- j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- E.** ~~In addition to the other time limitations in this Section, to apply termination pay to a service purchase the eligible member shall complete and sign the Termination Pay Authorization for the Purchase of Service Credit form, and the member shall ensure that the ASRS receives the Termination Pay Authorization for the Purchase of Service Credit form at least three full calendar months before the member retires or terminates employment.~~
- F.D.** ~~The ASRS shall not apply a termination pay distribution~~Termination Pay ~~to an SP Invoice a service credit purchase covered by an Irrevocable Payroll Deduction Authorization~~PDA ~~in effect at the time of termination, unless the eligible member~~Eligible Member ~~signed elected at the~~ Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization specified in pursuant to R2-8-513(D) at the time the member signedauthorized ~~the Irrevocable Payroll Deduction Authorization.~~PDA.
- G.E.** ~~If a member~~an Eligible Member ~~elects to use all of the member's available termination pay~~Termination Pay ~~to purchase service credit~~ Service Credit, ~~the ASRS shall not apply any other form of payment to the service credit~~ Service Credit ~~purchase until the ASRS receives the~~ termination pay.Termination Pay.

F. Notwithstanding any other section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.

G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable ~~Payroll Deduction Authorization~~ PDA

A. If ~~a member~~ an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing ~~service credit~~ Service Credit by an Irrevocable ~~Payroll Deduction Authorization~~ PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of ~~service credit~~ Service Credit including interest earned on those principal payments ~~as determined by the Board~~ at the interest rate used to determine return of contributions upon termination of membership by separation from service by other than retirement or death as specified in R2-8-118(A).

B. If ~~a member~~ an Eligible Member dies while purchasing ~~service credit~~ Service Credit, the ASRS shall credit the ~~member's~~ Eligible Member's account with:

1. The ~~service credit~~ Service Credit for which the ASRS received payment pursuant to a PDA before the ~~member's~~ Eligible Member's death;
2. The principal payments made by the Eligible Member; and

- ~~2.3.~~ Interest earned on payment through the date of distribution at the valuation rate established by the Board, and Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).
3. All service purchase payments.
- C. If a ~~member~~ Eligible Member dies while purchasing ~~service credit~~ Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.
- D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable ~~Payroll Deduction Authorization~~ PDA as specified in R2-8-513~~(E)~~(1).
- E. The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

R2-8-521. Adjustment of Errors

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment, ~~including, but limited to, increasing or decreasing a member's total credited service with the ASRS and increasing or decreasing the payment amount~~ to the member's account and return ineligible payments, if any.
- ~~B.~~ ~~If the ASRS determines that a member is receiving or is eligible to receive retirement benefits from another public employee retirement system that makes the member ineligible to purchase service credit for the same period, the ASRS~~

~~shall revoke that purchase of service credit, and return any payments made, less any interest payments made, if applicable.~~

C.B. The ASRS shall notify the member in writing of any adjustments.

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

R2-8-701. Definitions

The following definitions apply to this Article unless otherwise specified:

1. “218 agreement” means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § ~~418~~218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. “Documentation” means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, ~~employer~~Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other ~~ASRS employer provided~~Employer-provided form that includes:
 - a. Whether the employee was covered under the ~~ASRS employer’s~~ Employer’s 218 agreementAgreement prior to July 24, 2014,

- b. The number of hours the member worked ~~or length of time the member was employed by the ASRS employer, or for the Employer per pay period, and~~
 - c. ~~The compensation paid to the member by the ASRS employer. The amount and type of compensation earned by the member within each pay period.~~
3. “Eligible service” means employment with an ~~ASRS employer;~~Employer:
- a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
 - b. In which the member ~~worked a minimum of 20 hours per week for at least 20 weeks in a service year for at least one ASRS employer from 7/1/1999 to the present.~~ was Engaged to Work for an Employer.
4. “Engaged to Work” means the same as in R2-8-1001.

R2-8-702. General Information

- ~~A. Verified eligible service that occurred more than 15 years before the date ASRS receives the information identified in R2-8-704(A)(1) is considered public service credit as provided in A.R.S. § 38-738(D), and is not applied under this Article.~~

~~B.A.~~ B.A. The ~~ASRS employer~~ Employer shall pay the ~~ASRS employer's~~ Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member's portion of the contributions.;

1. ~~The member has withdrawn contributions as specified in R2-8-115; or~~

2. ~~The member pays the member's portion of the contributions.~~

~~C.B.~~ C.B. The person who initiates the claim that contributions were not withheld for ~~eligible service~~ Eligible Service has the burden to prove a contribution error was made.

~~D.C.~~ D.C. The ASRS shall not waive payment of contributions or interest owed under this Article.

~~E.D.~~ E.D. If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to ~~for which contributions were not withheld, but is able to establish a period of employment by an ASRS employer the member may request to purchase service credit for that period under A.R.S. § 38-743 and Article 5 of this Chapter.~~

R2-8-703. ASRS ~~Employer's~~ Employer's Discovery of Error

If an ~~ASRS employer~~ Employer determines that any amount of contributions have not been withheld for a member for a period of ~~eligible service~~ Eligible Service, the ~~ASRS employer~~ Employer shall notify the ASRS in writing, and shall provide ASRS with the member's full name, Social Security number, months, years, and hours per week worked, the compensation each fiscal year for the time periods worked, and the member's

~~position title and status at the time contributions should have been withheld by~~
submitting through the Employer's secure ASRS account a Verification of Contributions
Not Withheld form with the following information:

- The member's full name;
- The member's Social Security number;
- The range of dates that any contribution was not withheld;
- The member's position title during the date range listed in subsection (3);
- The amount and type of compensation the member was entitled to receive,
and the number of hours the member worked for the Employer per pay
period for each fiscal year;
- The member's hire date;
- Whether the member was Engaged to Work for the Employer;
- Whether the position was covered under the Employer's 218 Agreement for
periods prior to July 24, 2014; and
- The dated signature of the Employer's authorized agent certifying:
 - All the dates and salary information is correct;
 - The person submitting this form has the legal power to enter into
binding transactions with the ASRS;
 - Acknowledgement the Employer will receive an invoice for the
contributions owed for Eligible Service only, as well as the

accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and

- Acknowledgement the member will receive an invoice for their contributions owed.

R2-8-704. Member's Discovery of Error

A. If a member believes that an Employer has not withheld contributions for the member for a period of ~~eligible service~~, Eligible Service, the member shall:

~~A Provide the Employer with documentation of the member's claim and request that the Employer provide verification that includes the information in the Verification of Contributions Not Withheld form or complete a Verification of Contributions Not Withheld form that includes:~~

- ~~1. The member's full name;~~
- ~~2. Other names used by the member;~~
- ~~3. The member's Social Security number;~~
- ~~4. Whether the position was covered under the Employer's 218 agreement prior to July 24, 2014;~~
- ~~5. The position title the member held at the time the contributions should have been withheld;~~
- ~~6. The eligibility of the member at the time the contributions should have been withheld;~~
- ~~7. The following statements of understanding and agreements~~

~~certified by the authorized Employer representative's signature indicating:~~

- ~~a. I understand it is my responsibility to verify the accuracy of the information I am providing on this form. I understand any individual who knowingly makes a false statement, or who falsifies or permits to be falsified any record of the ASRS with an intent to defraud the ASRS, is guilty of a Class 6 felony pursuant to A.R.S. § 38-793; and~~
- ~~b. I understand that, based on the information provided on this form, the ASRS may determine that contributions are owed on behalf of the member listed on this form, and the Employer may incur a substantial financial obligation. I understand that I may receive an invoice for the member contributions I owe.~~

~~8. The following information by fiscal year:~~

- ~~a. All pay period end dates;~~
- ~~b. The hours per week worked within each pay period; and~~
- ~~c. The compensation earned by the member within each pay~~

~~period.~~

~~9. The name of the Employer;~~

~~10. The printed name and signature of the authorized Employer representative;~~

~~11. The daytime telephone number of the authorized Employer representative;~~

~~12. The title of the authorized Employer representative; and~~

~~13. The date the authorized Employer representative signed the form;~~

1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or

2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:

a. The name of the Employer that should have remitted contributions;

b. The range of dates that any contribution was not withheld

c. The member's position title during the date range listed in subsection (b);

d. Whether the member was Engaged to Work for the Employer; and

e. Dated signature of the member certifying the member understands:

i. The ASRS will be providing the member's Social Security number to the Employer for verification; and

ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.

B. ~~Provide the ASRS with the completed Verification of Contributions Not Withheld form; and~~ If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit

the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account, along with the information identified in subsection R2-8-703.

C. If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the ~~documentation~~Documentation the member believes supports the allegation that contributions should have been withheld, ~~that includes proof:~~

- a. ~~That the employee was covered under the ASRS Employer's 218 agreement prior to July 24, 2014,~~
- b. ~~Of the number of hours worked,~~
- c. ~~Of the length of time the member was employed by the Employer, and~~
- d. ~~Of the compensation paid to the member by the Employer.~~

R2-8-705. ASRS' Discovery of Error

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of ~~eligible service~~Eligible Service, the ASRS shall notify ~~the member and the ASRS employer~~Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703. ~~following information:~~

1. ~~The months, years and hours per week worked;~~
2. ~~The compensation earned by the member each fiscal year for the time periods worked; and~~
3. ~~The member's position title at the time contributions should have been withheld.~~

R2-8-706. Determination of Contributions Not Withheld

- A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B. Except for a member who met ~~active membership requirements~~the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in ~~questions~~question if:
 1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
 2. The employee participates in:
 - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
 - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12,

Article 3 or A.R.S. Title 15, Chapter 13, Article 2.

- C. Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D. If there is any discrepancy between the ~~documentation~~ Documentation provided by the Employer and the ~~documentation~~ Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E. The ASRS shall provide to ~~each the~~ Employer and the member, ~~a written statement~~ an invoice with the following: that includes:
1. The amount of ~~eligible service~~ Eligible Service for which contributions were not withheld,
 2. ~~The dollar amount of contributions that should have been made,~~
 3. ~~2.~~ The dollar amount of the contributions to be paid to the ASRS by the Employer,
 4. ~~3.~~ The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
 4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
 5. The dollar amount of contributions to be paid to the ASRS by the member; ~~and~~
 6. ~~The various payment options that may apply to the member, as specified~~

~~in R2-8-512 through R2-8-519.~~

R2-8-707. Submission of Payment

- A. Within 90 ~~calendar~~ days from the date on the statement identified in R2-8-706(E), ~~after the ASRS notifies the ASRS employer~~Employer ~~in writing of the amount due, the ASRS employer shall pay to the ASRS the amount due to be paid by the~~ Employer. ~~all ASRS employer contributions, including accrued interest on both the ASRS employer and member contributions, from the date the contributions were due to the date the ASRS notifies the ASRS employer of the amount due. An ASRS employer~~ Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the ~~ASRS employer's~~ Employer's amount due within 90 ~~calendar~~ days after the ASRS notifies the ~~ASRS employer~~ Employer of the amount due, the full amount due will accrue interest on the amount not paid, as provided in A.R.S. § 38-738(B)(3), ~~will accrue from the 91st day until the ASRS employer pays the full amount. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).~~
- B. ~~An ASRS employer may pay the amount the ASRS employer believes may be due at any time before ASRS's notification of the amount due in order to prevent the accrual of interest after the date of the payment. Any amount the ASRS employer pays that the ASRS determines is not owed shall be refunded to the~~

~~ASRS employer.~~The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).

- ~~C. A member may purchase eligible service for which contributions were not withheld in accordance with the requirements of Article 5 of this Chapter for purchase of service credit. If the ASRS does not receive full payment of the ASRS employee's member's amount due by the due date specified on the member's invoice identified in R2-8-706(E) within 90 calendar days after the ASRS notifies the member that the ASRS received the ASRS employer's full payment, the full amount due will accrue interest on the amount not paid, as provided in A.R.S. § 38-738(B)(1), will accrue from the 91st day until the member pays the full amount.~~
- D.** A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

R2-8-709. Nonpayment of Contributions Repealed

- ~~A. A member receives service credit only for the portion of service the ASRS has determined is eligible and that the member has paid for.~~
- ~~B. A member does not receive service credit until both the ASRS employer and member portions of the contributions have been paid.~~
- ~~C. If the ASRS employer does not pay, the ASRS shall take any steps legally~~

~~authorized to collect payment. Any steps the ASRS may take to collect payment are separate from any action a member may elect to take against the ASRS employer.~~

ARTICLE 11. TRANSFER OF SERVICE CREDIT

R2-8-1101. Definitions

The following definitions apply to this Article unless otherwise specified:

- “Actuarial present value” means an amount in today’s dollars of a member’s future retirement benefit calculated using appropriate actuarial assumptions and the:
 - a. Member’s Current Years of Credited Service;
 - b. Member’s age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
 - c. Member’s most recent annual compensation.

- “Current years of credited service” means:
 - For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and

- For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
- “Irrevocable PDA” means the same as in R2-8-501.
- “Funded Actuarial Present Value” means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.
- “Member’s accumulated contribution account balance” means the sum of all the member’s retirement contributions and any principal payments made for:
 - The purchase of service credit;
 - Contributions not withheld; and
 - Previous transfers of service credit.
- “Other retirement plan” means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
- “Other Retirement Plan’s cost” means the amount determined by the ASRS pursuant to R2-8-1102(D).

- “Other public service” means the same as in R2-8-501.
- “Transfer in service” means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.

R2-8-1102. Required Documentation and Calculations for Transfer In Service

Credit

- A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
 - The name of the Other Retirement Plan;
 - The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
 - The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
 - The number of years the member participated in the Other Retirement Plan;
 - Acknowledgement the member agrees that:
 - Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and

- The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.
- Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
 - The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
 - The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
 - The amount of service credit the member has accumulated in the Other Retirement Plan; and
 - The start date and end date for the member's participation in the Other Retirement Plan.
- Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- The ASRS shall calculate the Other Retirement Plan's Cost as follows:
 - If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:

- The Other Retirement Plan’s Funded Actuarial Present Value; or
- The Member’s Accumulated Contribution Account Balance in the Other Retirement Plan;
- If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan’s Funded Actuarial Present Value, then the Other Retirement Plan’s Cost is the greater of:
 - The ASRS Actuarial Present Value; or
 - The Member’s Accumulated Contribution Account Balance in the Other Retirement Plan.
- The ASRS shall compare the Other Retirement Plan’s Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
 - If the Other Retirement Plan’s Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
 - a. Pay the difference between the Other Retirement Plan’s Cost and the ASRS Actuarial Present Value; or
 - b. Accept a proportionately reduced amount of service credit;
 - If the Other Retirement Plan’s Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- Upon completion of the comparison specified in subsections (D) and (E), the ASRS

shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.

- The member may elect to complete a transfer of service credit pursuant to this section by submitting the member's election by the election due date specified on the transfer in invoice.
- Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.
- For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the

Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.

- The member shall submit payment to transfer service credit pursuant to this section by the payment due date specified on the transfer in invoice.
- If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.

R2-8-1103. Transferring Service to Other Retirement Plans

- Upon receipt of a request to transfer a member's service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
 - The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
 - The Member's Accumulated Contribution Account Balance in the ASRS.
- Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- If a member elects to transfer service credit to the Other Retirement Plan, the member

shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan's letterhead by the due date specified in subsection (B) to the ASRS with the following information:

- The member's full name;
 - The last four digits of the member's Social Security number;
 - The name of the Other Retirement Plan; and
 - The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan's Actuarial Present Value specified in subsection (C) and transfer funds as follows:
 - If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
 - The ASRS Funded Actuarial Present Value specified in subsection (A); or
 - The Member's Accumulated Contribution Account Balance in the ASRS.
 - If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:

- The Other Retirement Plan’s Actuarial Present Value specified in subsection (C); or
 - The Member’s Accumulated Contribution Account Balance in the ASRS.
- Transferring service credit to the Other Retirement Plan pursuant to this section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.
- Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
 - Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
 - Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. Identification of the rulemaking:

The ASRS needs to amend its rules in order to reflect its new electronic processes. The ASRS has recently developed an electronic system for processing service purchase, contributions not withheld, and transfer requests. As such, the ASRS needs to update its rules to reflect and clarify its new electronic processes.

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

In the past fiscal year, the ASRS processed approximately 1,503 service purchases, including contributions not withheld (CNW) adjustments and transfers into the ASRS from other public retirement systems. The ASRS also processed approximately 11,814 refunds, which includes transfers out of the ASRS. With the changes completed in this rulemaking, the processes for purchasing service, correcting CNW errors, and transferring service to or from the ASRS will be clearer and more effective. Ultimately, the rules will clarify how and when a member may request a service purchase, a CNW correction, or a transfer, and what the Employer or other retirement system is required to provide, thereby providing clear notice to the public.

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

Currently, the ASRS does not foresee significant changes or harm resulting from the conduct the rule is designed to change. However, without this rulemaking, members and Employers will not be aware of the processes for requesting and completing service purchases, CNW corrections, and transfers. Implementing clear and concise language will ensure members and Employers understand how the ASRS will process such requests electronically. This rulemaking will ensure the ASRS is consistent with Arizona statutes.

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

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

Arizona statutes indicate that members may request to purchase service, correct CNW errors, and transfer service or funds. This rulemaking simply explains the new electronic processes for such requests. Therefore, the ASRS does not anticipate any change in frequency as a result of this rule. As discussed above and below, this rulemaking will increase the clarity of the new electronic processes, which will incorporate consistent language and reduce confusion.

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

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer-partner political subdivision and political subdivision entities, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because they merely clarify how a member or employer may submit electronic requests for service purchase, contributions not withheld (CNW), and transfer of service credit and/or funds. Such clarification will increase understandability of how the ASRS shall process such requests, which will increase the effectiveness and efficiency of the administration of the ASRS, thus, reducing the regulatory burden and the economic impact.

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

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250

Telephone: (602) 240-2039
E-mail: JessicaT@azasrs.gov

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

In general, all members and Employers of the ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 586,306.

Specifically, members and Employers may be affected based on the various transactions. This rule will provide direction to the public about how to make service purchase, CNW corrections, and transfers requests. Such clarification will benefit members and Employers by increasing the readability of the new electronic processes.

5. Cost-benefit analysis:

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

All ASRS members and Employers are directly affected by this rulemaking because it will provide direction regarding the new electronic processes. The ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:
This rulemaking does not provide any benefits or impose any costs on political subdivisions.

- c. Costs and benefits to businesses directly affected by the rulemaking:
No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses²:
 - a. Identification of the small business subject to the rulemaking:
No businesses, regardless of size, are subject to the rulemaking.
 - b. Administrative and other costs required for compliance with the rulemaking:
Not applicable.
 - c. Description of methods that may be used to reduce the impact on small businesses:
Not applicable.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
All ASRS members and Employers are directly affected by the rulemaking. The effect has been previously described above.

9. Probable effects on state revenues:
There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:
The ASRS believes this is the least costly and least intrusive method because it will clarify the new electronic processes without imposing any additional requirements on the public.

² Small business has the meaning specified in A.R.S. § 41-1001(20).

ARTICLE 5. PURCHASING SERVICE CREDIT

R2-8-501. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than active reserve duty.
2. "Active duty termination date" means the day a member:
 - a. Separates from active military duty;
 - b. Is released from active duty-related hospitalization or one year after initiation of active duty-related hospitalization, whichever date is earlier; or
 - c. Dies as a result of active military duty.
3. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
4. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
 - a. Member's current years of credited service to the nearest month;
 - b. Member's age to the nearest day;
 - c. Amount of service credit the member wishes to purchase to the nearest month, except for the calculation in R2-8-506(A)(2); and
 - d. Member's current annual compensation.
5. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a custodian, trustee, plan administrator, or, if applicable, a member.
6. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable Payroll Deduction Authorization is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid.
7. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
8. "Direct rollover" means distribution of eligible funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
9. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
10. "Eligible member" means an active member of the Plan or a Plan member who is receiving benefits under the Long Term Disability Program established by A.R.S. Title 38, Chapter 5, Article 2.1.
11. "Forms of payment" means check, cashier's check, money order, Irrevocable Payroll Deduction Authorization, direct rollover, indirect IRA rollover, indirect rollover, trustee-to-trustee transfer, IRA rollover and termination pay distribution.
12. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
13. "Immediate family member" means:
 - a. A member's spouse or life partner;
 - b. A member's natural, step, or adopted sibling;
 - c. A member's natural, step, or adopted child;
 - d. A member's natural, step, or adoptive parent; or
 - e. An individual for whom the member has legal guardianship.
14. "Indirect IRA rollover" means funds already distributed to the eligible member from a retirement plan listed in A.R.S. § 38-747(H)(3) that are then paid by the eligible member to the ASRS as a contribution for the benefit of the eligible member.
15. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
16. "Irrevocable Payroll Deduction Authorization" means an irrevocable contract between an eligible member, an ASRS employer, and the ASRS that requires the ASRS employer to withhold payments from a member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
17. "Life partner" means an individual who lives with a member as a spouse, but without being legally married.
18. "Military Call-up" means a member is called to active duty in a branch of the United States uniformed services.
19. "Military service" means active duty or active reserve duty with any branch of the United States uniformed services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
20. "Military service record" means a United States uniformed services or National Oceanic and Atmospheric Administration document that provides the following information:
 - a. The member's full name;
 - b. The member's Social Security number;
 - c. Type of discharge the member received; and
 - d. Active duty dates, if applicable; or
 - e. Active reserve duty dates, if applicable; and
 - f. Point history for reserve duty dates, if applicable.
21. "Other public service" means previous employment listed in A.R.S. § 38-743(A).

22. "PDA pay-off letter" means written correspondence from the ASRS to a member that specifies the amount necessary to be paid by the member to complete an Irrevocable Payroll Deduction Authorization and receive the credited service specified in the Irrevocable Payroll Deduction Authorization.
23. "Plan Administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
24. "Service credit" means forfeited service under A.R.S. § 38-742, leave of absence under A.R.S. § 38-744, military service and Military Call-up service under A.R.S. § 38-745, and other public service under A.R.S. § 38-743 that an eligible member may purchase.
25. "SP invoice" means a written correspondence from the ASRS informing an eligible member of the amount of money required to purchase a specified amount of service credit.
26. "Termination pay distribution" means an ASRS employer's payment to the ASRS of an eligible member's termination pay to purchase service credit as specified in A.R.S. § 38-747(B)(2).
27. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
28. "Transfer employment" means to terminate employment with one ASRS employer with which a member has an Irrevocable Payroll Deduction Authorization:
 - a. After accepting an offer to work for a new ASRS employer, or
 - b. While working as an active member for a different ASRS employer.
29. "Trustee-to-trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program listed in R2-8-515(A) from which, at the time of the transfer, a member is not eligible to receive a distribution.
30. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserves, and the Commissioned Corps of the Public Health Service.
31. "Window credit" means overpayments made on previously purchased service credit by eligible members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

R2-8-502. Request to Purchase Service Credit and Notification of Cost

- A.** An eligible member may request to purchase service credit verbally, in writing, or electronically. The eligible member shall provide the eligible member's mailing address and designate which category of service credit the eligible member is requesting to purchase.
- B.** The ASRS shall send a letter acknowledging the request to purchase service credit to the mailing address provided by the eligible member. The ASRS shall provide, with the acknowledgment letter, any form specified in this Article that corresponds to the category of service credit the eligible member requests to purchase and indicate in the acknowledgment letter the deadline for providing supporting documentation of service credit to the ASRS.
- C.** Except as provided in R2-8-519(A), the eligible member shall provide documentation of service credit as required by this Article within 90 days of the eligible member's request to purchase service credit. If the ASRS has not received complete and correct documents within 90 days of the request to purchase service credit, the ASRS shall cancel the eligible member's request to purchase service credit. The eligible member may make a new request to purchase service credit.
- D.** Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide the following to the eligible member:
 1. A SP invoice stating the cost to purchase the amount of service credit the member is eligible to purchase and the date payment is due;
 2. A Service Purchase Payment Request form requesting the following information:
 - a. The member's name;
 - b. The member's Social Security number;
 - c. The member's mailing address;
 - d. The member's daytime telephone number;
 - e. ID number listed on the SP invoice;
 - f. Either the number of years or partial years of service credit the member wishes to purchase or the cost for the number of years or partial years of service the member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice;
 - g. If the member elects to pay for the service credit by trustee-to-trustee transfer, IRA rollover, distributed rollover contribution, or direct rollover, the anticipated number of rollovers or transfers;
 - h. If the member elects to pay by Irrevocable Payroll Deduction Authorization, the amount of money the member wishes to pay per pay period;
 - i. If the member elects to pay for the service credit by check, the check number and amount of the check;

- j. If the member elects to pay any cost remaining at retirement or termination of employment with a termination pay distribution, the retirement date or last date of work;
 - k. The member's signature and date of the signature; and
3. Other forms the member may need to complete the request for service credit purchase.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

R2-8-503. Requirements Applicable to All Service Credit Purchases

- A. To purchase service credit at the amount provided in an SP invoice, an eligible member shall purchase the service credit by check or money order, or request an Irrevocable Payroll Deduction Authorization, rollover, transfer or termination pay distribution as specified in this Article, by the due date specified on the SP invoice.
- B. An eligible member may purchase all of the service credit or a portion of the service credit. If the eligible member wishes to purchase only a portion of the service credit, the eligible member shall specify, on the Service Purchase Payment Request form identified in R2-8-502(D)(2):
 - 1. The dollar amount the eligible member wishes to purchase, up to the amount specified on the SP invoice, or
 - 2. The number of years or partial years the eligible member wishes to purchase, not exceeding the years or partial years specified on the SP invoice.
- C. If the eligible member elects to purchase only a portion of the service credit, the cost and amount of service credit the eligible member identifies on the Service Purchase Payment Request form is only an estimate and may be more or less than the actual cost or amount of service credit purchased by the eligible member.
- D. The eligible member shall not request to purchase additional service credit based on the SP invoice until the member has completed the purchase of the previously requested portion of service credit or cancel the request as specified in subsection (F).
- E. ASRS shall not consider more than one active request at a time from a member to purchase service credit in a single category. The categories are:
 - 1. Leave of absence,
 - 2. Military service,
 - 3. Presidential Call-up service,
 - 4. Forfeited service, and
 - 5. Other public service.
- F. An eligible member may cancel an active request to purchase a specific category of service credit verbally or in writing, and submit a new request in the same category of service credit for a different amount of service credit.
- G. If an eligible member is entitled to a window credit, the eligible member may apply the window credit to purchase service credit. To apply a window credit to a purchase of service credit, the eligible member shall make a request to the ASRS in writing by the due date specified on the SP invoice and include the following information:
 - 1. The amount the member wants to apply,
 - 2. The member's signature, and
 - 3. The date of the member's signature.
- H. The amount of service credit an eligible member may purchase and the benefits an eligible member may receive are subject to the limitations prescribed in A.R.S. § 38-747(E).
- I. On or before the due date specified on the SP Invoice, ASRS shall extend the time for an eligible member to respond to an SP invoice as follows:
 - 1. If the member notifies the ASRS of an ASRS error, the time is extended 30 days after the date the ASRS sends notification to the eligible member that the ASRS has corrected the error;
 - 2. If an ASRS internal review is made of the member's service credit purchase request, the time is extended 30 days after the date ASRS sends notification to the member that the review is completed;
 - 3. If the member appeals an issue regarding the SP invoice under Article 4 of this Chapter, the time is extended 30 days after the date ASRS sends notification to the member that a decision on the appeal has been made; or
 - 4. If an unforeseeable event occurs that is outside of the member's control, such as an incapacitating illness of the member or death of an immediate family member, and the member notifies the ASRS of the event, the ASRS shall extend the time by up to six months, after a review of the unforeseeable event to determine the length of the extension.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

R2-8-504. Service Credit Calculation for Purchasing Service Credit

An eligible member who purchases service credit shall receive one month of credited service for one or more days of service in a calendar month.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

R2-8-505. Restrictions on Purchasing Overlapping Service Credit; Transfers

- A. The ASRS shall not permit an eligible member to purchase service credit that, when added to credited service earned in any plan year, results in more than:
 - 1. One year of credited service in any plan year, or
 - 2. One month of credited service in any one calendar month.
- B. The restrictions in subsection (A) do not apply to service credit that an eligible member transfers from another retirement system to the ASRS as authorized in A.R.S. § 38-730 or A.R.S. Title 38, Chapter 5, Article 7, whether the eligible member requests the transfer before or after purchasing other service credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

R2-8-506. Cost Calculation for Purchasing Service Credit

- A. For leave of absence service credit, military service credit, and other public service credit, the ASRS shall calculate, as of the date of the request to purchase service credit:
 - 1. The actuarial present value of the future retirement benefit for the member including the service credit that the eligible member requests to purchase, and
 - 2. The actuarial present value of the future retirement benefit for the member without the service credit that the eligible member requests to purchase.
- B. The cost for purchasing the service credit that the member requests to purchase is the difference between the actuarial present value in subsection (A)(1) and the actuarial present value in subsection (A)(2).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

R2-8-507. Required Documentation and Calculations for Forfeited Service Credit

- A. An eligible member who requests to purchase service credit for forfeited service under A.R.S. § 38-742 shall provide to the ASRS:
 - 1. The eligible member's:
 - a. Full name and, if applicable, other names used while working for an ASRS employer for which the eligible member is requesting to purchase service credit;
 - b. Mailing address;
 - c. Telephone number, if applicable;
 - d. Social Security number;
 - 2. The name of each ASRS employer, if known, for which the eligible member is requesting to purchase service credit for forfeited service;
 - 3. The year the eligible member began working for each ASRS employer and the year the eligible member left each employment, if known; and
 - 4. The year the eligible member believes the ASRS returned retirement contributions to the member.
- B. The amount the eligible member shall pay to purchase service credit for previously forfeited service is the amount of retirement contributions that the ASRS returned to the eligible member, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the interest rate determined by the Board as specified in A.R.S. § 38-742.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit

- A. An eligible member may request to purchase service credit for an approved leave of absence from an ASRS employer under A.R.S. § 38-744. To request to purchase service credit for an approved leave of absence the eligible member shall provide to the ASRS:
 - 1. An Approved Leave of Absence form that includes:
 - a. The following information completed by the eligible member:
 - i. The eligible member's full name and, if applicable, other names used while working for the ASRS employer;
 - ii. The eligible member's Social Security number;
 - iii. The eligible member's mailing address;
 - iv. The eligible member's daytime telephone number;
 - v. A statement that the eligible member understands that up to one year of leave of absence service credit may be purchased for each approved leave of absence, if the eligible member returns to work for the employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;

- vi. A statement that the eligible member understands that the ASRS uses the actuarial present value calculation method to determine the cost of the service purchase request;
- vii. A statement that the eligible member authorizes the ASRS employer to provide any necessary personal information to ASRS in order to process this request; and
- viii. The member's dated signature; and
- b. The following information completed by the ASRS employer;
 - i. The beginning date and ending date of the approved leave of absence;
 - ii. The date the eligible member returned to work or a statement of why employment was not resumed;
 - iii. Name of the employer;
 - iv. The authorized employer representative's name;
 - v. The authorized employer representative's telephone number and, if applicable, fax number; and
 - vi. The authorized employer representative's dated signature verifying that the approved leave of absence benefited or was in the best interest of the employer; and
- 2. A copy of the guidelines referenced in A.R.S. § 38-744, if applicable.
- B.** The amount the member shall pay to purchase service credit for leave of absence is determined as provided in R2-8-506.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-509. Required Documentation and Calculations for Military Service Credit

- A.** An eligible member may request to purchase military service credit under A.R.S. § 38-745(A) and (B). To request to purchase military service credit, the eligible member shall provide to the ASRS:
 - 1. The items listed in R2-8-507(A)(1);
 - 2. A copy of the eligible member's military service record; and
 - 3. A completed, signed, dated, and notarized Affidavit of Military Service form that contains:
 - a. The member's full name;
 - b. The member's Social Security number;
 - c. The branch of the uniformed services the member was in;
 - d. Whether the member was active duty or active reserve duty;
 - e. The years and months by fiscal year that the member was in active duty or active reserve duty for which the member wishes to purchase service credit;
 - f. Acknowledgement that the member has attached:
 - i. Proof of honorable discharge for each type of military service listed on the form; and
 - ii. The member's military service record that supports all of the service listed on the affidavit;
 - g. The following statements of understanding initiated by the member:
 - i. I understand that any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per Arizona Revised Statutes Section 38-793;
 - ii. I understand this transaction is subject to audit and if any errors or misrepresentations are discovered as a result of this audit, my total credited service with the ASRS will be adjusted as necessary and if I am retired, my retirement benefit will also be adjusted;
 - iii. I understand that the service listed on this affidavit does not include time that I either volunteered or was ordered into active duty military service as part of a Presidential Call-up. This service is purchased under Presidential Call-up and requires a Presidential Call-up form to be completed by your employer; and
 - iv. I understand that any time I have listed on this affidavit for Reserve or National Guard time reflects the months that I attended at least one drill or assembly for each month listed.
- B.** The amount the eligible member pays to purchase military service credit is determined as provided in R2-8-506.
- C.** ASRS determines the amount of service credit an eligible member receives for active duty and active reserve duty time by the time listed on the Affidavit of Military Service form, if the service listed is supported by the information contained in the member's military service record.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-510. Required Documentation and Calculations for Presidential Call-up Service Credit

- A.** An eligible member or the eligible member's beneficiary who meets the requirements under A.R.S. § 38-745(C) shall receive up to 60 months of Presidential Call-up service under A.R.S. § 38-745(C) through (I). In order to determine the amount of contributions the ASRS employer owes to purchase service credit for Presidential Call-up service, the eligible member's ASRS employer shall provide to the ASRS
 - a copy of the eligible member's military service record and
 - a completed Military Call-up form that includes the following:
 - 1. The member's full name;

2. The member's Social Security number;
 3. The start date of Presidential Call-up Service;
 4. The end date of Presidential Call-up Service;
 5. Whether the member received paid leave while on Presidential Call-up;
 6. The date the member returned to work for the ASRS employer;
 7. The salary for each fiscal year while the member is on Presidential Call-up, including any salary increases the eligible member would have received had the member not left employment due to Presidential Call-up, if applicable;
 8. The ASRS employer's name and address;
 9. The name of a contact individual for the ASRS employer, and that individual's business and fax telephone numbers;
 10. The contact individual's signature and date of signature;
 11. If applicable, the earlier of:
 - a. The date that the member was released from the hospital for injuries sustained as a result of participating in a Presidential Call-up; or
 - b. The date that the member was hospitalized for one year for injuries sustained as a result of participating in a Presidential Call-up;
 and
 12. A copy of the member's death certificate, if applicable.
- B.** An ASRS employer shall make the request to purchase service credit for Presidential Call-up service within 30 days after the member's active duty termination date.
- C.** The ASRS calculates the amount the ASRS employer pays to purchase Presidential Call-up service by multiplying the eligible member's salary at the time active duty commences, by the contribution rate in effect for the period of active duty, and by the years or partial years of service elapsing from the active duty commencement date through the active duty termination date. Included in the calculation are any salary increases the member would have received if the member had not left work to participate in a Presidential Call-up.
- D.** The ASRS shall send the ASRS employer a statement of cost for purchase of the Presidential Call-up service credit, based on the calculation in subsection (B). Within 90 days from the date on the ASRS statement of cost, the ASRS employer shall pay to the ASRS the amount on the statement. If the ASRS employer fails to make full payment within the 90 days, interest shall accrue on the unpaid balance at the assumed actuarial investment earnings rate approved by the Board in effect on the date of the statement of cost.
- E.** If an ASRS employer deducts retirement and long-term disability contributions from an eligible member's pay while the eligible member is on Presidential Call-up service, the ASRS shall return the contributions to the ASRS employer after the ASRS receives the information in subsection (A).
- F.** If an ASRS employer deducts retirement contributions from an eligible member's pay while the eligible member is on Presidential Call-up service, and the eligible member does not return to the ASRS employer after separation from active military service, the ASRS shall apply the retirement contributions to the member's credited service.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-511. Required Documentation and Calculations for Other Public Service Credit

- A.** An eligible member who requests to purchase other public service credit under A.R.S. § 38-743 shall provide to the ASRS a completed Affidavit of Other Public Service form, signed and dated by the member, and notarized, that includes the following:
1. The member's full name;
 2. The member's Social Security number;
 3. Other names used by the member during employment with the other public service employer, if applicable;
 4. The name and mailing address of the other public service employer;
 5. The position the member held while working for the other public service employer;
 6. A contact name and telephone number of an individual in the other public service employer's human resources department who can verify employment, if known;
 7. The years and months by fiscal year of other public service the member worked and wishes to purchase;
 8. If the other public service employer was a non-ASRS employer, a statement of whether the member participated in the non-ASRS employer's retirement plan;
 9. If the member participated in a non-ASRS public service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
 - a. The approximate date the member took a return of retirement contributions;
 - b. The plan is non-contributory and the member is not eligible for benefits from the plan; or
 - c. That, if not using all of the retirement contributions as a pre-tax rollover, the member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the member has forfeited all rights to benefits from the plan no later than the due date specified on the SP invoice; and
 10. Acknowledgement that:

- a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793;
 - b. The service purchase transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's total credited service with the ASRS, or if the member is already retired, adjustments to the member's credited service will affect the member's retirement benefit; and
 - c. If an audit determines that the member is eligible for a benefit from the other public service employer's retirement plan, the member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the service credit purchase listed on this application will be revoked and any funds paid to purchase the service credit will be refunded to the member.
- B.** The amount the member shall pay to purchase other public service credit is determined as provided in R2-8-506.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order

- A.** An eligible member may purchase service credit by check, cashier's check, or money order.
- B.** Within 30 days of the issue date on the SP invoice or PDA payoff letter, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2) and a check, cashier's check, or money order made to the order of the Arizona State Retirement System in the amount to purchase the requested service credit.
- C.** If an eligible member purchases service credit by check, cashier's check, or money order in conjunction with one or more rollovers, trustee-to-trustee transfers, or termination pay, the member shall make payment within 30 days after the date the ASRS sends written confirmation that the ASRS received the final rollover, trustee-to-trustee transfer, or termination pay payment.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-513. Purchasing Service Credit by Irrevocable Payroll Deduction Authorization

- A.** An eligible member may purchase service credit by Irrevocable Payroll Deduction Authorization.
- B.** By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).
- C.** If the eligible member elects to pay for service credit by Irrevocable Payroll Deduction Authorization, ASRS shall prepare an Irrevocable Payroll Deduction Authorization and send it to the eligible member for signature. The member shall ensure that the ASRS receives the signed Irrevocable Payroll Deduction Authorization within 30 days after the date on the Irrevocable Payroll Deduction Authorization. The signed Irrevocable Payroll Deduction Authorization becomes irrevocable upon receipt by the ASRS.
- D.** At the time the eligible member signs the Irrevocable Payroll Deduction Authorization the eligible member may elect to use termination pay towards the balance of the Irrevocable Payroll Deduction Authorization if the eligible member terminates employment. If the eligible member chooses this option, the eligible member shall complete the Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization and return it to the ASRS along with the remainder of the Irrevocable Payroll Deduction Authorization that includes the following:
 - 1. A statement that the member:
 - a. Understands and agrees that the member must continue working at least three full calendar months after the date of submission of the form before termination pay may be used on a pre-tax basis;
 - b. Understands that if the termination payment exceeds the balance owed on the Irrevocable Payroll Deduction Authorization, the overage will be returned to the ASRS employer to be distributed to the member; and
 - c. Elects to irrevocably agree to have termination pay that may be payable to the member upon termination of employment sent to the ASRS on a pre-tax basis and used toward any remaining balance of the Irrevocable Payroll Deduction Authorization if all scheduled payroll deductions have not been completed upon termination of service; and
 - 2. A statement that either all termination pay or a specified amount of termination pay is to be applied to the balance of the Irrevocable Payroll Deduction Authorization.
- E.** The ASRS shall:
 - 1. Charge interest on the unpaid balance at the assumed actuarial investment earnings rate approved by the Board in effect at the time the authorization was entered into;
 - 2. Limit the payroll deduction time period to a maximum of 20 years; and
 - 3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 year of service credit per payroll period, whichever is greater.

- F. The ASRS shall transmit the Irrevocable Payroll Deduction Authorization to the active member's ASRS employer, and the ASRS employer shall implement the deduction on the first pay period after receiving the Irrevocable Payroll Deduction Authorization.
- G. If a deduction is not made under an Irrevocable Payroll Deduction Authorization within six months after the member signs the authorization, the authorization lapses and the member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H. A period of leave of absence, long-term disability, or Presidential Call-up shall not cancel the Irrevocable Payroll Deduction Authorization. The ASRS employer shall resume deductions immediately upon the member's return to that employment. The period during which the member is on leave of absence, on long-term disability, or leaves work because of a Presidential Call-up is not included in the 20-year payment time limitation under subsection (E)(2). If the member does not return to active working status, whether due to termination of employment or retirement, the member may elect to purchase the balance of unpaid service under the Irrevocable Payroll Deduction Authorization at the time of termination or retirement as specified in this Section.
- I. Deductions made pursuant to an Irrevocable Payroll Deduction Authorization continue until the:
 - 1. Irrevocable Payroll Deduction Authorization is completed;
 - 2. Member retires, whether or not the member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(J); or
 - 3. Member terminates all ASRS employment without transferring employment.
- J. If a member retires or terminates employment from all ASRS employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable Payroll Deduction Authorization, the member's purchase of service credit is canceled unless the member notifies the ASRS in writing during the period 14 days before to 14 days after retirement or termination from all ASRS employment of the intent to purchase the remaining amount due in a lump sum.
- K. When the member notifies ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable Payroll Deduction Authorization, the ASRS shall send the member a PDA pay-off letter to the mailing address given by the member. The ASRS shall calculate the amount owed by the member and reduce the amount owed by any excess interest that the member has paid.
- L. Within 30 days of the date of the PDA pay-off letter, the member shall ensure that the ASRS receives the completed SP Payment Request form with the information specified in R2-8-502(D)(2). The member may purchase the remaining service credit by one or more of the following methods:
 - 1. By check, cashier's check, or money order made out to the ASRS under R2-8-512;
 - 2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer within 90 days of the date of the PDA pay-off letter; or
 - 3. By termination pay distribution under R2-8-519, if the member authorized this option at the time the member signed the Irrevocable Payroll Deduction Authorization.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

R2-8-513.01. Irrevocable Payroll Deduction Authorization and Transfer of Employment to a Different ASRS Employer

- A. An Irrevocable Payroll Deduction Authorization continues if a member transfers employment.
- B. An Irrevocable Payroll Deduction Authorization ends if a member terminates employment without having accepted an offer to work for a new ASRS employer, and the member is not already an active member working for a different ASRS employer. The member shall then pay off the Irrevocable Payroll Deduction Authorization as specified in R2-8-513(J).
- C. If a retirement contribution is due from the new ASRS employer within 120 days from the member's termination date with the previous employer, there is a rebuttable presumption that there is a transfer of employment. If a retirement contribution is not received within 120 days, the Irrevocable Payroll Deduction Authorization terminates.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-513.02 Termination Date

For the purpose of an Irrevocable Payroll Deduction Authorization, the date a member is considered terminated from an ASRS employer is:

- 1. For a member terminating employment, the member's last pay period end date with that ASRS employer;
- 2. For a member on Presidential Call-up who does not return to the same ASRS employer:
 - a. Ninety days from the date of separation from Presidential Call-up service;
 - b. Ninety days from the date released from the hospital, if injured while on Presidential Call-up service;
 - c. The date the member has been hospitalized for one year for injuries sustained as a result of participating in a Presidential Call-up; or
 - d. The date of the member's death as a result of participating in a Presidential Call-up;

3. For a member on leave of absence without pay who does not return to the same ASRS employer, the date the ASRS employer required the member to return to work;
4. For a member who is unable to work because of a disability, the later of:
 - a. The date the member's request for long-term disability benefits are denied;
 - b. The date the member no longer has sick leave and annual leave; or
 - c. For a member on long-term disability who does not return to the same ASRS employer or transfer employment, the date long-term disability benefits are terminated.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-514. Purchasing Service Credit by Direct Rollover

- A.** An eligible member may purchase service credit or pay off an Irrevocable Payroll Deduction Authorization by direct rollover at retirement or termination of employment without transferring employment.
- B.** By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).
- C.** Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.
- D.** The member shall ensure that the ASRS receives the Direct Rollover/Transfer Certification to Purchase Service Credit form completed by the member and the plan making the distribution within 90 days after the issue date of the SP Invoice.
- E.** The information requested on the Direct Rollover/Transfer Certification to Purchase Service Credit form includes:
 1. Member's full name;
 2. Member's Social Security number;
 3. Member's mailing address;
 4. Member's daytime telephone number;
 5. The amount of each rollover or transfer, if applicable;
 6. The account number of each plan, if applicable;
 7. The member's signature certifying that the member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase service credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information sheets;
 8. The date the member signs the form;
 9. The authorized representative's name and title;
 10. The authorized representative's address;
 11. The authorized representative's telephone number;
 12. Certification by the authorized representative that:
 - a. The plan is either:
 - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
 - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
 - iii. An annuity contract described in IRC § 403(b); or
 - iv. An IRA described in A.R.S. § 38-747(H)(3);
 - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable section of the Internal Revenue Code;
 - c. The authorized representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable section of the Code; and
 - d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a trustee-to-trustee transfer; and
 13. The date and signature of the authorized representative.
- F.** The ASRS shall provide the member with written notification regarding the eligibility of the rollover.
- G.** The member shall contact the plan administrator to have the funds distributed and transferred to the ASRS. Except as provided in subsection (H), unless the ASRS receives a check for the correct amount from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).
- H.** At the written request of the member, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan at the written request of the member, if:
 1. The member has followed the procedure in this Article for requesting to purchase service credit,
 2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
 3. The eligible plan has not provided to the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
 4. The member makes the written request for extension before expiration of the 90 days.
- I.** The member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.

- J. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-515. Purchasing Service Credit by Trustee-to-Trustee Transfer

- A. An eligible member may purchase service credit or pay off an Irrevocable Payroll Deduction Authorization at retirement or termination of employment without transferring employment by a trustee-to-trustee transfer if the member participates in:
1. A deferred compensation plan described in IRC § 457 that is maintained by:
 - a. The state of Arizona;
 - b. A political subdivision, agency, or instrumentality of the state of Arizona; or
 - c. A political subdivision entity of the state of Arizona;
 2. An annuity contract described in IRC § 403(b); or
 3. A retirement program qualified under IRC § 401(a) or 403(a).
- B. By the due date specified on the SP invoice, the ASRS shall receive from the member the completed Service Purchase Payment Request form described in R2-8-502(D)(2).
- C. Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.
- D. The member shall ensure that the member and the plan administrator complete the Direct Rollover/Transfer Certification to Purchase Service Credit form, containing all of the applicable information identified in R2-8-514(E), and ensure that the ASRS receives the form within 90 days after the issue date on the SP Invoice.
- E. The ASRS shall provide the member with written notification regarding the eligibility of the transfer.
- F. The member shall contact the plan administrator to have the funds transferred to the ASRS. Except as provided in subsection (G), unless the ASRS receives the check for the correct amount from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).
- G. The ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan at the written request of the member, if:
1. The member has followed the procedure under this Article for requesting to purchase service credit,
 2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
 3. The eligible plan has not provided to the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
 4. The member makes the written request for extension before expiration of the 90 days.
- H. The member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- I. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member and notify the member of the correct amount due.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-516. Expired

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

R2-8-517. Expired

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

R2-8-518. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

R2-8-519. Purchasing Service Credit by Termination Pay Distribution

- A. To purchase service credit using termination pay distribution, an eligible member shall, no more than six months before the date the eligible member plans to retire or terminate employment, request to purchase service credit as specified in R2-8-502

and specify that the member wants to use termination pay distribution to pay for the service credit. Upon receipt of the acknowledgement letter identified in R2-8-502, the eligible member shall provide documentation for service credit as required by this Article, within 30 days of the eligible member's request to purchase service credit.

- B. Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide a:
 - 1. SP invoice stating the cost to purchase the requested amount of service credit and the date the payment is due, and
 - 2. Service Purchase Payment Request form as described in R2-8-502(D)(2).
- C. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form.
- D. Upon receipt of the Service Purchase Request form, if the member indicates the member wishes to purchase service credit by termination pay distribution, the ASRS shall send the member a Termination Pay Authorization for the Purchase of Service Credit form to complete and return within the time limitation specified in subsection (E) that includes:
 - 1. Member's full name,
 - 2. Member's Social Security number,
 - 3. Member's daytime telephone number,
 - 4. The Request ID number listed on the SP invoice,
 - 5. Name of ASRS employer,
 - 6. Whether the member elects to use all termination pay or a specific amount of termination pay to purchase service credit,
 - 7. Signature of the member, certifying that the member understands that:
 - a. The member is required to continue working at least three full calendar months after the date the member submits the Termination Pay Authorization for the Purchase of Service Credit form before termination pay may be used on a pre-tax basis;
 - b. If the member terminates employment more than six months after the date on the SP invoice, the member may purchase the service credit at a newly calculated rate and possibly at a higher cost;
 - c. The Termination Pay Authorization for the Purchase of Service Credit form is binding and irrevocable;
 - d. The member's employer is required to make payment directly to the ASRS after mandatory deductions are made, and the member does not have the option of receiving the funds directly from the employer;
 - e. The ASRS shall apply service credit to the member's account upon the receipt of payments authorized by the member by the Termination Pay Authorization for the Purchase of Service Credit form;
 - f. If the member elects to purchase with termination pay only a portion of the service credit that the member is entitled to purchase, the member may be eligible to use other forms of payment to purchase additional service credit. However, using other forms of payment to purchase additional service credit does not alter, amend, or revoke the terms of the Termination Pay Authorization for the Purchase of Service Credit form;
 - g. It is the member's responsibility to ensure that the member's employer properly deducts termination pay, as provided the Termination Pay Authorization for the Purchase of Service Credit form; and
 - h. The amount of termination pay the member is allowed to apply to purchase service credit is subject to federal laws.
- E. In addition to the other time limitations in this Section, to apply termination pay to a service purchase the eligible member shall complete and sign the Termination Pay Authorization for the Purchase of Service Credit form, and the member shall ensure that the ASRS receives the Termination Pay Authorization for the Purchase of Service Credit form at least three full calendar months before the member retires or terminates employment.
- F. The ASRS shall not apply a termination pay distribution to a service credit purchase covered by an Irrevocable Payroll Deduction Authorization in effect at the time of termination unless the eligible member signed a Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization specified in R2-8-513(D) at the time the member signed the Irrevocable Payroll Deduction Authorization.
- G. If a member elects to use all of the member's available termination pay to purchase service credit, ASRS shall not apply any other form of payment to the service credit purchase until the ASRS receives the termination pay.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable Payroll Deduction Authorization

- A. If a member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing service credit by an Irrevocable Payroll Deduction Authorization and requests return of retirement contributions, the ASRS shall return any payments made for the purchase of service credit including interest earned on those payments as determined by the Board.
- B. If a member dies while purchasing service credit, the ASRS shall credit the member's account with:
 - 1. The service credit for which the ASRS received payment before the member's death,
 - 2. Interest earned on payment through the date of distribution at the valuation rate established by the Board, and

3. All service purchase payments.
- C. If a member dies while purchasing service credit, the ASRS shall not permit the survivor to purchase the remaining balance.
- D. The ASRS shall not refund interest charged as part of an Irrevocable Payroll Deduction Authorization as specified in R2-8-513(E)(1).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-521. Adjustment of Errors

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment, including, but limited to, increasing or decreasing a member's total credited service with the ASRS and increasing or decreasing the payment amount.
- B. If the ASRS determines that a member is receiving or is eligible to receive retirement benefits from another public employee retirement system that makes the member ineligible to purchase service credit for the same period, the ASRS shall revoke that purchase of service credit, and return any payments made, less any interest payments made, if applicable.
- C. The ASRS shall notify the member in writing of any adjustments.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

R2-8-701. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 418 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, employer letter or spreadsheet, completed State Personnel Action Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other ASRS employer-provided form that includes:
 - a. Whether the employee was covered under the ASRS employer's 218 agreement prior to July 24, 2014,
 - b. The number of hours worked or length of time the member was employed by the ASRS employer, or
 - c. The compensation paid to the member by the ASRS employer.
3. "Eligible service" means employment with an ASRS employer:
 - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
 - b. In which the member worked a minimum of 20 hours per week for at least 20 weeks in a service year for at least one ASRS employer from 7/1/1999 to the present.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

R2-8-702. General Information

- A. Verified eligible service that occurred more than 15 years before the date ASRS receives the information identified in R2-8-704(A)(1) is considered public service credit as provided in A.R.S. § 38-738(D), and is not applied under this Article.
- B. The ASRS employer shall pay the ASRS employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not:
 1. The member has withdrawn contributions as specified in R2-8-115; or
 2. The member pays the member's portion of the contributions.
- C. The person who initiates the claim that contributions were not withheld for eligible service has the burden to prove a contribution error was made.
- D. ASRS shall not waive payment of contributions or interest owed under this Article.
- E. If a member is not able to establish eligibility for service credit for which contributions were not withheld, but is able to establish a period of employment by an ASRS employer the member may request to purchase service credit for that period under A.R.S. § 38-743 and Article 5 of this Chapter.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-703. ASRS Employer's Discovery of Error

If an ASRS employer determines that contributions have not been withheld for a member for a period of eligible service, the ASRS employer shall notify ASRS in writing, and shall provide ASRS with the member's full name, Social Security number,

months, years, and hours per week worked, the compensation each fiscal year for the time periods worked, and the member's position title and status at the time contributions should have been withheld.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-704. Member's Discovery of Error

If a member believes that an Employer has not withheld contributions for the member for a period of eligible service, the member shall:

- A. Provide the Employer with documentation of the member's claim and request that the Employer provide a letter that includes the information in the Verification of Contributions Not Withheld form or complete a Verification of Contributions Not Withheld form that includes:
 1. The member's full name;
 2. Other names used by the member;
 3. The member's Social Security number;
 4. Whether the position was covered under the Employer's 218 agreement prior to July 24, 2014;
 5. The position title the member held at the time the contributions should have been withheld;
 6. The eligibility of the member at the time the contributions should have been withheld;
 7. The following statements of understanding and agreements certified by the authorized Employer representative's signature indicating:
 - a. I understand it is my responsibility to verify the accuracy of the information I am providing on this form. I understand any individual who knowingly makes a false statement, or who falsifies or permits to be falsified any record of the ASRS with an intent to defraud the ASRS, is guilty of a Class 6 felony pursuant to A.R.S. § 38-793; and
 - b. I understand that, based on the information provided on this form, the ASRS may determine that contributions are owed on behalf of the member listed on this form, and the Employer may incur a substantial financial obligation. I understand that I may receive an invoice for the member contributions I owe.
 8. The following information by fiscal year:
 - a. All pay period end dates;
 - b. The hours per week worked within each pay period; and
 - c. The compensation earned by the member within each pay period.
 9. The name of the Employer;
 10. The printed name and signature of the authorized Employer representative;
 11. The daytime telephone number of the authorized Employer representative;
 12. The title of the authorized Employer representative; and
 13. The date the authorized Employer representative signed the form;
- B. Provide the ASRS with the completed Verification of Contributions Not Withheld form; and
- C. If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the documentation the member believes supports the allegation that contributions should have been withheld, that includes proof:
 1. That the employee was covered under the Employer's 218 agreement prior to July 24, 2014,
 2. Of the number of hours worked,
 3. Of the length of time the member was employed by the Employer, and
 4. Of the compensation paid to the member by the Employer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4).

R2-8-705. ASRS' Discovery of Error

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that contributions have not been withheld for a member for a period of eligible service, the ASRS shall notify the member and the ASRS employer in writing and shall request the following information:

1. The months, years and hours per week worked;
2. The compensation earned by the member each fiscal year for the time periods worked; and
3. The member's position title at the time contributions should have been withheld.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-706. Determination of Contributions Not Withheld

- A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.

- B. Except for a member who met active membership requirements while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
 - 1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
 - 2. The employee participates in:
 - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
 - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C. Except for returning to work under A.R.S. § 38-766.01(D), the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D. If there is any discrepancy between the documentation provided by the Employer and the documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E. The ASRS shall provide to the Employer and the member a written statement that includes:
 - 1. The dates of eligible service for which contributions were not withheld,
 - 2. The dollar amount of contributions that should have been made,
 - 3. The dollar amount of the contributions to be paid by the Employer,
 - 4. The interest on the Employer contributions and member contributions to be paid by the Employer,
 - 5. The dollar amount of contributions to be paid by the member, and
 - 6. The various payment options that may apply to the member, as specified in R2-8-512 through R2-8-519.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4).

R2-8-707. Submission of Payment

- A. Within 90 calendar days after the ASRS notifies the ASRS employer in writing of the amount due, the ASRS employer shall pay all ASRS employer contributions, including accrued interest on both the ASRS employer and member contributions, from the date the contributions were due to the date the ASRS notifies the ASRS employer of the amount due. An ASRS employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the ASRS employer's amount due within 90 calendar days after the ASRS notifies the ASRS employer of the amount due, interest on the amount not paid, as provided in A.R.S. § 38-738(B)(3), will accrue from the 91st day until the ASRS employer pays the full amount.
- B. An ASRS employer may pay the amount the ASRS employer believes may be due at any time before ASRS's notification of the amount due in order to prevent the accrual of interest after the date of the payment. Any amount the ASRS employer pays that the ASRS determines is not owed shall be refunded to the ASRS employer.
- C. A member may purchase eligible service for which contributions were not withheld in accordance with the requirements of Article 5 of this Chapter for purchase of service credit. If the ASRS does not receive full payment of the ASRS employee's amount due within 90 calendar days after the ASRS notifies the member that the ASRS received the ASRS employer's full payment, interest on the amount not paid, as provided in A.R.S. § 38-738(B)(1), will accrue from the 91st day until the member pays the full amount.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-708. Expired

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

R2-8-709. Nonpayment of Contributions

- A. A member receives service credit only for the portion of service the ASRS has determined is eligible and that the member has paid for.
- B. A member does not receive service credit until both the ASRS employer and member portions of the contributions have been paid.
- C. If the ASRS employer does not pay, the ASRS shall take any steps legally authorized to collect payment. Any steps the ASRS may take to collect payment are separate from any action a member may elect to take against the ASRS employer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

38-738. Adjustment and refund

A. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of fact, ASRS shall return those contributions to the employer if the employer requests return of the contributions through an employer credit or, if the request is made within one year after the date of overpayment, by check on request of the employer. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of law, ASRS shall return those contributions to the employer if the employer requests return of the contributions through an employer credit.

B. If less than the correct amount of employer or member contributions is paid into ASRS by an employer, the following apply:

1. The member shall pay an amount that is equal to the amount that would have been paid in member contributions for the period in question. For active members, payments shall be made as provided in section 38-747. For members who are inactive, retired or on long-term disability, payments shall be made using after-tax income and a personal check, cashier's check or money order. If the member does not make the payment within ninety days after being notified by ASRS that the employer has paid all amounts due from the employer, the unpaid amount accrues interest until the amount is paid in full. The member is responsible for payment of the unpaid amount and interest. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

2. If the member contributions to ASRS made pursuant to this subsection exceed the limits prescribed in section 38-747, subsection E when taking into account other annual additions of the member for the limitation year, the amount to be paid by the member shall be adjusted as provided in section 38-747. For the purposes of this paragraph, "limitation year" has the same meaning prescribed in section 38-769.

3. The employer shall pay to ASRS an amount equal to the amount that would have been paid in employer contributions for the period in question together with accumulated interest that would have accrued on both the employer and member contributions due. If the employer does not remit full payment of all employer contributions and all interest due within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

4. On satisfaction of the requirements of this subsection, the member's salary history on the records of ASRS shall be adjusted and any additional service credits acquired by the member shall be reinstated.

5. If the member retires before all contributions are made pursuant to this subsection, the member's benefits shall be calculated only based on the contributions actually made.

6. Annual additions shall be determined as provided in section 38-747, subsection O.

7. The initiator of the request for correction of salary history and service credits on records of ASRS is responsible for providing credible evidence of past employment and compensation to ASRS in a form or forms that would lead a reasonable person to conclude that a period of employment occurred under circumstances that made the employee eligible for membership in ASRS during that

period. A determination of eligibility by ASRS may be appealed to the ASRS board in a manner prescribed by the board.

8. A member who previously received a return of contributions pursuant to section 38-740 may receive an adjustment of employer contributions or service credits pursuant to this section only for qualifying employment and compensation that occurred after the member's most recent return of contributions pursuant to section 38-740.

C. Subsection B of this section applies to eligible verified service that occurred less than or equal to fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made.

D. Eligible verified service that is more than fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made is considered public service credit. The member may purchase this service pursuant to section 38-743.

38-742. Reinstatement

A. If an active member who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, is subsequently reemployed by an employer, the member's service shall be credited only from the date the member's most recent reemployment period commenced.

B. Notwithstanding subsection A of this section, the member may redeposit the amount of the contributions the ASRS paid at the time of the member's separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On satisfaction of this obligation, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

C. A member who is receiving benefits pursuant to section 38-797.07 and who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, may redeposit the amount of the contributions the ASRS paid at the time of the member's previous separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On redeposit of the contributions and interest, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

38-743. Public service credit

A. If an active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 was previously employed by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States, excluding any time worked for a prison while the member was incarcerated, the member may receive credited service for this prior employment if the member pays into ASRS the amount prescribed in subsection B of this section. For a member whose membership date is on or after July 20, 2011, the member may receive not more than sixty months of credited service.

B. A member who elects to receive credit for service with the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States shall pay to ASRS an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

38-744. Leave of absence; credit for leave without pay

A. A member may elect to be credited with service for retirement purposes for an officially granted leave of absence from employment without pay if all of the following apply:

1. At the time the absence was granted the member was an active member of ASRS or a member who was receiving benefits pursuant to section 38-797.07.

2. At the time the credit is requested the member is an active member of ASRS, receiving benefits pursuant to section 38-797.07 or a former active member of ASRS who has not withdrawn contributions from ASRS pursuant to section 38-740 and who was unable to resume employment because a position is not available.

3. The member returns to employment with the same employer, unless employment could not be resumed because of disability or a position was not available.

4. The member elects not more than one year of the leave and, for a member whose membership date is on or after July 20, 2011, not more than sixty months of credited service pursuant to this section.

5. The member pays the amount provided in subsection B of this section.

6. The member's employer has certified that the leave of absence benefits or is in the best interests of the employer.

B. A member who elects to be credited with a leave period as provided in subsection A of this section shall pay to ASRS an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive a retirement benefit from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

E. For the purposes of subsection A of this section, each employer shall adopt rules establishing guidelines for a leave of absence that benefits or is in the best interests of the employer.

38-745. Credit for military service

A. An active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 may purchase credited service in ASRS for active military service if all of the following apply:

1. The member was honorably separated from the military service.
2. The member submits a copy of the member's military service record (DD-214) or its equivalent with the member's application for military service credit.
3. If a member's membership date is on or after July 1, 2010, the member must have at least five years of credited service in ASRS.
4. Except as provided by 10 United States Code section 12736, the member is not yet eligible for a military retirement benefit.

B. For a member whose membership date is on or after July 20, 2011, the member may purchase not more than sixty months of credited service pursuant to subsection A of this section.

C. The cost to purchase military service credit is an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

D. An active member of ASRS who is called to active military service may receive credited service for not more than sixty months of active military service, except as provided by the uniformed services employment and reemployment rights act (38 United States Code section 4312(c)). The member's employer shall make employer contributions and member contributions for the member if the member meets the following requirements:

1. Was an active member of ASRS on the day before the member began active military service.
2. Is a member of the Arizona national guard or is a member of the reserves of any military establishment of the United States.

3. Volunteers or is ordered into active military service of the United States as part of a military call-up.

4. One of the following occurs:

(a) Is honorably separated from active military service and returns to employment for the same employer from which the member left for active military service within ninety days after the date active military service is terminated.

(b) Is hospitalized as a result of military service and returns to employment for the same employer from which the member left for active military service within ninety days after release from service related hospitalization.

(c) Develops a disability as a result of or during the military service and is unable to return to the same employer.

(d) Dies as a result of or during the military service.

E. Contributions made pursuant to subsection D of this section shall be for the period of time beginning on the date the member began active military service and ending on the later of one of the following dates:

1. The date the member returns to employment or the date the member should have returned to employment pursuant to 20 Code of Federal Regulations section 1002.115, whichever date is earlier.

2. The date the member is released from service related hospitalization or two years after initiation of service related hospitalization, whichever date is earlier.

3. One year after the date of disability.

4. The date the member dies as a result of or during active military service.

F. Notwithstanding any other law, on payment of the contributions made pursuant to subsection D of this section, the member shall be credited with service for retirement purposes for the period of time of active military service of not more than sixty months.

G. The employer shall make contributions pursuant to subsection D of this section as follows:

1. Contributions shall be based on the compensation that a member would have received but for the period that the member was ordered into active military service.

2. If the employer cannot reasonably determine a member's rate of compensation for the period that the member was ordered into active military service, the employer shall make contributions based on the member's average rate of compensation during the twelve-month period immediately preceding the period of active military service.

3. If a member has been employed less than twelve months before being ordered into active military service, the employer shall make contributions based on the employment period immediately preceding the period of active military service.

4. Employer contributions shall be made in a lump sum and without penalty when the member returns to employment, when it is determined that the member is unable to return to employment because of a disability as a result of or that occurred during military service or on receipt of the member's death certificate. If a member suffers a service related death, the employer shall make the employer and member contributions up to and including the date of the member's death. Death benefits shall be calculated as prescribed by law.

H. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.

I. Notwithstanding any other law, the member is not required to reimburse the member's employer or ASRS for any contribution made pursuant to subsection D of this section.

J. In addition to, but not in duplication of, the provisions of subsection D of this section, contributions, benefits and credited service provided pursuant to this section shall be provided in accordance with section 414(u) of the internal revenue code.

K. A member who does not currently perform services for an employer by reason of qualified military service, as that term is defined in section 414(u) of the internal revenue code, and who is receiving differential wage payments, as that term is defined in section 3401(h)(2) of the internal revenue code, shall not be considered as having a severance from employment for all purposes under ASRS during the period the differential wages are being paid by the employer to the employee.

[38-921. Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state; definitions](#)

A. An active or inactive member of a state retirement system or plan, including the retirement system provided for in article 2 of this chapter, the elected officials' retirement plan provided for in article 3 of this chapter, the public safety personnel retirement system provided for in article 4 of this chapter or the corrections officer retirement plan provided for in article 6 of this chapter, may transfer service credits from one system or plan to the member's current or former system or plan pursuant to section 38-922 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.
2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.
3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

B. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the state retirement system or plan and who is currently making member contributions to or receiving credited service from the state retirement system or plan.

2. "Inactive member" means a member of the state retirement system or plan who previously made contributions to the state retirement system or plan and who satisfies each of the following:

- (a) Has not retired.
- (b) Is not eligible for active membership in the state retirement system or plan.
- (c) Is not currently making contributions to the state retirement system or plan.
- (d) Has not withdrawn contributions from the state retirement system or plan.

38-922. Transfer or redemption of service credits

A. Service credits qualified in accordance with section 38-730 or 38-921 may be transferred or redeemed in accordance with this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:

1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer. If a system's or plan's market value is greater than one hundred per cent, the system or plan shall use a one hundred per cent market value.

2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.

C. In the event a member decides to transfer:

1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:

(a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.

(b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.

2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.

D. In the case of an applicant who has withdrawn the applicant's member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which the applicant is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.

E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

F. A member electing to transfer to or redeem service with the public safety personnel retirement system, the elected officials' retirement plan or the corrections officer retirement plan pursuant to this section may pay for the service being transferred or redeemed in the form of a lump sum payment to the system or plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

MEDICAL BOARD (R-19-0102)

Title 4, Chapter 16, Article 1, General Provisions; Article 4, Medical Assistants

Amend: R4-16-101; R4-16-102; R4-16-103; R4-16-401; R4-16-402

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

DATE: December 21, 2018

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

FROM: Council Staff

MEETING: January 8, 2018

SUBJECT: MEDICAL BOARD (R-19-0102)
Title 4, Chapter 16, Article 1, General Provisions; Article 4, Medical Assistants

Amend: R4-16-101; R4-16-102; R4-16-103; R4-16-401; R4-16-402

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Medical Board (Board), seeks to amend five rules in A.A.C. Title 4, Chapter 16, Articles 1 and 4. The Board received an exception from the rulemaking moratorium on March 1, 2018. The Board is proposing the following changes:

- Section 101 - *Definitions*: The definition of “approved medical assistant training program” is narrowed to include only the Commission on Accreditation of Allied Health Education Programs and the Accrediting Bureau of Health Education Schools. The definition of “auscultation” is deleted.
- Section 102 - *Continuing Medical Education*: Consistent with 2018 statutory changes, subsection (A) is rewritten to require a physician who is authorized to prescribe schedule II controlled substances, and who holds a valid U.S. Drug Enforcement Administration registration number, to complete at least three hours of opioid-related, substance-use-disorder-related, or addiction-related continuing medical education during each renewal cycle.
- Section 103 - *Rehearing or Review of Board Decision*: The rule is largely rewritten to improve clarity.
- Section 401 - *Medical Assistant Training Requirements*: Subsection (A) is amended for consistency with current industry standards.
- Section 402 - *Authorized Procedures for Medical Assistants*: Materials incorporated by reference in subsection (A) are being updated from a 2003 edition to a 2015 edition.

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

Yes. The Board cites to both general and specific authority for the rules.

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

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

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

The Board believes that the rulemaking has minimal economic impact because it simply amends the definition of approved medical assistant training program, updates the entities providing medical assistant examinations, updates material incorporated by reference, and makes the rule regarding CME (continuing medical education) consistent with recent statutory change. The primary stakeholders are the Board, medical assistants, the physicians or physician assistants who employ and supervise medical assistants, and the medical practices in which the physicians or physician assistants work.

There are currently 17,510 medical assistants employed in Arizona. It is estimated by the Bureau of Labor Statistics that 42 percent of medical offices employ a medical assistant.

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

The Board believes that there are no less intrusive or less costly alternatives to the rulemaking.

5. What are the economic impacts on stakeholders?

No physician, physician assistant, nor medical practice in which they work is required to employ a medical assistant. The costs of doing so are incurred voluntarily because the physician, physician assistant, or medical practice has determined the benefits outweigh the costs. No methods may be used to reduce the economic impact on those who choose to employ a medical assistant. The Board incurred the cost of completing the rulemaking and will incur the cost of implementing and enforcing the rules. The Board will benefit from having rules that are current and consistent with industry standards.

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

Yes. The Board received ten written comments and one verbal comment made at the August 14, 2018 oral proceeding. A summary of the comments and the Board's responses is provided on pages 3-6 of the Notice of Final Rulemaking. Council staff believes the Board has adequately addressed the comments.

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

No. No substantive changes were made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. The Board indicates that no federal laws are directly applicable 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?

No. While the rules may relate to the Board's licensees, none of the rules require issuance of a permit or license.

10. 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?

No. The Board indicates that it did not rely on any study for the rulemaking.

11. Conclusion

The Board accepts the usual 60-day delayed effective date for the rules. Council staff recommends approval of the rulemaking.



Arizona Medical Board

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October 29, 2018

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

**Re: A.A.C. Title 4. Professions and Occupations
Chapter 16. Arizona Medical Board**

Dear Ms. Wilhelm:

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

- A. Close of record date: The rulemaking record was closed on October 22, 2018, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking relates to a five-year-review report approved by the Council on December 5, 2017.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
 1. Cover letter signed by the Executive Director;
 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
 3. Economic, Small Business, and Consumer Impact Statement;
 4. Public comments

Sincerely,

Patricia McSorley
Executive Director

Address: Arizona Medical Board
1740 W Adams Street, Suite 4000
Phoenix, AZ 85007

Telephone: (480) 551-2700

Fax: (480) 551-2704

E-mail: patricia.mcsorley@azmd.gov

Web site: 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:

In a five-year-review report approved by the Council on December 5, 2017, the Board indicated it would amend the rules in this rulemaking. The rules regarding medical assistants are amended to update them with current industry standards. Minor, non-substantive, changes are made to the language of R4-16-101 through R4-16-103. An exemption from Executive Order 2018-02 was provided for this rulemaking by Emily Rajakovich, Director of Boards and Commissions, in an e-mail dated March 1, 2018.

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

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

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

Not applicable

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

The Board expects the rulemaking to have minimal economic impact. The rulemaking simply amends the definition of approved medical assistant training program, updates the entities providing medical assistant examinations, updates material incorporated by reference, and makes the rule regarding CME consistent with recent statutory change.

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

Between the proposed and final rulemaking, the Board made the changes described in item 11.

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

The Board received written comments from Michael McCarty, legal counsel to American Medical Technologists; Dr. Michael Dunn; Dr. Patrick Hitchcock; Dr. Steven Perlmutter; Dr. A. Joseph Dawood; Monica Rodriguez; Lili Jordan; Dr. Ruth Letizia; Ian Rothwell; and Donald Balasa of the American Association of Medical Assistants (AAMA). Mr. Balasa also spoke at the oral proceeding held on August 14, 2018. His comments were supported by Mary Dockall, president of the Arizona Society of the AAMA.

COMMENT	ANALYSIS	RESPONSE
<p>R4-16-102(A)(1): Do not approve the rule. This change further codifies the new ridiculous extra CME punishment of Arizona physicians for simply having a DEA registration whether utilized daily or not utilized at all.</p>	<p>Under Laws 2018, Chapter 1, the legislature added A.R.S. § 32-3248.02, which requires a health professional authorized to prescribe or dispense schedule II controlled substances to complete three hours of opioid-related, substance use disorder-related, or addiction-related continuing medical education during each license renewal cycle.</p>	<p>No change</p>
<p>The rule change is too cumbersome—represents a hardship. Make the proposed change every two or three years instead.</p>	<p>The statutory requirement is to obtain three hours of the specified CME during each renewal cycle. A renewal cycle is two years.</p>	<p>No change</p>
<p>R4-16-103(A)(4): There is a typographical error. The word “purposed” should be “purposes.”</p>	<p>The comment is correct.</p>	<p>The correction was made.</p>

<p>R4-16-103(H): No decision of the Board should absolutely preclude a physician from filing a motion for rehearing or review.</p>	<p>This provision applies only if the Board makes a finding that a final decision is necessary to preserve public health, safety, or welfare. When the Board issues a final decision without opportunity for a review or rehearing, the party affected still has an opportunity to appeal to court under A.R.S. Title 12, Chapter 7, Article 6.</p>	<p>No change</p>
<p>R4-16-401(A)(2): Insert "...a certifying organization accredited by..." because the named entities do not administer medical assistant certification examinations. Rather, they accredit certification programs, which require passing the examination.</p>	<p>The comment is correct.</p>	<p>The suggested language was added to R4-16-401(A)(2).</p>
<p>You might want to add a requirement for a full international criminal background check for all new foreign licensing applicants and a comprehensive test of the ability to write and speak English. Many of my patients note they cannot understand the doctor.</p>	<p>This rulemaking is about medical assistants, who make no application and are not licensed by the Board. The rulemaking is not about physicians.</p>	<p>No change</p>
<p>R4-16-402(A): Because the incorporated material is updated frequently, eliminate the</p>	<p>A.R.S. § 41-1028(B) of the Arizona Administrative Procedure Act requires agency</p>	<p>No change</p>

<p>provision that the incorporated material “does not include later amendments or editions.”</p>	<p>rules to fully identify incorporated matter by date and “...shall state that the rule does not include any later amendments or editions of the incorporated matter.”</p>	
<p>R4-16-402(B): Add a provision that medical assistants may obtain intravenous access and administer intravenous fluids after successful completion of 10 hours of training and 10 documents supervised procedures.</p>	<p>The Board determined the reference procedures, which are not among those identified in the materials incorporated by reference in R4-16-402, are not appropriate for medical assistants to perform.</p>	<p>No change</p>
<p>Because of the little training time required to become a medical assistant, I am uneasy having them provide treatments involving traction, ultrasound, or electronic galvanation stimulations.</p>	<p>Because a medical assistant may perform a procedure does not mean the supervisor is required to allow the medical assistant to perform the procedure. Indeed, the supervisor has an obligation to ensure a medical assistant is able to correctly and safely perform any procedure delegated.</p>	<p>No change</p>
<p>An addendum listing the activities that may be performed by medical assistants rather than referring to the source would be helpful.</p>	<p>The reason materials are incorporated by reference is to simplify a rule. Appendix B, as incorporated, can be downloaded and printed for use in your office.</p>	<p>No change</p>

Can a medical assistant remove/replace a urinary catheter and do IM injections?	No. These procedures are not among those identified in the materials incorporated by reference in R4-16-402.	No change
Are medical assistants permitted to do sterile urinary catheterization of the bladder?	No. This procedure is not among those identified in the materials incorporated by reference in R4-16-402.	No change

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

None

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

None of the rules requires a permit.

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:

None of the rules is more stringent than federal law. There are numerous federal laws relating to the provision of health care but none is directly applicable to 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:

R4-16-402: Appendix B, Core Curriculum for Medical Assistants, 2015 edition of Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting, published by the Commission on Accreditation of Allied Health Education Programs

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:

None of the rules was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

ARTICLE 1. GENERAL PROVISIONS

Section

- R4-16-101. Definitions
- R4-16-102. Continuing Medical Education
- R4-16-103. Rehearing or Review of Board Decision

ARTICLE 4. MEDICAL ASSISTANTS

- R4-16-401. Medical Assistant Training Requirements
- R4-16-402. Authorized Procedures for Medical Assistants

ARTICLE 1. GENERAL PROVISIONS

R4-16-101. Definitions

Unless the context otherwise requires, definitions prescribed under A.R.S. § 32-1401 and the following apply to this Chapter:

1. “ACLS” means advanced cardiac life support performed according to certification standards of the American Heart Association.
2. “Agent” means an item or element that causes an effect.
3. “Approved medical assistant training program” means a program accredited by ~~any~~ one of the following:
 - a. The Commission on Accreditation of Allied Health Education Programs; or
 - b. The Accrediting Bureau of Health Education Schools; ~~;~~
 - c. ~~A medical assisting program accredited by any accrediting agency recognized by the United States Department of Education; or~~
 - d. ~~A training program:~~
 - i. ~~Designed and offered by a licensed allopathic physician;~~
 - ii. ~~That meets or exceeds any of the prescribed accrediting programs in subsection (a), (b), or (c); and~~
 - iii. ~~That verifies the entry-level competencies of a medical assistant prescribed under R4-16-402(A).~~
4. ~~“Auscultation” means the act of listening to sounds within the human body either directly or through use of a stethoscope or other means.~~
5. ~~4.~~ “BLS” means basic life support performed according to certification standards of the American Heart Association.
6. ~~5.~~ “Capnography” means monitoring the concentration of exhaled carbon dioxide of a sedated patient to determine the adequacy of the patient’s ventilatory function.
7. ~~6.~~ “Deep sedation” means a drug-induced depression of consciousness during which a patient:
 - a. Cannot be easily aroused, but
 - b. Responds purposefully following repeated or painful stimulation, and
 - c. May partially lose the ability to maintain ventilatory function.
8. ~~7.~~ “Discharge” means a written or electronic documented termination of office-based surgery to a patient.
9. ~~8.~~ “Drug” means the same as in A.R.S. § 32-1901.
10. ~~9.~~ “Emergency” means an immediate threat to the life or health of a patient.

- ~~11~~10. “Emergency drug” means a drug that is administered to a patient in an emergency.
- ~~12~~11. “General Anesthesia” means a drug-induced loss of consciousness during which a patient:
- Is unarousable even with painful stimulus; and
 - May partially or completely lose the ability to maintain ventilatory, neuromuscular, or cardiovascular function or airway.
- ~~13~~12. “Health care professional” means a registered nurse defined in A.R.S. § 32-1601, registered nurse practitioner defined in A.R.S. § 32-1601, physician assistant defined in A.R.S. § 32-2501, and any individual authorized to perform surgery according to A.R.S. Title 32 who participates in office-based surgery using sedation at a physician’s office.
- ~~14~~13. “Informed consent” means advising a patient of the:
- Purpose for and alternatives to the office-based surgery using sedation,
 - Associated risks of office-based surgery using sedation, and
 - Possible benefits and complications from the office-based surgery using sedation.
- ~~15~~14. “Inpatient” has the same meaning as in A.A.C. R9-10-201.
- ~~16~~15. “Malignant hyperthermia” means a life-threatening condition in an individual who has a genetic sensitivity to inhalant anesthetics and depolarizing neuromuscular blocking drugs that occurs during or after the administration of an inhalant anesthetic or depolarizing neuromuscular blocking drug.
- ~~17~~16. “Minimal Sedation” means a drug-induced state during which:
- A patient responds to verbal commands,
 - Cognitive function and coordination may be impaired, and
 - A patient’s ventilatory and cardiovascular functions are unaffected.
- ~~18~~17. “Moderate Sedation” means a drug-induced depression of consciousness during which:
- A patient responds to verbal commands or light tactile stimulation, and
 - No interventions are required to maintain ventilatory or cardiovascular function.
- ~~19~~18. “Monitor” means to assess the condition of a patient.
- ~~20~~19. “*Office-based surgery*” means a medical procedure conducted in a physician’s office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center. (A.R.S. § 32-1401(20)).
- ~~21~~20. “PALS” means pediatric life support performed according to certification standards of the American Academy of Pediatrics or the American Heart Association.
- ~~22~~21. “Patient” means an individual receiving office-based surgery using sedation.
- ~~23~~22. “Physician” has the same meaning as doctor of medicine as defined in A.R.S. § 32-1401.

~~24:~~23. “Rescue” means to correct adverse physiologic consequences of deeper than intended level of sedation and return the patient to the intended level of sedation.

~~25:~~24. “Sedation” means minimum sedation, moderate sedation, or deep sedation.

~~26:~~25. “Staff member” means an individual who:

- a. Is not a health care professional, and
- b. Assists with office-based surgery using sedation under the supervision of the physician performing the office-based surgery using sedation.

~~27:~~26. “Transfer” means a physical relocation of a patient from a physician’s office to a licensed health care institution.

R4-16-102. Continuing Medical Education

A. No change

1. ~~The physician shall ensure at least one of the credit hours of continuing medical education is certified as Category 1, as described in subsection (B)(4), and addresses the effective and safe prescribing of opioids~~ A physician who is authorized to prescribe schedule II controlled substances and holds a valid U.S. Drug Enforcement Administration registration number shall complete at least three hours of opioid-related, substance-use-disorder-related, or addiction-related continuing medical education during each renewal cycle;
2. No change
3. No change

B. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
 - a. No change
 - b. No change
8. No change
 - a. No change
 - b. No change

- c. No change
 - d. No change
- C. If a physician holding an active license to practice medicine in this state fails to meet the continuing medical education requirements under subsection (A) because of illness, military service, medical or religious missionary activity, or residence in a foreign country, upon written application, the Board shall grant an extension of time to complete the continuing medical education.
- D. No change

R4-16-103. Rehearing or Review of Board Decision

- A. ~~A motion for rehearing or review shall be filed as follows:~~ In a contested case or appealable agency action, a party aggrieved by an order of the Board may file a written motion for rehearing or review with the Board under A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.
- ~~1. Except as provided in subsection (B), any party in a contested case may file a written motion for rehearing or review of the Board's decision, specifying generally the grounds upon which the motion is based.~~
 - ~~2.1.~~ A motion for rehearing or review shall be filed with the Board and served no later ~~that~~ than 30 days after the decision of the Board.
 - ~~3.2.~~ For purposes of this Section, "service" has the same meaning as in A.R.S. § 41-1092.09.
 - ~~4.3.~~ For purposes of this Section, a document is deemed filed when the Board receives the document.
 - ~~5.4.~~ For ~~purposed purposes~~ purposes of the this Section, the terms "contested case" and "party" shall have has the same meaning as in A.R.S. § 41-1001.
- B. ~~If the Board makes a specific finding that it is necessary for a particular decision to take immediate effect to protect the public health and safety, or that a rehearing or review of the Board's decision is impracticable or contrary to the public interest, the decision shall be issued as a final decision without opportunity for rehearing or review and shall be a final administrative decision for purposes of judicial review. Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies.~~
- C. ~~A written response to a motion for rehearing or review may be filed and served within 15 days after service of the motion for rehearing or review. The Board may require the filing of written briefs upon any issues raised in the motion and may provide for oral argument. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.~~

D. ~~A~~ The Board may grant a rehearing or review ~~of a decision may be granted~~ for any of the following reasons materially affecting a party's rights:

1. Irregularity in the ~~administrative proceedings by the Board, its hearing officer, or the prevailing party, or any ruling or an order or~~ abuse of discretion, that deprives the moving party of a fair hearing;
2. Misconduct of the Board, ~~its hearing officer~~ its staff, administrative law judge, or the prevailing party;
3. Accident or surprise that could have not been prevented by ordinary prudence;
4. ~~Material evidence, newly~~ Newly discovered, ~~which material evidence that could not,~~ with reasonable diligence, ~~could not~~ have been discovered and produced at the ~~original~~ hearing;
5. Excessive ~~or insufficient penalties~~ penalty;
6. Error in the admission or rejection of evidence; or other errors of law ~~that occurred~~ occurring at the hearing or during the progress of the proceedings;
7. The decision is the result of a passion or prejudice; or
8. The ~~decision of~~ findings of fact or decision is not justified by the evidence or is contrary to law.

E. ~~A rehearing or review may be granted~~ The Board may grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons in subsection (D). The Board may take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and affirm, modify, or reverse the original decision. The Board shall specify the particular grounds for any order modifying a decision or granting a rehearing. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

F. ~~A rehearing or review, if granted, shall be a rehearing or review only of the question upon which the decision is found erroneous. An order granting a rehearing or review shall specify with particularity the grounds for the order.~~

G. Not later than 15 days after a decision is issued, the Board ~~of~~ on its own initiative may order a rehearing or review for any reason that it might have granted a rehearing or review on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a timely-served motion for a rehearing or review; for a reason not stated in the motion. In either case, the Board shall specify in the order the grounds for the rehearing or review.

H.G. If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. ~~The~~ An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days either ~~by the Board~~ for good cause; or upon written stipulation by the parties ~~by written stipulation~~. The Board may permit reply affidavits.

- H. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for the preservation of the public health, safety, or welfare, the decision may be issued as a final decision without an opportunity for rehearing or review.
- I. A party that has exhausted the party's administrative remedies may appeal a final order of the Board under A.R.S. Title 12, Chapter 7, Article 6.
- J. A person that 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.

ARTICLE 4. MEDICAL ASSISTANTS

R4-16-401. Medical Assistant Training Requirements

- A.** ~~After the effective date of this Section, a supervising physician or physician assistant shall ensure that before a medical assistant satisfies one of the following training requirements before employing is employed, the medical assistant completes either:~~
 - 1. Completion of an approved medical assistant An approved training program identified in R4-16-101; or
 - 2. Completion of an An unapproved medical assistant training program and passage of successfully passes the medical assistant examination administered by a certifying organization accredited by either the American Association of Medical Assistants or the American Medical Technologists National Commission for Certifying Agencies or the American National Standards Institute.
- B.** This Section does not apply to any person who:
 - 1. Before February 2, 2000:
 - a. Completed an unapproved medical assistant training program and was employed as a medical assistant after program completion; or
 - b. Was directly supervised by the same physician, physician group, or physician assistant for a minimum of 2000 hours; or
 - 2. Completes a United States Armed Forces medical services training program.

R4-16-402. Authorized Procedures for Medical Assistants

- A. A medical assistant may perform, under the direct supervision of a physician or a physician assistant, the medical procedures listed in ~~the 2003 revised~~ Appendix B, Core Curriculum for Medical Assistants, 2015 edition of Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting, published by the Commission on Accreditation of Allied Health Education Program's, Programs ~~“Standards and Guidelines for an Accredited Educational Program for the Medical Assistant, Section (H)(C)(3)(a) through (H)(C)(3)(e).”~~² This material is incorporated by reference, does not include ~~any~~ later amendments or editions ~~of the incorporated matter~~, and may be obtained from the publisher at ~~35 East Wacker Drive, Suite 1970, Chicago, Illinois 60601~~ 25400 U.S. Highway 19 N, Suite 158, Clearwater, FL 33763, www.caahep.org, or the Arizona Medical Board at 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258, www.azmd.gov.
- B. In addition to the medical procedures in subsection (A), a medical assistant may administer the following under the direct supervision of a physician or physician assistant:
1. Whirlpool treatments,
 2. Diathermy treatments,
 3. Electronic galvation stimulation treatments,
 4. Ultrasound therapy,
 5. Massage therapy,
 6. Traction treatments,
 7. Transcutaneous Nerve Stimulation unit treatments,
 8. Hot and cold pack treatments, and
 9. Small volume nebulizer treatments.



Kristina Fredericksen <kristina.fredericksen@azmd.gov>

Re: AMT Comments on proposed Medical Assistant rule revisions

1 message

Patricia Mcsorley <patricia.mcsorley@azmd.gov>
To: Michael McCarty <michael@mccarty-legal.com>
Cc: Kristina Fredericksen <Kristina.Fredericksen@azmd.gov>

Fri, Jul 20, 2018 at 3:22 PM

Dear Michael McCarty,

Thank you for your review and response to the proposed rule revisions you submitted on behalf of the AMT. The Agency will review your comments and make the appropriate adjustments.

Regards,
Pat

On Thu, Jul 19, 2018 at 12:47 PM, Michael McCarty <michael@mccarty-legal.com> wrote:

July 19, 2018

TO: Patricia McSorley, Executive Director
Arizona Medical Board
1740 W. Adams St., Suite 4000
Phoenix, AZ 85007

Dear Ms. McSorley:

On behalf of American Medical Technologists (AMT) and the Arizona State Society of AMT (collectively referred to as "AMT"), I offer the following brief comments on the Arizona Medical Board's proposed rulemaking published in the July 6, 2018 issue of the *Arizona Administrative Register*, at pp. 1851-1855.

AMT is a national, nonprofit certifying organization and professional society for medical assistants, clinical laboratory personnel, and related allied health occupations. AMT currently has over 80,500 active member-certificants nationally, more than 60,600 of whom are certified as Registered Medical Assistants (RMAs). AMT maintains an active state society in Arizona, with over 2,300 active members including over 1,450 RMAs. The RMA(AMT) certification is one of two medical assistant credentials that have been recognized since the inception of the Board's Medical Assistant Rules, at section R4-16-401.A.2.

AMT's comments are limited to two provisions of the proposed rulemaking. First, in the Board's proposed revision to section R4-16-401.A.2, some important words were inadvertently omitted from the proposed text. We suggest inserting the highlighted, boldfaced text underlined in red below in addition to the amendments proposed by the Board:

R4-16-401. Medical Assistant Training Requirements

A. ~~After the effective date of this Section, a~~ supervising physician or physician assistant shall ensure that ~~before a~~ medical assistant ~~satisfies one of the following training requirements before employing-is employed, the~~ medical assistant completes either:

- 1. ~~Completion of an approved medical assistant-An approved~~ training program identified in R4-16-101; or**

2. ~~Completion of an An~~ unapproved medical assistant training program and ~~passage of successfully passes~~ the medical assistant examination administered by **a certifying organization accredited by either the American Association of Medical Assistants or the American Medical Technologists National Commission for Certifying Agencies or the American National Standards Institute.**

The addition of the text "...a certifying organization accredited by ..." is necessary because neither of the named entities (the National Commission for Certifying Agencies or the American National Standards Institute) administers medical assistant certification exams. Rather, those entities independently accredit certification programs offered by organizations such as AMT. AMT's certification program for Registered Medical Assistants, which requires passage of a certification exam among other qualifications, has been accredited by the National Commission for Certifying Agencies for more than three decades.

Second, AMT appreciates that the Board has proposed to revise section R4-16-402.A to update the reference to the medical assisting procedures listed in the CAAHEP Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting. As correctly incorporated in the proposed rulemaking, the current version of the procedures is embodied in "Appendix B, Core Curriculum for Medical Assistants, 2015 edition of Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting, published by the Commission on Accreditation of Allied Health Education Programs [CAAHEP]." However, because the Core Curriculum is frequently updated in response to task analyses performed by CAAHEP's Medical Assisting Education Review Board (MAERB) so as to reflect current trends in medical assisting practice, AMT suggests that the Board eliminate the provision that the material incorporated by reference "does not include later amendments or editions" of the CAAHEP Core Curriculum. Removal of this unnecessary limitation will ensure that medical assistants can engage in the full scope of the currently accepted practice of medical assisting without the Board's having to amend its rules every time the Core Curriculum is updated. AMT therefore suggests the following additional amendments to the Board's proposal with respect to section R4-16-402.A:

R4-16-402. Authorized Procedures for Medical Assistants

A. A medical assistant may perform, under the direct supervision of a physician or a physician assistant, the medical procedures listed in the 2003 revised Appendix B, Core Curriculum for Medical Assistants, 2015 edition of Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting, published by the Commission on Accreditation of Allied Health Education Pre-gram's, Programs, or in subsequent superseding editions of said Standards and Guidelines. "Standards and Guidelines for an Accredited Educational Program for the Medical Assistant, Section (III)(C)(3)(a) through (III)(C)(3)(e). "This material is incorporated by reference, **does not include any later amendments or editions of the incorporated matter**, and may be obtained from the publisher at 35 East Wacker Drive, Suite 1970, Chicago, Illinois 60601-25400 U. S. Highway 19 N, Suite 158, Clearwater, FL 33763, www.caahep.org, or the Arizona Medical Board at 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258, www.azmd.gov.

AMT appreciates the opportunity to comment on the Medical Board's proposed revisions to its Medical Assistant rules. Please contact the undersigned counsel or AMT's Executive Director, Christopher Damon, JD (cdamon@americanmedtech.org), with any questions about these comments.

Sincerely,

Michael McCarty

Legal counsel to American Medical Technologists

Michael McCarty

Michael N. McCarty Law Office, PLLC

8/16/2018

State of Arizona Mail - Re: AMT Comments on proposed Medical Assistant rule revisions

1050 30th Street, NW | Washington, DC 20007
Office: 202.243.7842 | Mobile: 703.727.3776

michael@mccarty-legal.com
www.mccarty-legal.com

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Patricia McSorley

Executive Director

Arizona Medical Board

Arizona Regulatory Board of

Physician Assistants



Kristina Fredericksen <kristina.fredericksen@azmd.gov>

Comment from the Arizona Medical Board website

1 message

Michael Dunn, MD <communications@azmd.gov>

Mon, Jul 23, 2018 at 4:14 PM

To: communications@azmd.gov

Comment Message

From: Michael Dunn, MD

Email: m.dunn@maamexams.com

Message: Please add a provision for starting peripheral IV access and IV fluids (already stated under the direction of the provider) with 10 hours of additional training:

R4-16-402

10. Obtaining intravenous access and the administration of intravenous fluids with the successful completion of 10 hours of subject specific training and 10 documented supervised procedures.



Kristina Fredericksen <kristina.fredericksen@azmd.gov>

Comment from the Arizona Medical Board website

1 message

Patrick Hitchcock, MD <communications@azmd.gov>

Mon, Jul 23, 2018 at 4:29 PM

To: communications@azmd.gov

Comment Message

From: Patrick Hitchcock, MD

Email: f15edoc@hotmail.com

Message: Do not approve the rule.

Thought the Governor said Arizona State Regulations to be reduced in number, not increased.
If this approved, where are the 2 rules that will be rescinded???

This change also further codifies the new ridiculous extra CME punishment of Arizona physicians, for simply having a DEA registration- whether utilized daily ,or not utilized at all.



Kristina Fredericksen <kristina.fredericksen@azmd.gov>

Comment from the Arizona Medical Board website

1 message

Steven B. Perlmutter, M.D. <communications@azmd.gov>

Mon, Jul 23, 2018 at 5:42 PM

To: communications@azmd.gov

Comment Message

From: Steven B. Perlmutter, M.D.

Email: steveperl@cox.net

Message: R4-16-103(4): should read, "For purposes of this Section"

R4-16-103(H): In my opinion, no decision of the Board should absolutely preclude a physician from filing a motion for rehearing or review. Of course, the Board can always deny the motion, but I believe a physician should be entitled to make the motion and have it considered.



Kristina Fredericksen <kristina.fredericksen@azmd.gov>

Comment from the Arizona Medical Board website

1 message

A. Joseph Dawood MD <communications@azmd.gov>

Mon, Jul 23, 2018 at 9:17 PM

To: communications@azmd.gov

Comment Message

From: A. Joseph Dawood MD

Email: Jdawood@comcast.net

Message: R4-16-102

This rule change is too cumbersome, represents a hardship. I propose change to make it every 2-3 years instead.



Kristina Fredericksen <kristina.fredericksen@azmd.gov>

Comment from the Arizona Medical Board website

1 message

Monica Rodriguez <communications@azmd.gov>

Mon, Jul 23, 2018 at 9:46 PM

To: communications@azmd.gov

Comment Message

From: Monica Rodriguez

Email: mocarodriguez@hotmail.com

Message: I have my concerns on what specifics are the requirements for a medical assistant programs , when we are inundated on internet with announcements of getting medical assistant degree in as little of 9 months and on line , what kind of practice should have , some of them have not even seen a patient and I feel uneasy with having them even under a physician supervision of treatments involving " traction " , " ultrasound " and " electronic glavation stimulations " I believe there are ultrasound tech and physical therapist and other that are trained in those particular areas We , the medical community practicing are concern with granting so much with so little time of training , not only medical assitant but other (NP and PA)



Kristina Fredericksen <kristina.fredericksen@azmd.gov>

Comment from the Arizona Medical Board website

1 message

Lili Jordan <communications@azmd.gov>

Tue, Jul 24, 2018 at 11:41 AM

To: communications@azmd.gov

Comment Message

From: Lili Jordan

Email: liliacj@aol.com

Message: An addendum listing the activities which may be performed by medical assistants rather than referring to the source would be helpful. This always comes up in my practice. Also, can removal/replacement of urinary catheter be listed as acceptable activity, IM injections, both under supervision of physician. Thanks.



Kristina Fredericksen <kristina.fredericksen@azmd.gov>

Comment from the Arizona Medical Board website

1 message

Ruth Letizia, MD <communications@azmd.gov>

Tue, Jul 24, 2018 at 12:32 PM

To: communications@azmd.gov

Comment Message

From: Ruth Letizia, MD

Email: rletizia@sspmesa.com

Message: Regarding Article 4, I think that the scope of medical assistants should specifically spell out if sterile urinary catheterization of the bladder is permitted. I am reluctant to allow my MA's to cath infants and toddlers without more guidance from the board due to concerns about liability.

Sincerely,

Ruth E. Letizia, MD



Kristina Fredericksen <kristina.fredericksen@azmd.gov>

Comment from the Arizona Medical Board website

1 message

Ian Rothwell <communications@azmd.gov>

Tue, Jul 31, 2018 at 8:28 PM

To: communications@azmd.gov

Comment Message

From: Ian Rothwell

Email: drianrothwell@hotmail.com

Message: The Medical Board of Australia has 2 stipulations that stand out that may want to be considered here

- 1] A full international criminal background check on all new foreign licensing applicants.
- 2] a comprehensive test on the ability to write English and especially important is demonstrating the skill to speak English and be clearly understood. Many of my patients note they cannot understand the doctor . Communication is critical and if this breaks down, can lead to bad outcomes.

NOTICE OF PROPOSED RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 16. ARIZONA MEDICAL BOARD

ARTICLE 1 – GENERAL PROVISIONS

ARTICLE 4 – MEDICAL ASSISTANTS

PUBLIC COMMENT FORM – August 14, 2018

Letter July 17, 2018 to
ED McSorley.

Signature: _____

Donald A. Balasa

Printed Name: _____

DONALD A. BALASA

- American Association
of medical
Assistant



AMERICAN ASSOCIATION
OF MEDICAL ASSISTANTS®
20 N. WACKER DR., STE. 1575
CHICAGO, ILLINOIS 60606

July 17, 2018

Patricia McSorley, Executive Director
Arizona Medical Board
1740 W. Adams St., Suite 4000
Phoenix, AZ 85007
patricia.mcsorley@azmdl.gov

Transmitted via email

Dear Ms. McSorley:

I am writing on behalf of the American Association of Medical Assistants (AAMA) and the Arizona State Society of Medical Assistants, an affiliate of the AAMA, in regard to the amendments to the medical assistant provisions in the July 6, 2018, Note of Proposed Rulemaking.

The National Commission for Certifying Agencies (NCCA) and the American National Standards Institute (ANSI) do not administer medical assistant examinations. Rather, the NCCA and ANSI accredit medical assistant examinations that meet their respective Standards. Therefore, the AAMA and the Arizona State Society of Medical Assistants suggest that the wording of Article 4, R4-16-401, be amended as follows:

...successfully passes the medical assistant examination administered by a certification program accredited by either the National Commission for Certifying Agencies of the American National Standards Institute.

Thank you for your consideration, Ms. McSorley. Feel free to email me at dbalasa@aama-ntl.org

Very truly yours,

Donald A. Balasa, JD, MBA
CEO and Legal Counsel
American Association of Medical Assistants.



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PDF TRANSCRIPT COVER PAGE

Transcription

Public Rules Stakeholder Meeting

08/14/2018



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3770 N. 7th Street, Suite 150
Phoenix, AZ 85014
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scheduling@ottmarassoc.com

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TRANSCRIPT OF RECORDED PROCEEDINGS
ARIZONA MEDICAL BOARD
PUBLIC RULES STAKEHOLDER MEETING

Phoenix, Arizona
August 14, 2018
12:00 p.m.

PREPARED FOR:
ARIZONA STATE MEDICAL BOARD

(COPY)

TRANSCRIBED BY:
Cindy Bachman
Arizona CCR No. 50763
AZ Registered Reporting Firm No. R1008

TRANSCRIPTION OF RECORDED PROCEEDINGS,
PUBLIC RULES STAKEHOLDER MEETING,

taken on August 14, 2018, commencing at 12:00 p.m., at
the ARIZONA STATE MEDICAL BOARD, 1740 West Adams
Street, Suite 4000, Phoenix, Arizona.

APPEARING:

Donald Balasa, American Associations of Medical
Assistants of Chicago

Mary Dockall, President of the Arizona Society of AAMA

Kristina Fredericksen, MPA Deputy Director, Arizona
Medical Board

1 (Commencement of recorded proceedings.)

2 * * * * *

3 MR. BALASA: And you are Patricia?

4 MS. FREDERICKSEN: I am Kristina.

5 MR. BALASA: Kristina.

6 MS. FREDERICKSEN: I'm the Deputy Director
7 for the AZ (indiscernible).

8 MR. BALASA: Okay. Okay.

9 SHAUN: Okay, guys. We are live and
10 recording.

11 MR. BALASA: All right.

12 MS. FREDERICKSEN: So anytime you'd like
13 to start.

14 MR. BALASA: Yes. Very good. Thank you.

15 Good afternoon. My name is Donald Balasa.

16 I am the CEO and executive director and legal counsel
17 of the American Association of Medical Assistants in
18 Chicago, representing the Arizona State Society of
19 Medical Assistants. We have two of our leaders present
20 as well and the American Association of Medical
21 Assistants. And I am speaking to the proposed rule
22 amendments in Title IV, Chapter 16.

23 First of all, Article 1, the general
24 provisions.

25 FEMALE SPEAKER: I'm going to follow

1 along.

2 MR. BALASA: Okay. Very good.

3 We are in agreement with eliminating
4 Section -- Subsections C and D and allowing -- or
5 defining an approved medical assistant training program
6 as the only program that is accredited by either the
7 Commission on Accreditation of Allied Health Education
8 Programs, CAAHEP as it's known, or the Accrediting
9 Bureau of Health Education Schools.

10 Those are the only agencies that are
11 recognized as programmatic accreditors of
12 post-secondary medical assistant programs by either the
13 United States Department of Education or the Council
14 for Higher Education Accreditation.

15 So we are in support of 3, keeping that
16 language and deleting -- under 3, deleting C and D,
17 which allowed for recognition of medical assistant
18 programs accredited by a school that is recognized or
19 is accredited by an agency recognized by the United
20 States Department of Education or a training program
21 which is essentially offered in-house by a physician.

22 The problem is that with the old
23 language -- and, again, we agree with the deletion --
24 is that a medical assistant program can be in a school
25 that is accredited but there's no oversight given to

1 the program in and of itself. So these two bodies,
2 CAAHEP and ABHES, are the only bodies that actually
3 look at the medical assistant programs specifically and
4 not the school as a whole. So we do agree with
5 eliminating the other categories.

6 Now, moving on to Article 4, if I may.

7 Are there any questions about that before
8 I move on?

9 MS. FREDERICKSEN: No. It's very clear.
10 Thank you.

11 MR. BALASA: Okay. All right. Very good.

12 Then moving on to Article 4, R4-16-401.

13 As I indicated in my letter of July 17 to
14 Patricia McSorley, the fact is that these two bodies,
15 the National Commission for Certifying Agencies, NCCA,
16 and the American National Standards Institute, do not
17 actually administer examinations themselves, but they
18 accredit bodies that do offer examinations.

19 And there are medical assisting
20 certification programs that are accredited by the NCCA
21 or under the International Standard 17024 under the
22 American National Standards Institute.

23 So the language that I proposed was to
24 amend that by stating "Successfully passes the medical
25 assistant examination administered by a certification

1 program accredited by either the National Commission
2 for Certifying Agencies or the American National
3 Standards Institute."

4 Again, that's necessary because these two
5 bodies, NCCA and ANSI, do not actually administer
6 examinations.

7 So with that in mind, we would -- well,
8 any questions about that and why that --

9 MS. FREDERICKSEN: No. And that makes
10 sense.

11 MR. BALASA: Okay. And the final point
12 that we'd like to raise this afternoon is that we are
13 of the opinion that the dimensions of the AAMA, the
14 American Association of Medical Assistants, should be
15 maintained because that is the examination, the only
16 examination, that is accredited by -- actually, it's
17 accredited by both of these bodies, the NCCA and under
18 the International Standard, which is administered by
19 the ANSI, that requires graduation from an accredited
20 medical assistant program.

21 Accredited -- again, to go back to 101
22 accredited. The requirement is that the programs, the
23 individuals, the graduates of a medical assistant
24 program, an approved program, that's accredited by
25 either CAAHEP or ABHES.

1 And because of that, we would argue that
2 the American Association of Medical Assistants should
3 not be stricken from this rule because of the
4 requirements that candidates be graduates of either
5 CAAHEP or ABHES accredited medical assistant program.

6 So those are our three main points.

7 I'll ask my colleagues if they have
8 anything to add to that.

9 Mrs. Mary Dockall, CMC, AAMA?

10 MS. DOCKALL: I'm president of the Arizona
11 Society of AAMA.

12 MS. FREDERICKSEN: Okay.

13 MS. DOCKALL: If it's removed, we put the
14 doctors at risk. We put the patients at risk.

15 MS. FREDERICKSEN: Can you explain that
16 for me?

17 MS. DOCKALL: The schools -- the programs
18 in the schools do not go into all the legal detail that
19 CAAHEP and ABHES require in our tech schools. They do
20 not -- their programs are not designed to protect the
21 doctor and to protect the patient.

22 MS. FREDERICKSEN: Okay.

23 MS. DOCKALL: We are. We take classes,
24 legal classes, to protect our doctors, protect our
25 patients, and follow HIPAA and follow OSHA and all the

1 other legal ramifications that these other school
2 programs do not follow.

3 MS. FREDERICKSEN: Okay.

4 MS. DOCKALL: And I, myself, I will not
5 see a doctor that does not have a certified medical
6 assistant, a CMA, AAMA person, in that office.

7 MS. FREDERICKSEN: Okay. Interesting.

8 MS. DOCKALL: Because I want to know that
9 that office is legal. I want to know that they were
10 abiding by all the rules and that they're out for my
11 safety as well as I am after my safety.

12 MS. FREDERICKSEN: Okay. Thank you.

13 MR. BALASA: You have a distinction
14 between the approved programs, the --

15 MS. DOCKALL: And the non-approved
16 programs.

17 MR. BALASA: Correct. Right.

18 MS. DOCKALL: And that's a big, big
19 difference.

20 MR. BALASA: And CAAHEP and ABHES are
21 accredited programs that meet their standards that are
22 specific to the program, as opposed to the unapproved
23 programs.

24 MS. FREDERICKSEN: Okay.

25 MR. BALASA: So that's the position that

1 we are taking today.

2 MS. DOCKALL: Most of the physicians do
3 not -- most of the physicians, unless they are
4 politically inclined, could not answer half the
5 questions that we as CMAs in their office get asked.

6 MS. FREDERICKSEN: That's interesting.

7 MS. DOCKALL: Where did you go to school?
8 How much schooling did you have before you give me that
9 injection? Were you trained? How were you trained?
10 Are you trained in the right method?

11 Are you -- you know, if you're not trained
12 in the right way, I can give you an injection
13 incorrectly and paralyze you.

14 FEMALE SPEAKER: And that's true.

15 MS. DOCKALL: I can give you an injection
16 in the wrong way and kill you.

17 It's the same way with doing EKGs. If
18 that EKG is not -- if the leads are not applied
19 correctly, you're going to get an incorrect reading and
20 your doctor then is going to panic and send you off for
21 all these studies that are unnecessary, all because of
22 one person doing it incorrectly.

23 And there again, it comes back to
24 accredited schooling and non-accredited schooling.

25 MS. FREDERICKSEN: Okay.

1 MR. BALASA: And, again, CAAHEP and ABHES
2 are based on competency-based standards. So a person
3 not only -- a student not only has to just demonstrate
4 knowledge, but actually has to do certain tasks to the
5 standards established by the program. So it is very
6 hands-on psychomotor, as well as just the --

7 MS. DOCKALL: Right. And our testing, our
8 questions, are written and approved by physicians, not
9 just some instructors down the way.

10 MR. BALASA: Yes, that is correct as well.

11 MS. FREDERICKSEN: That's a good point to
12 add.

13 And I just want to make sure for the
14 record that we have your name spelled correctly. Can
15 you spell your name for me, please.

16 MS. DOCKALL: D-o-c-k-a-l-l.

17 MS. FREDERICKSEN: Thank you.

18 MR. BALASA: I think those are our key
19 points. Any questions or anything else we wanted to
20 add?

21 I think we've covered the importance of
22 accredited programmatic accreditation, as opposed to
23 just any other non-approved program and, again, the
24 unique requirements of the CMA, AAMA.

25 MS. FREDERICKSEN: Okay. I will make sure

1 that your comments are added to the list --

2 MR. BALASA: Thank you. Thank you.

3 MS. FREDERICKSEN: -- to be evaluated.

4 Thank you.

5 MR. BALASA: All right.

6 MS. FREDERICKSEN: Appreciate you

7 coming and --

8 MR. BALASA: Yes, absolutely. Thank you
9 for the opportunity.

10 MS. FREDERICKSEN: Shaun, I think we can
11 cut the tape.

12 (Conclusion of recorded proceedings.)

13 * * * * *

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2) SS.
3 COUNTY OF MARICOPA)

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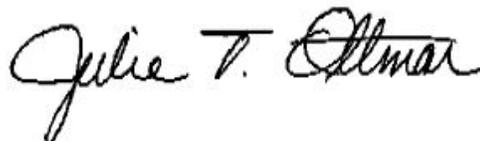
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**Standards and Guidelines
for the Accreditation of Educational Programs in
Medical Assisting**

**Essentials/Standards initially adopted in 1969;
revised in 1971, 1977, 1984, 1991, 1999, 2003, 2008, 2015**

**Adopted by the
American Association of Medical Assistants
Medical Assisting Education Review Board
and the
Commission on Accreditation of Allied Health Education Programs**

The Commission on Accreditation of Allied Health Education Programs (CAAHEP) accredits programs upon the recommendation of the Medical Assisting Education Review Board (MAERB).

These accreditation **Standards and Guidelines** are the minimum standards of quality used in accrediting programs that prepare individuals to enter the *medical assisting* profession. Standards are the minimum requirements to which an accredited program is held accountable. Guidelines are descriptions, examples, or recommendations that elaborate on the Standards. Guidelines are not required, but can assist with interpretation of the Standards.

Standards are printed in regular typeface in outline form. *Guidelines* are printed in italic typeface in narrative form.

Preamble

The Commission on Accreditation of Allied Health Education Programs (CAAHEP) and the American Association of Medical Assistants and American Medical Association cooperate to establish, maintain and promote appropriate standards of quality for educational programs in medical assisting and to provide recognition for educational programs that meet or exceed the minimum standards outlined in these accreditation **Standards and Guidelines**. Lists of accredited programs are published for the information of students, employers, educational institutions and agencies, and the public.

These **Standards and Guidelines** are to be used for the development, evaluation, and self-analysis of medical assisting programs. On-site review teams assist in the evaluation of a program's relative compliance with the accreditation Standards.

Description of the Profession: Medical assistants are multiskilled health professionals specifically educated to work in ambulatory settings performing administrative and clinical duties. The practice of medical assisting directly influences the public's health and well-being, and requires mastery of a complex body of knowledge and specialized skills requiring both formal education and practical experience that serve as standards for entry into the profession.

I. Sponsorship

A. Sponsoring Educational Institution

A sponsoring institution must be at least one of the following:

1. A post-secondary academic institution accredited by an institutional accrediting agency that is recognized by the U.S. Department of Education, and must be authorized under applicable law or

other acceptable authority to provide a post-secondary program, which awards a minimum of a diploma/certificate at the completion of the program.

2. A foreign post-secondary academic institution acceptable to CAAHEP, and authorized under applicable law or other acceptable authority to provide a post-secondary education program, which awards a minimum of a diploma/certificate at the completion of the program.

B. Consortium Sponsor

1. A consortium sponsor is an entity consisting of two or more members that exists for the purpose of operating an educational program. In such instances, at least one of the members of the consortium must meet the requirements of a sponsoring educational institution as described in I.A.
2. The responsibilities of each member of the consortium must be clearly documented in a formal affiliation agreement or memorandum of understanding, which includes governance and lines of authority.

C. Responsibilities of Sponsor

The Sponsor must ensure that the provisions of these **Standards and Guidelines** are met.

II. Program Goals

A. Program Goals and Outcomes

There must be a written statement of the program's goals and learning domains consistent with and responsive to the demonstrated needs and expectations of the various communities of interest served by the educational program. The communities of interest that are served by the program must include, but are not limited to, students, graduates, faculty, sponsor administration, employers, physicians, and the public.

Program-specific statements of goals and learning domains provide the basis for program planning, implementation, and evaluation. Such goals and learning domains must be compatible with the mission of the sponsoring institution(s), the expectations of the communities of interest, and nationally accepted standards of roles and functions. Goals and learning domains are based upon the substantiated needs of healthcare providers and employers, and the educational needs of the students served by the educational program.

B. Appropriateness of Goals and Learning Domains

The program must regularly assess its goals and learning domains. Program personnel must identify and respond to changes in the needs and/or expectations of its communities of interest.

An advisory committee, which is representative of at least each of the communities of interest named in these **Standards**, must be designated and charged with the responsibility of meeting at least annually, to assist program and sponsor personnel in formulating and periodically revising appropriate goals and learning domains, monitoring needs and expectations, and ensuring program responsiveness to change.

Advisory committee meetings may include participation by synchronous electronic means.

C. Minimum Expectations

The program must have the following goal defining minimum expectations: "To prepare competent entry-level medical assistants in the cognitive (knowledge), psychomotor (skills), and affective (behavior) learning domains."

Programs adopting educational goals beyond entry-level competence must clearly delineate this intent and provide evidence that all students have achieved the basic competencies prior to entry into the field.

Nothing in this Standard restricts programs from formulating goals beyond entry-level competence.

III. Resources

A. Type and Amount

Program resources must be sufficient to ensure the achievement of the program's goals and outcomes. Resources must include, but are not limited to, faculty; clerical and support staff; curriculum; finances; offices; classroom, laboratory and ancillary student facilities; clinical affiliates; equipment; supplies; computer resources; instructional reference materials, and faculty/staff continuing education.

"Clinical affiliates" are locations used as practicum sites.

Equipment and supplies should be representative of those used in ambulatory healthcare facilities.

B. Personnel

The sponsor must appoint sufficient faculty and staff with the necessary qualifications to perform the functions identified in documented job descriptions and to achieve the program's stated goals and outcomes.

1. Program Director

- a. Responsibilities: The program director must be responsible for program effectiveness, including outcomes, organization, administration, continuous review, planning, and development.
- b. Qualifications: The program director must:
 - 1) be a full-time employee of the sponsoring institution.
 - 2) have a minimum of an associate degree.
 - 3) have instruction in educational theory and techniques.
 - 4) be credentialed in good standing in medical assisting, by an organization whose credentialing exam is accredited by the National Commission for Certifying Agencies (NCCA) or the *American National Standards Institute (ANSI)*. Currently approved program directors without a credential from an accredited credentialing exam must meet that requirement within two years from the effective date of these **Standards**.
 - 5) have a minimum of three years of employment in a healthcare facility, including a minimum of 160 hours in an ambulatory healthcare setting performing or observing administrative and clinical procedures as performed by medical assistants.
 - 6) have a minimum of one year teaching experience in postsecondary and/or vocational/technical education.

Program directors approved under previous CAAHEP **Standards** who are employed part time, and/or who do not have a minimum of an associate degree, and/or who have fewer than 160 hours in an ambulatory healthcare setting performing or observing administrative and clinical procedures as performed by medical assistants, and/or who do not have one year of teaching experience, will continue to be approved provided they remain continuously employed as the program director with the same program.

*Maintaining knowledge of current medical assisting practice should include continuing education in administrative and clinical areas as indicated in the MAERB Core Curriculum Appendix B of these **Standards** (documented annually).*

Educational theories and techniques may be demonstrated by documentation of completed college courses, seminars, or in-service sessions on topics including, but not limited to, learning theory, curriculum design, test construction, teaching methodology, or assessment techniques.

2. Faculty and/or Instructional Staff

- a. Responsibilities: Medical assisting faculty and/or instructional staff must direct student learning and assess student progress in achieving the requirements of the program in the appropriate learning domains.
- b. Qualifications: Medical assisting faculty and/or instructional staff must be current and competent in the *MAERB Core Curriculum* objectives included in their assigned teaching, as evidenced by education and/or experience, and have instruction in educational theory and techniques.

Medical assisting faculty includes individuals who teach courses specifically designed and unique to the medical assisting program.

3. Practicum Coordinator

- a. Responsibilities: The practicum coordinator must:
 - 1) select and approve appropriate practicum sites.
 - 2) provide orientation for the on-site supervisors.
 - 3) provide oversight of the practicum experience.
 - 4) ensure appropriate and sufficient evaluation of student achievement in the practicum experience.

The responsibilities of the practicum coordinator may be fulfilled by the program director, faculty member(s), or other qualified designee.

- b. Qualifications: The practicum coordinator must be knowledgeable about the *MAERB Core Curriculum*, knowledgeable about the program's evaluation of student learning and performance, and effective in ensuring appropriate and sufficient evaluation of student achievement in the practicum experience.

C. Curriculum

1. The curriculum must ensure the achievement of program goals and learning domains. Instruction must be an appropriate sequence of classroom, laboratory, and clinical activities. Instruction must be based on clearly written course syllabi or addendum to the syllabi that include course description, learning objectives, methods of evaluation, topic outline, and competencies required for graduation.

Syllabi and any addenda should be provided prior to instruction.

Learning objectives include The MAERB Core Curriculum cognitive objectives and psychomotor and affective competencies.

2. The program must demonstrate that the content and competencies included in the program's curriculum meet or exceed those stated in the *MAERB Core Curriculum* (Appendix B).
3. Practicum
 - a) An unpaid, supervised practicum of at least 160 contact hours in an ambulatory healthcare setting, demonstrating the knowledge, skills, and behaviors of the *MAERB Core Curriculum* in performing clinical and administrative duties, must be completed prior to graduation.
 - b) On-site supervision of the student must be provided by an individual who has knowledge of the medical assisting profession.

The program should ensure that the practicum experience and instruction of students are meaningful and parallel in content and concept with the material presented in lecture and laboratory sessions. Sites should afford each student a variety of experiences.

The program should ensure that all applicable cognitive objectives and psychomotor and affective competencies be achieved prior to the start of any practicum.

D. Resource Assessment

The program must, at least annually, assess the appropriateness and effectiveness of the resources described in these **Standards**. The results of resource assessment must be the basis for ongoing planning and appropriate change. An action plan must be developed when deficiencies are identified in the program resources. Implementation of the action plan must be documented and results measured by ongoing resource assessment.

The format for the resource assessment matrix should be the following: Purpose Statement, Measurement Systems, Dates of Measurement, Results, Analyses, Action Plans, and Follow-up.

IV. Student and Graduate Evaluation/Assessment

A. Student Evaluation

1. Frequency and purpose

Evaluation of students must be conducted on a recurrent basis and with sufficient frequency to provide both the students and program faculty with valid and timely indications of the students' progress toward, and achievement of, the competencies and learning domains stated in the curriculum.

"Validity" means that the evaluation methods chosen are consistent with the learning and performance objectives being tested. Methods of assessment are carefully designed and constructed to measure stated learning and performance objectives at the appropriate level of difficulty. Methods used to evaluate skills and behaviors are consistent with stated practicum performance expectations and designed to assess competency attainment.

"Achievement of the competencies" means that each student has successfully achieved 100% of the MAERB Core Curriculum psychomotor and affective competencies taught within that course. There should be a statement in the grading policy informing students that, in order to earn a passing grade in the course, the student must successfully complete all of the psychomotor and affective competencies in the course.

2. Documentation

Records of student evaluations must be maintained in sufficient detail to document learning progress and achievements.

B. Outcomes

1. Outcomes Assessment

The program must periodically assess its effectiveness in achieving its stated goals and learning domains. The results of this evaluation must be reflected in the review and timely revision of the program.

Outcomes assessments must include, but are not limited to: national credentialing examination(s) performance, programmatic retention/attrition, graduate satisfaction, employer satisfaction, job (positive) placement, and programmatic summative measures. The program must meet the outcomes assessment thresholds.

"Positive placement" means that the graduate is employed full or part-time in the profession or in a related field; or continuing his/her education; or serving in the military. A related field is one in which the individual is using cognitive, psychomotor, and affective competencies acquired in the educational program.

"Programmatic summative measures" means that all graduates have achieved 100% of the MAERB Core Curriculum psychomotor and affective competencies.

"National credentialing examinations" are those medical assisting exams containing clinical and administrative items accredited by the National Commission for Certifying Agencies (NCCA) or American National Standards Institute (ANSI). Participation and pass rates on national credentialing examination(s) performance may be considered in determining whether or not a program meets the designated

threshold, provided the credentialing examination(s), or alternative examination(s) offered by the same credentialing organization, is/are available to be administered prior to graduation from the program. Results from said alternative examination(s) may be accepted, if designated as equivalent by the same organization whose credentialing examination(s) is/are so accredited.

2. Outcomes Reporting

The program must periodically submit to the MAERB the program goal(s), learning domains, evaluation systems (including type, cut score, and appropriateness), outcomes, its analysis of the outcomes, and an appropriate action plan based on the analysis.

Programs not meeting the established thresholds must begin a dialogue with the MAERB to develop an appropriate plan of action to respond to the identified shortcomings.

V. Fair Practices

A. Publications and Disclosure

1. Announcements, catalogs, publications, and advertising must accurately reflect the program offered.
2. At least the following must be made known to all applicants and students: the sponsor's institutional and programmatic accreditation status as well as the name, mailing address, web site address and phone number of the accrediting agencies; admissions policies and practices, including technical standards (when used); policies on advanced placement, transfer of credits, and credits for experiential learning; number of credits required for completion of the program; tuition/fees and other costs required to complete the program; policies and processes for withdrawal and for refunds of tuition/fees.
3. At least the following must be made known to all students: academic calendar, student grievance procedure, criteria for successful completion of each segment of the curriculum and for graduation, and policies and processes by which students may perform clinical work while enrolled in the program.
4. The sponsor must maintain, and make available to the public, current and consistent summary information about student/graduate achievement that includes the results of one or more of the outcomes assessments required in these **Standards**.

The sponsor should develop a suitable means of communicating to the communities of interest the achievement of students/graduates.

B. Lawful and Non-discriminatory Practices

All activities associated with the program, including student and faculty recruitment, student admission, and faculty employment practices, must be non-discriminatory and in accordance with federal and state statutes, rules, and regulations. There must be a faculty grievance procedure made known to all paid faculty.

C. Safeguards

The health and safety of patients, students, faculty, and other participants associated with the educational activities of the students must be adequately safeguarded.

All activities required in the program must be educational and students must not be substituted for staff.

Safeguards may include OSHA and CDC guidelines, and any state, local or institutional guidelines/policies related to health and safety.

D. Student Records

Satisfactory records must be maintained for student admission, advisement, counseling, and evaluation. Grades and credits for courses must be recorded on the student transcript and permanently maintained by the sponsor in a safe and accessible location.

E. Substantive Change

The sponsor must report substantive change(s) as described in Appendix A to CAAHEP/MAERB in a timely manner. Additional substantive changes to be reported to the MAERB, within the time limits prescribed, include:

1. Change in the institution's legal status or form of control;
2. Change/addition/deletion of courses that represent a significant departure in content;
3. Change in method of curriculum delivery;
4. Change in the award level (i.e. degree to certificate/diploma or certificate/diploma to degree);
5. Change of clock hours to credit hours or vice versa; and
6. Substantial increase/decrease in clock or credit hours for successful completion of a program.

Programs should report all curriculum changes to the MAERB.

F. Agreements

There must be a formal affiliation agreement or memorandum of understanding between the sponsor and all other entities that participate in the education of the students describing the relationship, roles, and responsibilities of the sponsor and that entity.

Practicum agreements must include a statement that students must be supervised and must not receive compensation for services provided as a part of the practicum.

*Agreements or memoranda of understanding should be reviewed periodically to ensure consistency with the **Standards**.*

APPENDIX A

Application, Maintenance and Administration of Accreditation

A. Program and Sponsor Responsibilities

1. Applying for Initial Accreditation

- a. The chief executive officer or an officially designated representative of the sponsor completes a “Request for Accreditation Services” form and returns it to:

Medical Assisting Education Review Board
American Association of Medical Assistants Endowment
20 N. Wacker Drive, Suite 1575
Chicago, IL 60606

The “Request for Accreditation Services” form can be obtained from MAERB, CAAHEP, or the CAAHEP website at www.caahep.org.

Note: There is **no** CAAHEP fee when applying for accreditation services; however, individual committees on accreditation may have an application fee.

- b. The program undergoes a comprehensive review, which includes a written self-study report and an on-site review.

The self-study instructions and report form are available from the MAERB. The on-site review will be scheduled in cooperation with the program and once the self-study report has been completed, submitted, and accepted by the MAERB.

2. Applying for Continuing Accreditation

- a. Upon written notice from the MAERB, the chief executive officer or an officially designated representative of the sponsor completes a “Request for Accreditation Services” form, and returns it to:

Medical Assisting Education Review Board (MAERB)
American Association of Medical Assistants Endowment
20 N. Wacker Drive, Suite 1575
Chicago, IL 60606

- b. The program may undergo a comprehensive review in accordance with the policies and procedures of the MAERB.

If it is determined that there were significant concerns with the on-site review, the sponsor may request a second site visit with a different team.

After the on-site review team submits a report of its findings, the sponsor is provided the opportunity to comment in writing and to correct factual errors prior to the MAERB forwarding a recommendation to CAAHEP.

3. Administrative Requirements for Maintaining Accreditation

- a. The program must inform the MAERB and CAAHEP within a reasonable period of time (as defined by the MAERB and CAAHEP policies) of changes in chief executive officer, dean of health professions or equivalent position, and required program personnel.
- b. The sponsor must inform CAAHEP and the MAERB of its intent to transfer program sponsorship. To begin the process for a Transfer of Sponsorship, the current sponsor must submit a letter

(signed by the CEO or designated individual) to CAAHEP and the MAERB that it is relinquishing its sponsorship of the program. Additionally, the new sponsor must submit a "Request for Transfer of Sponsorship Services" form. The MAERB has the discretion of requesting a new self-study report with or without an on-site review. Applying for a transfer of sponsorship does not guarantee that the transfer of accreditation will be granted.

- c. The sponsor must promptly inform CAAHEP and the MAERB of any adverse decision affecting its accreditation by recognized institutional accrediting agencies and/or state agencies (or their equivalent).
- d. Comprehensive reviews are scheduled by the MAERB in accordance with its policies and procedures. The time between comprehensive reviews is determined by the MAERB and based on the program's on-going compliance with the **Standards**; however, all programs must undergo a comprehensive review at least once every ten years.
- e. The program and the sponsor must pay MAERB and CAAHEP fees within a reasonable period of time, as determined by the MAERB and CAAHEP respectively.
- f. The sponsor must file all reports in a timely manner (self-study report, progress reports, annual reports, etc.) in accordance with MAERB policy.
- g. The sponsor must agree to a reasonable on-site review date that provides sufficient time for CAAHEP to act on a MAERB accreditation recommendation prior to the "next comprehensive review" period, which was designated by CAAHEP at the time of its last accreditation action, or a reasonable date otherwise designated by the MAERB.

Failure to meet any of the aforementioned administrative requirements may lead to administrative probation and ultimately to the withdrawal of accreditation. CAAHEP will immediately rescind administrative probation once all administrative deficiencies have been rectified.

4. Voluntary Withdrawal of a CAAHEP- Accredited Program

Voluntary withdrawal of accreditation from CAAHEP may be requested at any time by the Chief Executive Officer or an officially designated representative of the sponsor writing to CAAHEP indicating: the last date of student enrollment, the desired effective date of the voluntary withdrawal, and the location where all records will be kept for students who have completed the program.

5. Requesting Inactive Status of a CAAHEP- Accredited Program

Inactive status may be requested from CAAHEP at any time by the chief executive officer or an officially designated representative of the sponsor writing to CAAHEP indicating the desired date to become inactive. No students can be enrolled or matriculated in the program at any time during the time period in which the program is on inactive status. The maximum period for inactive status is two years. The sponsor must continue to pay all required fees to the MAERB and CAAHEP to maintain its accreditation status.

To reactivate the program the chief executive officer or an officially designated representative of the sponsor must notify CAAHEP of its intent to do so in writing to both CAAHEP and the MAERB. The sponsor will be notified by the MAERB of additional requirements, if any, that must be met to restore active status.

If the sponsor has not notified CAAHEP of its intent to re-activate a program by the end of the two-year period, CAAHEP will consider this a "Voluntary Withdrawal of Accreditation."

B. CAAHEP and Committee on Accreditation Responsibilities – Accreditation Recommendation Process

1. After a program has had the opportunity to comment in writing and to correct factual errors on the on-site review report, the MAERB forwards a status of public recognition recommendation to the CAAHEP Board of Directors. The recommendation may be for any of the following statuses: initial accreditation, continuing accreditation, transfer of sponsorship, probationary accreditation, withhold accreditation, or withdraw accreditation.

The decision of the CAAHEP Board of Directors is provided in writing to the sponsor immediately following the CAAHEP meeting at which the program was reviewed and voted upon.

2. Before the MAERB forwards a recommendation to CAAHEP that a program be placed on probationary accreditation, the sponsor must have the opportunity to request reconsideration of that recommendation or to request voluntary withdrawal of accreditation. The MAERB reconsideration of a recommendation for probationary accreditation must be based on conditions existing both when the committee arrived at its recommendation as well as on subsequent documented evidence of corrected deficiencies provided by the sponsor.

The CAAHEP Board of Directors' decision to confer probationary accreditation is not subject to appeal.

3. Before the MAERB forwards a recommendation to CAAHEP that a program's accreditation be withdrawn or that accreditation be withheld, the sponsor must have the opportunity to request reconsideration of the recommendation, or to request voluntary withdrawal of accreditation or withdrawal of the accreditation application, whichever is applicable. The MAERB reconsideration of a recommendation of withdraw or withhold accreditation must be based on conditions existing both when the MAERB arrived at its recommendation as well as on subsequent documented evidence of corrected deficiencies provided by the sponsor.

The CAAHEP Board of Directors' decision to withdraw or withhold accreditation may be appealed. A copy of the CAAHEP "Appeal of Adverse Accreditation Actions" is enclosed with the CAAHEP letter notifying the sponsor of either of these actions.

At the completion of due process, when accreditation is withheld or withdrawn, the sponsor's chief executive officer is provided with a statement of each deficiency. Programs are eligible to re-apply for accreditation once the sponsor believes that the program is in compliance with the accreditation **Standards**.

Any student who completes a program that was accredited by CAAHEP at any time during his/her matriculation is deemed by CAAHEP to be a graduate of a CAAHEP-accredited program.

Appendix B

Core Curriculum for Medical Assistants Medical Assisting Education Review Board (MAERB) 2015 Curriculum Requirements

Individuals graduating from Medical Assisting programs accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) must demonstrate knowledge of the subject matters required for competence in the profession. They must incorporate the cognitive (C) knowledge in performance of the psychomotor (P) and affective (A) competencies required in the following academic subjects.

FOUNDATIONS FOR CLINICAL PRACTICE CONTENT AREA I-IV

CONTENT AREA I: Anatomy & Physiology		
Cognitive (Knowledge) I.C Anatomy & Physiology	Psychomotor (Skills) I.P Anatomy & Physiology	Affective (Behavior) I.A Anatomy & Physiology
<ol style="list-style-type: none"> 1. Describe structural organization of the human body 2. Identify body systems 3. Describe: <ol style="list-style-type: none"> a. body planes b. directional terms c. quadrants d. body cavities 4. List major organs in each body system 5. Identify the anatomical location of major organs in each body system 6. Compare structure and function of the human body across the life span 7. Describe the normal function of each body system 	<ol style="list-style-type: none"> 1. Measure and record: <ol style="list-style-type: none"> a. blood pressure b. temperature c. pulse d. respirations e. height f. weight g. length (infant) h. head circumference (infant) i. pulse oximetry 2. Perform: <ol style="list-style-type: none"> a. electrocardiography b. venipuncture c. capillary puncture d. pulmonary function testing 3. Perform patient screening using established protocols 	<ol style="list-style-type: none"> 1. Incorporate critical thinking skills when performing patient assessment 2. Incorporate critical thinking skills when performing patient care 3. Show awareness of a patient's concerns related to the procedure being performed

<ol style="list-style-type: none"> 8. Identify common pathology related to each body system including: <ol style="list-style-type: none"> a. signs b. symptoms c. etiology 9. Analyze pathology for each body system including: <ol style="list-style-type: none"> a. diagnostic measures b. treatment modalities 10. Identify CLIA waived tests associated with common diseases 11. Identify the classifications of medications including: <ol style="list-style-type: none"> a. indications for use b. desired effects c. side effects d. adverse reactions 12. Identify quality assurance practices in healthcare 13. List principles and steps of professional/provider CPR 14. Describe basic principles of first aid as they pertain to the ambulatory healthcare setting 	<ol style="list-style-type: none"> 4. Verify the rules of medication administration: <ol style="list-style-type: none"> a. right patient b. right medication c. right dose d. right route e. right time f. right documentation 5. Select proper sites for administering parenteral medication 6. Administer oral medications 7. Administer parenteral (excluding IV) medications 8. Instruct and prepare a patient for a procedure or a treatment 9. Assist provider with a patient exam 10. Perform a quality control measure 11. Obtain specimens and perform: <ol style="list-style-type: none"> a. CLIA waived hematology test b. CLIA waived chemistry test c. CLIA waived urinalysis d. CLIA waived immunology test e. CLIA waived microbiology test 12. Produce up-to-date documentation of provider/professional level CPR 13. Perform first aid procedures for: <ol style="list-style-type: none"> a. bleeding b. diabetic coma or insulin shock c. fractures d. seizures e. shock f. syncope 	
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CONTENT AREA II: Applied Mathematics

Cognitive (Knowledge) II.C Applied Mathematics	Psychomotor (Skills) II.P Applied Mathematics	Affective (Behavior) II.A Applied Mathematics
<ol style="list-style-type: none"> 1. Demonstrate knowledge of basic math computations 2. Apply mathematical computations to solve equations 3. Define basic units of measurement in: <ol style="list-style-type: none"> a. the metric system b. the household system 4. Convert among measurement systems 5. Identify abbreviations and symbols used in calculating medication dosages 6. Analyze healthcare results as reported in: <ol style="list-style-type: none"> a. graphs b. tables 	<ol style="list-style-type: none"> 1. Calculate proper dosages of medication for administration 2. Differentiate between normal and abnormal test results 3. Maintain lab test results using flow sheets 4. Document on a growth chart 	<ol style="list-style-type: none"> 1. Reassure a patient of the accuracy of the test results

CONTENT AREA III: Infection Control

CONTENT AREA III: Infection Control		
Cognitive (Knowledge) III.C Infection Control	Psychomotor (Skills) III.P Infection Control	Affective (Behavior) III.A Infection Control
<ol style="list-style-type: none"> 1. List major types of infectious agents 2. Describe the infection cycle including: <ol style="list-style-type: none"> a. the infectious agent b. reservoir c. susceptible host d. means of transmission e. portals of entry f. portals of exit 3. Define the following as practiced within an ambulatory care setting: <ol style="list-style-type: none"> a. medical asepsis b. surgical asepsis 4. Identify methods of controlling the growth of microorganisms 5. Define the principles of standard precautions 6. Define personal protective equipment (PPE) for: <ol style="list-style-type: none"> a. all body fluids, secretions and excretions b. blood c. non-intact skin d. mucous membranes 7. Identify Center for Disease Control (CDC) regulations that impact healthcare practices 	<ol style="list-style-type: none"> 1. Participate in bloodborne pathogen training 2. Select appropriate barrier/personal protective equipment (PPE) 3. Perform handwashing 4. Prepare items for autoclaving 5. Perform sterilization procedures 6. Prepare a sterile field 7. Perform within a sterile field 8. Perform wound care 9. Perform dressing change 10. Demonstrate proper disposal of biohazardous material <ol style="list-style-type: none"> a. sharps b. regulated wastes 	<ol style="list-style-type: none"> 1. Recognize the implications for failure to comply with Center for Disease Control (CDC) regulations in healthcare settings

CONTENT AREA IV: Nutrition

Cognitive (Knowledge) IV. C Nutrition	Psychomotor (Skills) IV. P Nutrition	Affective (Behavior) IV.A Nutrition
<ul style="list-style-type: none">1. Describe dietary nutrients including:<ul style="list-style-type: none">a. carbohydratesb. fatc. proteind. mineralse. electrolytesf. vitaminsg. fiberh. water2. Define the function of dietary supplements3. Identify the special dietary needs for:<ul style="list-style-type: none">a. weight controlb. diabetesc. cardiovascular diseased. hypertensione. cancerf. lactose sensitivityg. gluten-freeh. food allergies	<ul style="list-style-type: none">1. Instruct a patient according to patient's special dietary needs	<ul style="list-style-type: none">1. Show awareness of patient's concerns regarding a dietary change

APPLIED COMMUNICATIONS CONTENT AREA V

CONTENT AREA V: Concepts of Effective Communication		
Cognitive (Knowledge) V.C Concepts of Effective Communication	Psychomotor (Skills) V.P. Concepts of Effective Communication	Affective (Behavior) V.A. Concepts of Effective Communication
<ol style="list-style-type: none"> 1. Identify styles and types of verbal communication 2. Identify types of nonverbal communication 3. Recognize barriers to communication 4. Identify techniques for overcoming communication barriers 5. Recognize the elements of oral communication using a sender-receiver process 6. Define coaching a patient as it relates to: <ol style="list-style-type: none"> a. health maintenance b. disease prevention c. compliance with treatment plan d. community resources e. adaptations relevant to individual patient needs 7. Recognize elements of fundamental writing skills 8. Discuss applications of electronic technology in professional communication 	<ol style="list-style-type: none"> 1. Use feedback techniques to obtain patient information including: <ol style="list-style-type: none"> a. reflection b. restatement c. clarification 2. Respond to nonverbal communication 3. Use medical terminology correctly and pronounced accurately to communicate information to providers and patients 4. Coach patients regarding: <ol style="list-style-type: none"> a. office policies b. health maintenance c. disease prevention d. treatment plan 5. Coach patients appropriately considering: <ol style="list-style-type: none"> a. cultural diversity b. developmental life stage c. communication barriers 6. Demonstrate professional telephone techniques 7. Document telephone messages accurately 	<ol style="list-style-type: none"> 1. Demonstrate: <ol style="list-style-type: none"> a. empathy b. active listening c. nonverbal communication 2. Demonstrate the principles of self-boundaries 3. Demonstrate respect for individual diversity including: <ol style="list-style-type: none"> a. gender b. race c. religion d. age e. economic status f. appearance 4. Explain to a patient the rationale for performance of a procedure

<ul style="list-style-type: none"> 9. Identify medical terms labeling the word parts 10. Define medical terms and abbreviations related to all body systems 11. Define the principles of self-boundaries 12. Define patient navigator 13. Describe the role of the medical assistant as a patient navigator 14. Relate the following behaviors to professional communication: <ul style="list-style-type: none"> a. assertive b. aggressive c. passive 15. Differentiate between adaptive and non-adaptive coping mechanisms 16. Differentiate between subjective and objective information 17. Discuss the theories of: <ul style="list-style-type: none"> a. Maslow b. Erikson c. Kubler-Ross 18. Discuss examples of diversity: <ul style="list-style-type: none"> a. cultural b. social c. ethnic 	<ul style="list-style-type: none"> 8. Compose professional correspondence utilizing electronic technology 9. Develop a current list of community resources related to patients' healthcare needs 10. Facilitate referrals to community resources in the role of a patient navigator 11. Report relevant information concisely and accurately 	
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MEDICAL BUSINESS PRACTICES CONTENT AREAS VI-IX

CONTENT AREA VI: Administrative Functions		
Cognitive (Knowledge) VI.C Administrative Functions	Psychomotor (Skills) VI.P Administrative Functions	Affective (Behavior) VI.A Administrative Functions
<ol style="list-style-type: none"> 1. Identify different types of appointment scheduling methods 2. Identify advantages and disadvantages of the following appointment systems <ol style="list-style-type: none"> a. manual b. electronic 3. Identify critical information required for scheduling patient procedures 4. Define types of information contained in the patient's medical record 5. Identify methods of organizing the patient's medical record based on: <ol style="list-style-type: none"> a. problem-oriented medical record (POMR) b. source-oriented medical record (SOMR) 6. Identify equipment and supplies needed for medical records in order to: <ol style="list-style-type: none"> a. Create b. Maintain c. Store 7. Describe filing indexing rules 8. Differentiate between electronic medical records (EMR) and a practice management system 	<ol style="list-style-type: none"> 1. Manage appointment schedule using established priorities 2. Schedule a patient procedure 3. Create a patient's medical record 4. Organize a patient's medical record 5. File patient medical records 6. Utilize an EMR 7. Input patient data utilizing a practice management system 8. Perform routine maintenance of administrative or clinical equipment 9. Perform an inventory with documentation 	<ol style="list-style-type: none"> 1. Display sensitivity when managing appointments

<p>9. Explain the purpose of routine maintenance of administrative and clinical equipment</p> <p>10. List steps involved in completing an inventory</p> <p>11. Explain the importance of data back-up</p> <p>12. Explain meaningful use as it applies to EMR</p>		
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CONTENT AREA VII: Basic Practice Finances

Cognitive (Knowledge) VII.C Basic Practice Finances	Psychomotor (Skills) VII.P Basic Practice Finances	Affective (Behavior) VII.A Basic Practice Finances
<ol style="list-style-type: none"> 1. Define the following bookkeeping terms: <ol style="list-style-type: none"> a. charges b. payments c. accounts receivable d. accounts payable e. adjustments 2. Describe banking procedures as related to the ambulatory care setting 3. Identify precautions for accepting the following types of payments: <ol style="list-style-type: none"> a. cash b. check c. credit card d. debit card 4. Describe types of adjustments made to patient accounts including: <ol style="list-style-type: none"> a. non-sufficient funds (NSF) check b. collection agency transaction c. credit balance d. third party 5. Identify types of information contained in the patient's billing record 6. Explain patient financial obligations for services rendered 	<ol style="list-style-type: none"> 1. Perform accounts receivable procedures to patient accounts including posting: <ol style="list-style-type: none"> a. charges b. payments c. adjustments 2. Prepare a bank deposit 3. Obtain accurate patient billing information 4. Inform a patient of financial obligations for services rendered 	<ol style="list-style-type: none"> 1. Demonstrate professionalism when discussing patient's billing record 2. Display sensitivity when requesting payment for services rendered

CONTENT AREA VIII: Third Party Reimbursement

Cognitive (Knowledge) VIII.C Third Party Reimbursement	Psychomotor (Skills) VIII.P Third Party Reimbursement	Affective (Behavior) VIII.A Third Party Reimbursement
<ol style="list-style-type: none"> 1. Identify: <ol style="list-style-type: none"> a. types of third party plans b. information required to file a third party claim c. the steps for filing a third party claim 2. Outline managed care requirements for patient referral 3. Describe processes for: <ol style="list-style-type: none"> a. verification of eligibility for services b. precertification c. preauthorization 4. Define a patient-centered medical home (PCMH) 5. Differentiate between fraud and abuse 	<ol style="list-style-type: none"> 1. Interpret information on an insurance card 2. Verify eligibility for services including documentation 3. Obtain precertification or preauthorization including documentation 4. Complete an insurance claim form 	<ol style="list-style-type: none"> 1. Interact professionally with third party representatives 2. Display tactful behavior when communicating with medical providers regarding third party requirements 3. Show sensitivity when communicating with patients regarding third party requirements

CONTENT AREA IX: Procedural and Diagnostic Coding

Cognitive (Knowledge) IX.C Procedural and Diagnostic Coding	Psychomotor (Skills) IX.P Procedural and Diagnostic Coding	Affective (Behavior) IX.A Procedural and Diagnostic Coding
<ol style="list-style-type: none"> 1. Describe how to use the most current procedural coding system 2. Describe how to use the most current diagnostic coding classification system 3. Describe how to use the most current HCPCS level II coding system 4. Discuss the effects of: <ol style="list-style-type: none"> a. upcoding b. downcoding 5. Define medical necessity as it applies to procedural and diagnostic coding 	<ol style="list-style-type: none"> 1. Perform procedural coding 2. Perform diagnostic coding 3. Utilize medical necessity guidelines 	<ol style="list-style-type: none"> 1. Utilize tactful communication skills with medical providers to ensure accurate code selection

MEDICAL LAW AND ETHICS

CONTENT AREAS X-XI

CONTENT AREA X: Legal Implications		
Cognitive (Knowledge) X.C Legal Implications	Psychomotor (Skills) X.P Legal Implications	Affective (Behaviors) X.A Legal Implications
<ol style="list-style-type: none"> 1. Differentiate between scope of practice and standards of care for medical assistants 2. Compare and contrast provider and medical assistant roles in terms of standard of care 3. Describe components of the Health Insurance Portability & Accountability Act (HIPAA) 4. Summarize the Patient Bill of Rights 5. Discuss licensure and certification as they apply to healthcare providers 6. Compare criminal and civil law as they apply to the practicing medical assistant 7. Define: <ol style="list-style-type: none"> a. negligence b. malpractice c. statute of limitations d. Good Samaritan Act(s) e. Uniform Anatomical Gift Act f. living will/advanced directives g. medical durable power of attorney h. Patient Self Determination Act (PSDA) i. risk management 8. Describe the following types of insurance: <ol style="list-style-type: none"> a. liability b. professional (malpractice) 	<ol style="list-style-type: none"> 1. Locate a state's legal scope of practice for medical assistants 2. Apply HIPAA rules in regard to: <ol style="list-style-type: none"> a. privacy b. release of information 3. Document patient care accurately in the medical record 4. Apply the Patient's Bill of Rights as it relates to: <ol style="list-style-type: none"> a. choice of treatment b. consent for treatment c. refusal of treatment 5. Perform compliance reporting based on public health statutes 6. Report an illegal activity in the healthcare setting following proper protocol 7. Complete an incident report related to an error in patient care 	<ol style="list-style-type: none"> 1. Demonstrate sensitivity to patient rights 2. Protect the integrity of the medical record

<p>c. personal injury</p> <p>9. List and discuss legal and illegal applicant interview questions</p> <p>10. Identify:</p> <ul style="list-style-type: none"> a. Health Information Technology for Economic and Clinical Health (HITECH) Act b. Genetic Information Nondiscrimination Act of 2008 (GINA) c. Americans with Disabilities Act Amendments Act (ADAAA) <p>11. Describe the process in compliance reporting:</p> <ul style="list-style-type: none"> a. unsafe activities b. errors in patient care c. conflicts of interest d. incident reports <p>12. Describe compliance with public health statutes:</p> <ul style="list-style-type: none"> a. communicable diseases b. abuse, neglect, and exploitation c. wounds of violence <p>13. Define the following medical legal terms:</p> <ul style="list-style-type: none"> a. informed consent b. implied consent c. expressed consent d. patient incompetence e. emancipated minor f. mature minor g. subpoena duces tecum h. respondent superior i. res ipsa loquitor j. locum tenens k. defendant-plaintiff l. deposition m. arbitration-mediation n. Good Samaritan laws 		
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CONTENT AREA XI: Ethical Considerations

Cognitive (Knowledge) XI.C Ethical Considerations	Psychomotor (Skills) XI.P Ethical Considerations	Affective (Behavior) XI.A Ethical Considerations
<ol style="list-style-type: none"> 1. Define: <ol style="list-style-type: none"> a. ethics b. morals 2. Differentiate between personal and professional ethics 3. Identify the effect of personal morals on professional performance 	<ol style="list-style-type: none"> 1. Develop a plan for separation of personal and professional ethics 2. Demonstrate appropriate response(s) to ethical issues 	<ol style="list-style-type: none"> 1. Recognize the impact personal ethics and morals have on the delivery of healthcare

SAFETY AND EMERGENCY PRACTICES

CONTENT AREA XII

CONTENT AREA XII: Protective Practices		
Cognitive (Knowledge) XII.C Protective Practices	Psychomotor (Skills) XII.P Protective Practices	Affective (Behavior) XII.A Protective Practices
<ol style="list-style-type: none"> 1. Identify: <ol style="list-style-type: none"> a. safety signs b. symbols c. labels 2. Identify safety techniques that can be used in responding to accidental exposure to: <ol style="list-style-type: none"> a. blood b. other body fluids c. needle sticks d. chemicals 3. Discuss fire safety issues in an ambulatory healthcare environment 4. Describe fundamental principles for evacuation of a healthcare setting 5. Describe the purpose of Safety Data Sheets (SDS) in a healthcare setting 6. Discuss protocols for disposal of biological chemical materials 7. Identify principles of: <ol style="list-style-type: none"> a. body mechanics b. ergonomics 8. Identify critical elements of an emergency plan for response to a natural disaster or other emergency 	<ol style="list-style-type: none"> 1. Comply with: <ol style="list-style-type: none"> a. safety signs b. symbols c. labels 2. Demonstrate proper use of: <ol style="list-style-type: none"> a. eyewash equipment b. fire extinguishers c. sharps disposal containers 3. Use proper body mechanics 4. Participate in a mock exposure event with documentation of specific steps 5. Evaluate the work environment to identify unsafe working conditions 	<ol style="list-style-type: none"> 1. Recognize the physical and emotional effects on persons involved in an emergency situation 2. Demonstrate self-awareness in responding to an emergency situation

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ARIZONA MEDICAL BOARD

1. Identification of the rulemaking:

In a five-year-review report approved by the Council on December 5, 2017, the Board indicated it would amend the rules in this rulemaking. The rules regarding medical assistants are amended to update them with current industry standards. Minor, non-substantive, changes are made to the language of R4-16-101 through R4-16-103.

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

Until the rulemaking is completed, the Board will not have completed the plan of work identified in the five-year-review report approved by the Council, rules regarding medical assistants will not be consistent with current industry standards, and the rule regarding CME will be inconsistent with statute.

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

It is not good government to fail to complete needed actions, to work under outdated standards, or to have a rule inconsistent with statute.

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

When the rulemaking is completed, the Board's rules will be up-to-date and consistent with industry standards and statute.

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

The rulemaking has minimal economic impact because it simply amends the definition of approved medical assistant training program, updates the entities providing medical assistant examinations, updates material incorporated by reference, and makes the rule regarding CME consistent with recent statutory change.

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

Name: Patricia McSorley, Executive Director

Address: Arizona Medical Board

1740 W Adams Street, Suite 4000

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

Phoenix, AZ 85007

Telephone: (480) 551-2700

Fax: (480) 551-2704

E-mail: patricia.mcsorley@azmd.gov

Web site: www.azmd.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:
Medical assistants, the physicians or physician assistants who employ and supervise medical assistants, and the medical practices in which the physicians or physician assistants work are directly affected by, bear the costs of, and directly benefit from the rulemaking. The Board also is directly affected by, bears the costs of, and directly benefits from the rulemaking.

There are currently 17, 510 medical assistants employed in Arizona. It is estimated by the Bureau of Labor Statistics that approximately 42 percent of medical offices employ a medical assistant. Physicians and physician assistants who employ a medical assistant will bear the cost of ensuring the medical assistant is qualified under R4-16-401 and will bear the cost of providing direct supervision of the medical assistant. Physicians and physician assistants who employ a medical assistant will directly benefit from the time and cost savings resulting from employing a medical assistant to perform delegated tasks.

The Board incurred the cost of completing the rulemaking and will incur the cost of implementing and enforcing the rules. The Board will benefit from having rules that are up-to-date and consistent with industry standards.

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

The Board is the only state agency directly affected by the rulemaking. It will not be necessary for the Board to employ a new FTE to implement and enforce the rules.

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

No political subdivisions are directly affected by the rulemaking.

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

Physicians and physician assistants and the medical practices in which they work are businesses directly affected by the rulemaking. Their cost and benefits are described in item 4.

6. Impact on private and public employment:

The Board expects the rulemaking to have no impact on private or public employment.

7. Impact on small businesses²:

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

Physicians and physician assistants and the medical practices in which they work are small businesses subject to the rulemaking.

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

A medical assistant works under a supervising physician or physician assistant. It is the supervisor who is responsible for ensuring an employed medical assistant has completed required training, including passing a required examination. It is also the supervising physician or physician assistant who must provide direct supervision of the medical assistant. The costs associated with these activities are minimal and outweighed by the savings resulting from tasks performed by the medical assistant.

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

No physician or physician assistant or medical practice in which they work is required to employ a medical assistant. The costs of doing so are incurred voluntarily because the physician, physician assistant, or medical practice has determined the benefits outweigh the costs. No methods may be used to reduce the economic impact on those who choose to employ a medical assistant.

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

No private persons or consumers are directly affected by the rulemaking. Consumers of medical care may be indirectly affected by the rulemaking.

9. Probable effects on state revenues:

The rulemaking will have no effect on state revenue.

10. Less intrusive or less costly alternative methods considered:

The Board believes there is no less intrusive or less costly alternative method. None was considered.

² Small business has the meaning specified in A.R.S. § 41-1001(21).

R4-16-102. Continuing Medical Education

- A.** A physician holding an active license to practice medicine in this state shall complete 40 credit hours of the continuing medical education required by A.R.S. § 32-1434 during the two calendar years preceding biennial registration. A physician may not carry excess hours over to another two-year cycle. One hour of credit is allowed for each clock hour of participation in continuing medical education activities, unless otherwise designated in subsection (B).
- B.** A physician may claim continuing medical education for the following:
1. Participating in an internship, residency, or fellowship at a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of training in a full-time approved program, or for a less than full-time training on a pro rata basis. In this subsection teaching institutions define “full-time.”
 2. Participating in an education program for an advanced degree in a medical or medically-related field in a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of full-time study or less than a full-time study on a pro rata basis. In this subsection teaching institutions define “full-time”.
 3. Participating in full-time research in a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of full-time research, or less than full-time research on a pro rata basis. In this subsection teaching institutions define “full-time”.
 4. Participating in an education program certified as Category 1 by an organization accredited by the Accreditation Council for Continuing Medical Education, 515 North State Street, Suite 2150, Chicago, Illinois 60610.
 5. Participating in a medical education program designed to provide understanding of current developments, skills, procedures, or treatments related to the practice of medicine, that is provided by an organization or institution accredited by the Accreditation Council for Continuing Medical Education.
 6. Serving as an instructor of medical students, house staff, other physicians, or allied health professionals from a hospital or other health care institution with a formal training program, if the instructional activities provide the instructor with understanding of current developments, skills, procedures, or treatments related to the practice of allopathic medicine.
 7. Publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of allopathic medicine. The physician may claim one credit hour for each hour preparing, writing, and presenting materials:
 - a. Actually published or presented; and
 - b. After the date of publication or presentation.
 8. A credit hour may be earned for any of the following activities that provide an understanding of current developments, skills, procedures, or treatments related to the practice of allopathic medicine:
 - a. Completing a medical education program based on self-instruction that uses videotapes, audiotapes, films, filmstrips, slides, radio broadcasts, or computers;
 - b. Reading scientific journals and books;
 - c. Preparing for specialty board certification or recertification examinations;

- d. Participating on a staff or quality of care committee, or utilization review committee in a hospital, health care institution, or government agency.
- C. If a physician holding an active license to practice medicine in this state fails to meet the continuing medical education requirements under subsection (A) because of illness, military service, medical or religious missionary activity, or residence in a foreign country, upon written application, shall grant an extension of time to complete the continuing medical education.
- D. The Board shall mail to each physician a license renewal form that includes a section regarding continuing medical education compliance. The physician shall sign and return the form certified under penalty of perjury that the continuing medical education requirements under subsection (A) are satisfied for the two-calendar-year period preceding biennial renewal. Failure to receive the license renewal form under subsection (A) shall not relieve the physician of the requirements of subsection (A). The Board may randomly audit a physician to verify compliance with the continuing medical education requirements under subsection (A).

32-1401. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice medicine.
2. "Adequate records" means legible medical records, produced by hand or electronically, 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 licensee 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 hospital internship, residency or clinical fellowship program" means a program at a hospital that at the time the training occurred was legally incorporated and that had a program that was approved for internship, fellowship or residency training by the accreditation council for graduate medical education, the association of American medical colleges, the royal college of physicians and surgeons of Canada or any similar body in the United States or Canada approved by the board whose function is that of approving hospitals for internship, fellowship or residency training.
5. "Approved school of medicine" means any school or college offering a course of study that, on successful completion, results in the degree of doctor of medicine and whose course of study has been approved or accredited by an educational or professional association, recognized by the board, including the association of American medical colleges, the association of Canadian medical colleges or the American medical association.
6. "Board" means the Arizona medical board.
7. "Completed application" means that 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. "Direct supervision" means that a physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified pursuant to chapter 15 of this title is within the same room or office suite as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to section 32-1456.
9. "Dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers

of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

10. "Doctor of medicine" means a natural person holding a license, registration or permit to practice medicine pursuant to this chapter.

11. "Full-time faculty member" means a physician who is employed full time as a faculty member while holding the academic position of assistant professor or a higher position at an approved school of medicine.

12. "Health care institution" means any facility as defined in section 36-401, any person authorized to transact disability insurance, as defined in title 20, chapter 6, article 4 or 5, any person who is issued a certificate of authority pursuant to title 20, chapter 4, article 9 or any other partnership, association or corporation that provides health care to consumers.

13. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the doctor and the natural or adopted children, father, mother, brothers and sisters of the doctor's spouse.

14. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician that the physician's conduct violates state or federal law and may require the board to monitor the physician.

15. "Limit" means taking a nondisciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be mentally or physically unable to safely engage in the practice of medicine.

16. "Medical assistant" means an unlicensed person who meets the requirements of section 32-1456, has completed an education program approved by the board, assists in a medical practice under the supervision of a doctor of medicine, physician assistant or nurse practitioner and performs delegated procedures commensurate with the assistant's education and training but does not diagnose, interpret, design or modify established treatment programs or perform any functions that would violate any statute applicable to the practice of medicine.

17. "Medically incompetent" means a person who the board determines is incompetent based on a variety of factors, including:

(a) A lack of sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients.

(b) When considered with other indications of medical incompetence, failing to obtain a scaled score of at least seventy-five percent on the written special purpose licensing examination.

18. "Medical peer review" means:

(a) The participation by a doctor of medicine in the review and evaluation of the medical management of a patient and the use of resources for patient care.

(b) Activities relating to a health care institution's decision to grant or continue privileges to practice at that institution.

19. "Medicine" means allopathic medicine as practiced by the recipient of a degree of doctor of

medicine.

20. "Office based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center.

21. "Physician" means a doctor of medicine who is licensed pursuant to this chapter.

22. "Practice of medicine" means the diagnosis, the treatment or the correction of or the attempt or the claim to be able to diagnose, treat or correct any and all human diseases, injuries, ailments, infirmities or deformities, physical or mental, real or imaginary, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter. The practice of medicine includes the practice of medicine alone or the practice of surgery alone, or both.

23. "Restrict" means taking a disciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be medically incompetent or guilty of unprofessional conduct.

24. "Special purpose licensing examination" means an examination that is developed by the national board of medical examiners on behalf of the federation of state medical boards for use by state licensing boards to test the basic medical competence of physicians who are applying for licensure and who have been in practice for a considerable period of time in another jurisdiction and to determine the competence of a physician who is under investigation by a state licensing board.

25. "Teaching hospital's accredited graduate medical education program" means that the hospital is incorporated and has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American medical association, the association of American medical colleges, the royal college of physicians and surgeons of Canada or a similar body in the United States or Canada that is approved by the board and whose function is that of approving hospitals for internship, fellowship or residency training.

26. "Teaching license" means a valid license to practice medicine as a full-time faculty member of an approved school of medicine or a teaching hospital's accredited graduate medical education program.

27. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Violating any federal or state laws, rules or regulations applicable to the practice of medicine.

(b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.

(c) Committing false, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.

(d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(e) Failing or refusing to maintain adequate records on a patient.

- (f) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while practicing medicine or to the extent that judgment may be impaired and the practice of medicine detrimentally affected.
- (g) Using controlled substances except if prescribed by another physician for use during a prescribed course of treatment.
- (h) Prescribing or dispensing controlled substances to members of the physician's immediate family.
- (i) Prescribing, dispensing or administering schedule II controlled substances as defined in section 36-2513, including amphetamines and similar schedule II sympathomimetic drugs in the treatment of exogenous obesity for a period in excess of thirty days in any one year, or the nontherapeutic use of injectable amphetamines.
- (j) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.
- (k) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-1491.
- (l) Signing a blank, undated or predated prescription form.
- (m) Committing conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.
- (n) Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.
- (o) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.
- (p) Having action taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.
- (q) Having sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the practice of medicine or restricting that person's ability to obtain financial remuneration.
- (r) Committing any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.
- (s) Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter.

(t) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter.

(u) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution.

(v) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for a clinical trial regulated by the United States food and drug administration.

(w) Obtaining a fee by fraud, deceit or misrepresentation.

(x) Charging or collecting a clearly excessive fee. In determining whether a fee is clearly excessive, the board shall consider the fee or range of fees customarily charged in this state for similar services in light of modifying factors such as the time required, the complexity of the service and the skill requisite to perform the service properly. This subdivision does not apply if there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the provision of the service.

(y) Committing conduct that is in violation of section 36-2302.

(z) Using experimental forms of diagnosis and treatment without adequate informed patient consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee as approved by the United States food and drug administration or its successor agency.

(aa) 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 physician-patient 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 any other verbal conduct or physical contact of a sexual nature.

(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.

(bb) Procuring or attempting to procure a license to practice medicine or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

(cc) Representing or claiming to be a medical specialist if this is not true.

(dd) Maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine.

(ee) Failing to furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board.

(ff) Failing to allow properly authorized board personnel on demand to examine and have access to documents, reports and records maintained by the physician that relate to the physician's medical practice or medically related activities.

(gg) 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 doctor has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one doctor of medicine to another doctor of medicine within a group of doctors of medicine practicing together.

(hh) Using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy, with the exception of treatment of heavy metal poisoning, without:

(i) Adequate informed patient consent.

(ii) Conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

(iii) Approval by the United States food and drug administration or its successor agency.

(ii) Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

(jj) Exhibiting a lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.

(kk) Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.

(ll) Failing to dispense drugs and devices in compliance with article 6 of this chapter.

(mm) Committing conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

(nn) Making a representation by a doctor of medicine or the doctor's staff, employer or representative that the doctor is boarded or board certified if this is not true or the standing is not current or without supplying the full name of the specific agency, organization or entity granting this standing.

(oo) Refusing to submit to a body fluid examination or any other examination known to detect the presence of alcohol or other drugs as required by the board pursuant to section 32-1452 or pursuant to a board investigation into a doctor of medicine's alleged substance abuse.

(pp) Failing to report in writing to the Arizona medical board or the Arizona regulatory board of physician assistants any evidence that a doctor of medicine or a physician assistant is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to

safely practice medicine or to perform as a physician assistant.

(qq) As a physician who is the chief executive officer, the medical director or the medical chief of staff of a health care institution, failing to report in writing to the board that the hospital privileges of a doctor of medicine have been denied, revoked, suspended, supervised or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be unable to engage safely in the practice of medicine.

(rr) Claiming to be a current member of the board or its staff or a board medical consultant if this is not true.

(ss) Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, osteopathic physician or homeopathic physician licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent, the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(tt) 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 or mental health status examination of that person or has previously established a doctor-patient relationship. The physical or mental health status examination may be conducted during a real-time telemedicine encounter with audio and video capability, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1. This subdivision does not apply to:

(i) A physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by 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 prescription medications issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For the purposes of this item, "bioterrorism" has the same meaning prescribed in section 36-781.

(v) 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.

(vi) Prescriptions written or prescription medications issued for administration of immunizations or vaccines listed in the United States centers for disease control and prevention's recommended immunization schedule to a household member of a patient.

(vii) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157 or for an authorized

entity to be stocked pursuant to section 36-2226.01.

(viii) Prescriptions written by a licensee through a telemedicine program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(ix) Prescriptions for naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228 or 36-2266.

(uu) Performing office based surgery using sedation in violation of board rules.

(vv) Practicing medicine under a false or assumed name in this state.

32-1404. Meetings; quorum; committees; rules; posting

A. The board shall hold regular quarterly meetings on a date and at the time and place designated by the chairman. The board shall hold special meetings, including meetings using communications equipment that allows all members participating in the meeting to hear each other, as the chairman determines are necessary to carry out the functions of the board. The board shall hold special meetings on any day that the chairman determines are necessary to carry out the functions of the board. The vice-chairman may call meetings and special meetings if the chairman is not available.

B. The presence of seven board members at a meeting constitutes a quorum. A majority vote of the quorum is necessary for the board to take any action.

C. The chairman may establish committees from the membership of the board and define committee duties necessary to carry out the functions of the board.

D. The board may adopt rules pursuant to title 41, chapter 6 that are necessary and proper to carry out the purposes of this chapter.

E. Meetings held pursuant to subsection A of this section shall be audio and video recorded. Beginning September 2, 2014, the board shall post the video recording on the board's website within five business days after the meeting.

32-1456. Medical assistants; use of title; violation; classification

A. A medical assistant may perform the following medical procedures under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner:

1. Take body fluid specimens.
2. Administer injections.

B. The board by rule may prescribe other medical procedures which a medical assistant may perform under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner on a determination by the board that the procedures may be competently performed by a medical assistant.

C. Without the direct supervision of a doctor of medicine, physician assistant or nurse practitioner, a medical assistant may perform the following tasks:

1. Billing and coding.
2. Verifying insurance.
3. Making patient appointments.
4. Scheduling.
5. Recording a doctor's findings in patient charts and transcribing materials in patient charts and records.
6. Performing visual acuity screening as part of a routine physical.
7. Taking and recording patient vital signs and medical history on medical records.

D. The board by rule shall prescribe medical assistant training requirements.

E. A person who uses the title medical assistant or a related abbreviation is guilty of a class 3 misdemeanor unless that person is working as a medical assistant under the direct supervision of a doctor of medicine, physician assistant or nurse practitioner.

D-4

DEPARTMENT OF HEALTH SERVICES (R-19-0103)

Title 9, Chapter 6, Article 12, Tuberculosis Control

Amend: R9-6-1201; R9-6-1202; R9-6-1203; R9-6-1204

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

DATE: December 21, 2018

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

FROM: Council Staff

MEETING: January 8, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (R-19-0103)
Title 9, Chapter 6, Article 12, Tuberculosis Control

Amend: R9-6-1201; R9-6-1202; R9-6-1203; R9-6-1204

SUMMARY OF THE RULEMAKING

This expedited rulemaking, from the Department of Health Services (Department), seeks to amend four rules in A.A.C. Title 9, Chapter 6. The rules in Article 12 establish definitions, reporting requirements for local health agencies, tuberculosis control requirements in correctional facilities, and the standard of care that must be given to an afflicted person by a health care provider.

The rulemaking relates to a five-year-review report, approved on May 1, 2018, which identified numerous outdated cross-references and obsolete medical guidelines in the rules. In addition, the current rules are unclear as to the reporting requirements for local health agencies. The Department indicates that the use of the expedited rulemaking process is justified by A.R.S. § 41-1027 because the rulemaking does not increase the cost of regulatory compliance or any fees, or reduce procedural rights of regulated persons. The Department is engaging in this rulemaking to reduce a regulatory burden while achieving the same objective, comply with statutory requirements, and help eliminate confusion.

The Department received an exemption from the moratorium on July 9, 2018.

Proposed Action

- **R9-6-1201 - *Definitions*:** A clarifying change is being made.
- **R9-6-1202 - *Local Health Agency Reporting Requirements*:** The rule is rewritten to provide specific instances in which a local health agency must report a tuberculosis case to the Department.

- **R9-6-1203 - *Tuberculosis Control in Correctional Facilities***: Cross references are updated throughout the rule. Subsection (7) is added to indicate that an inmate who has tested positive on a repeat test must be evaluated within 14 days of the positive result. Subsection (8) is added to clarify that if an inmate tested negative for tuberculosis, an inmate is not required to complete an additional chest x-ray unless the inmate has symptoms of tuberculosis. Lastly, subsection (C)(3) is added to require an administrator of a correctional facility to provide information to local health agencies to comply with R9-6-1202.
- **R9-6-1204 - *Standards of Medical Care***: The rule is rewritten for clarity.

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

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 36-721, which requires the Department to make rules to prescribe reasonable and necessary measures regarding standards of medical care for persons afflicted with tuberculosis.

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

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

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

Not applicable. The Department indicates that it did not receive any public comments on the proposed rules.

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

Not applicable. No changes have been made between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited 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?

No. The Department indicates that no federal laws are applicable to these rules.

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

No. The rules do not require a permit or license.

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

No. The Department indicates that it did not rely on any study for this rulemaking.

8. Conclusion

If approved, this expedited rulemaking will become effective immediately upon filing with the Secretary of State. Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

November 20, 2018

Gilbert Davidson, Acting Director
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 6, Article 12 Department of Health Services – Communicable Diseases and Infestations

Dear Mr. Davidson:

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

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

1. The close of record:
The close of record was November 19, 2018. Submission of the rule is within the 120 days allowed for Final Expedited Rulemaking.
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, the rulemaking implements, without material change, a course of action that was proposed in a five-year review report approved by the Council pursuant to section A.R.S. § 41-1056.
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 6, Article 12 relates to a five-year-review report approved by the Council on May 1, 2018.
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

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

The Department is requesting that the rules be heard at the Council meeting on January 8, 2019.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', is written over the printed name and title.

Robert Lane
Director's Designee

RL:rms

Enclosures

or

Name: Robert Lane, 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: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing “reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases.” A.R.S. § 36-721 requires the Director to make rules to prescribe reasonable and necessary measures regarding standards of medical care for persons afflicted with tuberculosis. A.R.S. § 36-721 further requires the submission of tuberculosis reports and statistics from counties. The Department has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 12. As part of the five-year-review report for 9 A.A.C. 6, Article 12, the Department identified that the rules, which were last revised effective January 5, 2008, contain references to outdated forms and obsolete medical guidelines that do not adequately protect the health and safety of tuberculosis afflicted persons. In addition, the rules are unclear as to what is required of a local health agency when reporting to the Department, and the formatting used is outdated and may be confusing. The requirements for when an inmate has a positive result on a repeat test for tuberculosis are also unclear, which may lead to cases being inadequately diagnosed and treated. The Department is revising the rules by expedited rulemaking to make these changes to reduce a regulatory burden while achieving the same regulatory objective, comply with statutory requirements, and help eliminate confusion on the part of the public. The Department believes the rulemaking meets the criteria for expedited rulemaking since the changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but implement a course of action proposed in a five-year-review report approved by the Governor’s Regulatory Review Council on May 1, 2018.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public

may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

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

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

Not applicable

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

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

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

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

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

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

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

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

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

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

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

Federal laws do not apply to the rule.

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

No such analysis was submitted.

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

None

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 12. TUBERCULOSIS CONTROL

Section

R9-6-1201. Definitions

R9-6-1202. Local Health Agency Reporting Requirements

R9-6-1203. Tuberculosis Control in Correctional Facilities

R9-6-1204. Standards of Medical Care

ARTICLE 12. TUBERCULOSIS CONTROL

R9-6-1201. Definitions

In addition to the definitions in A.R.S. § 36-711, the following definitions apply in this Article, unless otherwise specified:

1. "Inmate" means an individual who is incarcerated in a correctional facility.
2. "Latent tuberculosis infection" means the presence of ~~Mycobacterium tuberculosis~~ *Mycobacterium tuberculosis*, as evidenced by a positive result from an approved test for tuberculosis, in an individual who:
 - a. Has no symptoms of active tuberculosis,
 - b. Has no clinical signs of tuberculosis other than the positive result from the approved test for tuberculosis, and
 - c. Is not infectious to others.
3. "Symptoms suggestive of tuberculosis" means any of the following that cannot be attributed to a disease or condition other than tuberculosis:
 - a. A productive cough that has lasted for at least three weeks;
 - b. Coughing up blood; or
 - c. A combination of at least three of the following:
 - i. Fever,
 - ii. Chills,
 - iii. Night sweats,
 - iv. Fatigue,
 - v. Chest pain, and
 - vi. Weight loss.

R9-6-1202. Local Health Agency Reporting Requirements

~~A. Within 30 days after receiving information, a local health agency shall report to the Department regarding:~~

- ~~1. Each individual in its jurisdiction who has been diagnosed with active tuberculosis,~~
- ~~2. Each individual in its jurisdiction who is suspected of having active tuberculosis, and~~
- ~~3. Each individual in its jurisdiction who is believed to have been exposed to an individual with infectious active tuberculosis.~~

~~B. Each report made under subsection (A) shall consist of completed Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Form CDC 72-9A and B,~~

~~“Report of Verified Case of Tuberculosis” (January 2003), which is incorporated by reference or a completed electronic equivalent to Form CDC 72.9A and B provided by the Department.~~

A local health agency shall report to the Department:

1. Regarding each individual in its jurisdiction who:
 - a. Has been diagnosed with active tuberculosis,
 - b. Is suspected of having active tuberculosis, or
 - c. Is believed to have been exposed to an individual with infectious active tuberculosis;
2. According to R9-6-206:
 - a. After receiving information according to R9-6-202; and
 - b. After conducting an epidemiologic investigation of a case, suspect case, or contact;
3. Within 30 days after receiving the information needed to complete an initial summary for a case of active tuberculosis, in a Department-provided format, containing:
 - a. Demographic information about the case,
 - b. Information specific to the case’s diagnosis of active tuberculosis,
 - c. Information about the case’s risk factors for tuberculosis, and
 - d. Information specific to the treatment being provided to the case;
4. As applicable, within 30 days after receiving the information needed to complete a summary of laboratory test results for a case of active tuberculosis, in a Department-provided format, including:
 - a. The results from the analysis of the agent causing tuberculosis in the case, and
 - b. The drug sensitivity pattern of the agent causing tuberculosis in the case;
5. Within 30 days after determining the final disposition of a case or, except for a case still receiving treatment, two years after the case’s initial diagnosis of active tuberculosis, whichever is earlier, in a Department-provided format, including:
 - a. Whether the case:
 - i. Completed treatment, including confirmation of the case’s freedom from active tuberculosis;
 - ii. Refused treatment;
 - iii. Was lost to follow-up before completing treatment;
 - iv. Left the jurisdiction of the local health agency before completing treatment; or

- v. Died;
- b. If applicable, the method by which the local health agency has knowledge of completion of treatment;
- c. If the period of treatment was longer than 12 months, the reason for the extended treatment; and
- d. A description of each course or method of treatment provided to the case, including the date each treatment was initiated.

R9-6-1203. Tuberculosis Control in Correctional Facilities

- A. An administrator of a correctional facility shall ensure that:
 - 1. Each new inmate in the correctional facility undergoes a symptom screening for tuberculosis while processing into the correctional facility;
 - 2. An inmate in whom symptoms suggestive of tuberculosis are detected during screening:
 - a. Is immediately:
 - i. Placed in airborne infection isolation, or
 - ii. Required to wear a surgical mask and retained in an environment where exposure to the general inmate population is minimal and the inmate can be observed at all times to be wearing the mask;
 - b. If not immediately placed in airborne infection isolation, is within 24 hours after screening:
 - i. Given a medical evaluation for active tuberculosis, or
 - ii. Transported to a health care institution to be placed in airborne infection isolation; and
 - c. Is given a medical evaluation for active tuberculosis before being released from airborne infection isolation or permitted to stop wearing a surgical mask and released from the environment described in subsection (A)(2)(a)(ii).
 - 3. Except as provided in subsection ~~(A)(6)~~ (A)(5), each new inmate who does not have a documented history of a positive result from an approved test for tuberculosis or who has not received an approved test for tuberculosis within the previous 12 months is given an approved test for tuberculosis within seven days after processing into the correctional facility;
 - 4. Except as provided in subsection ~~(A)(5)~~ (A)(8), each new inmate who has a positive result from an approved test for tuberculosis or who has a documented history of a positive result from an approved test for tuberculosis is given a chest x-ray and a medical

evaluation, within 14 days after processing into the correctional facility, to determine whether the inmate has active tuberculosis;

~~5.~~ If an inmate has had a documented negative chest x-ray after a positive result from an approved test for tuberculosis, the inmate is not required to have another chest x-ray unless the inmate has signs or symptoms of active tuberculosis;

~~6.5.~~ Each new inmate who is HIV-positive, in addition to receiving an approved test for tuberculosis, is given a chest x-ray and a medical evaluation within seven days after processing into the correctional facility, to determine whether the inmate has active tuberculosis;

~~7.6.~~ Each inmate who ~~has~~ had a negative result from an approved test for tuberculosis when tested according to subsection (A)(3) during processing has a repeat approved test for tuberculosis after 12 months of incarceration and every 12 months thereafter during the inmate's term of incarceration;

7. Each inmate who has a positive result on a repeat approved test for tuberculosis after a negative result on a previous approved test for tuberculosis is given a chest x-ray and a medical evaluation within 14 days after the date of the positive result on the repeat approved test to determine whether the inmate has active tuberculosis;

8. An inmate is not required to have another chest x-ray unless the inmate has symptoms suggestive of tuberculosis if the inmate has had a documented negative chest x-ray;

~~8.9.~~ Each inmate with active tuberculosis is:

a. Provided medical treatment that meets accepted standards of medical practice, and

b. Placed in airborne infection isolation until no longer infectious; and

~~9.10.~~ All applicable requirements in 9 A.A.C. 6, Articles 2 and 3 are complied with.

B. The requirements of subsection (A) apply to each correctional facility that houses inmates for 14 days or longer and to each inmate who will be incarcerated for 14 days or longer.

C. An administrator of a correctional facility, either personally or through a representative, shall:

1. Unless unable to provide prior notification because of security concerns, notify the local health agency at least one working day before releasing a tuberculosis case or suspect case;

2. If unable to provide prior notification because of security concerns, notify the local health agency within 24 hours after releasing a tuberculosis case or suspect case;

3. Provide to a local health agency, within three working days after the local health agency's request, the information required by the local health agency to comply with R9-6-1202(5); and
- 3.4. Provide a tuberculosis case or suspect case or an inmate being treated for latent tuberculosis infection the name and address of the local health agency before the case, suspect case, or inmate is released.

R9-6-1204. Standards of Medical Care

~~A health care provider caring for an afflicted person shall comply with the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), published in 167 American Journal of Respiratory and Critical Care Medicine 603-662 (February 15, 2003), which is incorporated by reference, on file with the Department, and available from the American Thoracic Society, 61 Broadway, New York, NY 10006-2747 or at www.atsjournals.org, unless the health care provider believes, based on the health care provider's professional judgment, that deviation from the recommendations is medically necessary. If a health care provider caring for an afflicted person deviates from the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), the health care provider shall, upon request, explain to the Department or a local health agency the rationale for the deviation. If the tuberculosis control officer determines that deviation from the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), is inappropriate and that the public health and welfare require intervention, the tuberculosis control officer may take charge of the afflicted person's treatment as authorized under A.R.S. § 36-723(C).~~

- A.** Unless a health care provider believes, based on the health care provider's professional judgment, that deviation is medically necessary, a health care provider caring for an afflicted person shall comply with the recommendations for treatment of tuberculosis in the Official American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America Clinical Practice Guidelines: Treatment of Drug-Susceptible Tuberculosis (October 2016), which is incorporated by reference, on file with the Department, and available from the American Thoracic Society, 25 Broadway, New York, NY 10004 or at www.atsjournals.org.
- B.** If a health care provider caring for an afflicted person deviates from the recommendations for treatment of tuberculosis specified in subsection (A), the health care provider shall, upon request, explain to the Department or a local health agency the rationale for the deviation.

C. If the tuberculosis control officer determines that deviation from the recommendations for treatment of tuberculosis specified in subsection (A) is inappropriate and that the public health and welfare require intervention, the tuberculosis control officer may take charge of the afflicted person's treatment as authorized under A.R.S. § 36-723(C).

TITLE 9. HEALTH SERVICES
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 - c. Is not infectious to others.
3. "Symptoms suggestive of tuberculosis" means any of the following that cannot be attributed to a disease or condition other than tuberculosis:
 - a. A productive cough that has lasted for at least three weeks;
 - b. Coughing up blood; or
 - c. A combination of at least three of the following:
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 - ii. Chills,
 - iii. Night sweats,
 - iv. Fatigue,
 - v. Chest pain, and
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 2. Each individual in its jurisdiction who is suspected of having active tuberculosis, and

3. Each individual in its jurisdiction who is believed to have been exposed to an individual with infectious active tuberculosis.
- B.** Each report made under subsection (A) shall consist of completed Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Form CDC 72.9A and B, “Report of Verified Case of Tuberculosis” (January 2003), which is incorporated by reference or a completed electronic equivalent to Form CDC 72.9A and B provided by the Department

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 2. An inmate in whom symptoms suggestive of tuberculosis are detected during screening:
 - a. Is immediately:
 - i. Placed in airborne infection isolation, or
 - ii. Required to wear a surgical mask and retained in an environment where exposure to the general inmate population is minimal and the inmate can be observed at all times to be wearing the mask;
 - b. If not immediately placed in airborne infection isolation, is within 24 hours after screening:
 - i. Given a medical evaluation for active tuberculosis, or
 - ii. Transported to a health care institution to be placed in airborne infection isolation; and
 - c. Is given a medical evaluation for active tuberculosis before being released from airborne infection isolation or permitted to stop wearing a surgical mask and released from the environment described in subsection (A)(2)(a)(ii).
 3. Except as provided in subsection (A)(6), each new inmate who does not have a documented history of a positive result from an approved test for tuberculosis or who has not received an approved test for tuberculosis within the previous 12 months is given an approved test for tuberculosis within seven days after processing into the correctional facility;
 4. Except as provided in subsection (A)(5), each new inmate who has a positive result from an approved test for tuberculosis or who has a documented history of a positive result from an approved test for tuberculosis is given a chest x-ray and a medical evaluation,

within 14 days after processing into the correctional facility, to determine whether the inmate has active tuberculosis;

5. If an inmate has had a documented negative chest x-ray after a positive result from an approved test for tuberculosis, the inmate is not required to have another chest x-ray unless the inmate has signs or symptoms of active tuberculosis;
 6. Each new inmate who is HIV-positive, in addition to receiving an approved test for tuberculosis, is given a chest x-ray and a medical evaluation within seven days after processing into the correctional facility, to determine whether the inmate has active tuberculosis;
 7. Each inmate who has a negative result from an approved test for tuberculosis when tested during processing has a repeat approved test for tuberculosis after 12 months of incarceration and every 12 months thereafter during the inmate's term of incarceration;
 8. Each inmate with active tuberculosis is:
 - a. Provided medical treatment that meets accepted standards of medical practice, and
 - b. Placed in airborne infection isolation until no longer infectious; and
 9. All applicable requirements in 9 A.A.C. 6, Articles 2 and 3 are complied with.
- B.** The requirements of subsection (A) apply to each correctional facility that houses inmates for 14 days or longer and to each inmate who will be incarcerated for 14 days or longer.
- C.** An administrator of a correctional facility, either personally or through a representative, shall:
1. Unless unable to provide prior notification because of security concerns, notify the local health agency at least one working day before releasing a tuberculosis case or suspect case;
 2. If unable to provide prior notification because of security concerns, notify the local health agency within 24 hours after releasing a tuberculosis case or suspect case; and
 3. Provide a tuberculosis case or suspect case or an inmate being treated for latent tuberculosis infection the name and address of the local health agency before the case, suspect case, or inmate is released.

R9-6-1204. Standards of Medical Care

A health care provider caring for an afflicted person shall comply with the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), published in 167 American

Journal of Respiratory and Critical Care Medicine 603-662 (February 15, 2003), which is incorporated by reference, on file with the Department, and available from the American Thoracic Society, 61 Broadway, New York, NY 10006-2747 or at www.atsjournals.org, unless the health care provider believes, based on the health care provider's professional judgment, that deviation from the recommendations is medically necessary. If a health care provider caring for an afflicted person deviates from the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), the health care provider shall, upon request, explain to the Department or a local health agency the rationale for the deviation. If the tuberculosis control officer determines that deviation from the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), is inappropriate and that the public health and welfare require intervention, the tuberculosis control officer may take charge of the afflicted person's treatment as authorized under A.R.S. § 36-723(C).

Statutory Authority for 9 A.A.C. 6, Article 12

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. Whenever 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 no 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 fund-raising 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) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. 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 obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous"

means baked and confectionary goods 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.
- 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 the preservation or storage of 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 preparation of 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 food for commercial purposes pursuant to paragraph 4 of this subsection.
 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. For the purposes of this section, "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.

36-711. Definitions

In this article, unless the context otherwise requires:

1. "Active tuberculosis" means a disease that is caused by mycobacterium tuberculosis or other members of the mycobacterium tuberculosis complex family in any part of the body and that is in an active state as determined by either:
 - (a) A smear or culture that is taken from any source in the afflicted person's body and that tests positive for tuberculosis and the afflicted person has not completed a medically successful complete course of antituberculosis treatment.
 - (b) Radiographic, current clinical or laboratory bacteriological evidence that is sufficient to support a medical diagnosis of tuberculosis for which medical treatment is indicated and the person has not completed a medically successful complete course of antituberculosis treatment.
2. "Afflicted person" means a person who has or who based upon reasonable grounds is suspected of having active tuberculosis.
3. "Appropriate prescribed course of medication" means a course of medication that is prescribed by a physician and that meets the recommendations of any of the following:

- (a) The tuberculosis control officer.
 - (b) A local health officer.
 - (c) The most recent guidelines of the department.
 - (d) The most recent guidelines of the federal centers for disease control and prevention.
4. "Cure" means a medically successful complete course of antituberculosis treatment.
 5. "Department" means the department of health services.
 6. "Directly observed therapy" means an appropriate prescribed course of treatment for active tuberculosis in which the prescribed antituberculosis medications are administered to the afflicted person or taken by the afflicted person under the direct observation of a physician, a physician assistant, a registered nurse, a health care provider or another designated responsible person.
 7. "Director" means the director of the department of health services.
 8. "Examination" means conducting tests that include Mantoux tuberculin skin tests, laboratory examination and x-rays as recommended by any of the following:
 - (a) The tuberculosis control officer.
 - (b) A local health officer.
 - (c) The most recent department guidelines.
 - (d) The most recent guidelines of the centers for disease control and prevention.
 9. "Health care institution" has the same meaning prescribed in section 36-401.
 10. "Incapacitated person" has the same meaning as prescribed in section 14-5101.
 11. "Institution" means any public or private hospital, rest home, sanatorium, health care institution or other facility approved by the department for the care and treatment of afflicted persons.
 12. "Intervention" means treatment, monitoring, quarantine or isolation or any combination thereof.
 13. "Isolation" means the physical separation of afflicted persons from others in order to limit the transmission of active tuberculosis.
 14. "Local health officer" means the health officer and other persons who are designated by the local health officer.
 15. "Medical director" means an individual at a receiving facility who is either a licensed physician or a hospital administrator acting upon the advice of a licensed physician who

is authorized by the facility to make any decisions concerning afflicted persons as prescribed by this article.

16. "Medically successful complete course of antituberculosis treatment" means that an afflicted person has successfully completed a prescribed course of antituberculosis treatment and has been medically discharged from further medical treatment for tuberculosis by a licensed physician.
17. "Minor" means a child under the age of eighteen years of age, except as provided by the provisions of section 44-132.
18. "Monitoring" means a program of supervision designed to monitor the health and activities of an afflicted person. Monitoring includes ensuring compliance with an appropriate prescribed course of medication or medical therapy and with the recommendations and orders of the tuberculosis control officer or a local health officer.
19. "Quarantine" means the restriction of activities of persons who have been exposed to an afflicted person.
20. "Treatment" means medication or medical therapy prescribed by a licensed physician to cure a person of active tuberculosis.
21. "Tuberculosis control officer" means a person appointed by the director to be the chief tuberculosis control officer for tuberculosis control in this state and other persons who are designated by the control officer.
22. "Voluntary treatment plan" means a written plan that is developed by a medical authority, that has been approved by the tuberculosis control officer or the local health officer and that prescribes one or more of the following on a voluntary basis:
 - (a) Examination.
 - (b) Monitoring.
 - (c) Treatment.
 - (d) Isolation.
 - (e) Quarantine.

36-721. Rules

The director shall adopt rules to:

1. Prescribe reasonable and necessary measures for the submission of tuberculosis reports and statistics from counties.

2. Prescribe reasonable and necessary measures regarding standards of medical care to be used by health care providers, agencies and institutions caring for afflicted persons.
3. Prescribe necessary and reasonable measures not in conflict with law for the enforcement of the provisions of this article.
4. To enforce this article as necessary.

36-723. Investigation of tuberculosis cases

- A. When a local health officer is notified that an afflicted person is within the officer's jurisdiction, the local health officer shall immediately initiate an investigation. In performance of the duty to prevent or control tuberculosis, the tuberculosis control officer or local health officer at reasonable times and within reasonable limits may enter and inspect:
1. A public place in the performance of that person's duty to prevent or control tuberculosis. For the purposes of this paragraph, "public place" means all or any portion of an area, lands, building or other structure that is generally open to the public or to which the public has access and is not used primarily for private residential purposes.
 2. Any public or commercial means of transportation or common carrier, including a vehicle, watercraft or aircraft in the performance of that person's duty to prevent or control tuberculosis.
 3. Private property and premises to locate and inspect persons who may be afflicted persons. The tuberculosis control officer or the local health officer shall first identify the officer to an occupant of the building or premises and shall seek the consent of an adult occupant to enter the building or premises to enforce the provisions of this article. If consent is refused or if it is not possible to reasonably obtain consent, the tuberculosis control officer, the local health officer or a designated representative may obtain a search warrant to enter the building or premises to locate the afflicted person and to inspect the building or premises for other persons who may be at risk of exposure to active tuberculosis. The scope of the search shall be limited to those areas in which the afflicted person or other persons who may be at risk of exposure to active tuberculosis may reasonably be found. any search warrant sought by the tuberculosis control officer or local health officer shall be obtained in compliance with section 13-3912.
- B. A local health officer who conducts an investigation pursuant to this article shall immediately notify the tuberculosis control officer of the existence and nature of the disease and of the

measures taken to control tuberculosis. The local health officer shall keep the tuberculosis control officer informed of the prevalence of the disease as prescribed by the department.

- C. The tuberculosis control officer may take charge of the investigation and suppression of a suspected or actual case, outbreak or epidemic of tuberculosis if the officer reasonably believes that the public health and welfare require this action. In that event the control officer or the control officer's designee has exclusive authority over the case, outbreak or epidemic.
- D. A treating, screening or attending health care provider as defined in section 36-661, a clinical laboratory as defined in section 36-451 or an operator of a homeless shelter who knows of an afflicted person shall notify the tuberculosis control officer or the local health officer and cooperate in any investigation conducted as a result of the notification. The notification shall include, if known, the name, address and physical location of an afflicted person. If the person reporting is a licensed physician, the physician shall report on the condition of the afflicted person and the status of the disease as often as required by the tuberculosis control officer or the local health officer.
- E. An institution or health care provider shall promptly report to the tuberculosis control officer or the local health officer if an afflicted person ceases or refuses to accept treatment or fails or refuses to comply with medical recommendations for voluntary examination, isolation, monitoring, quarantine or treatment for active tuberculosis. The initial disease notification report and subsequent reports shall include if known the afflicted person's name, address and physical location, date of birth, tuberculin skin test results and pertinent radiologic, microbiologic and pathologic reports, whether final or pending, and any other information as required by the tuberculosis control officer or the local health officer.

DEPARTMENT OF HEALTH SERVICES (R-19-0104)

Title 9, Chapter 10, Article 3, Behavioral Health Inpatient Facilities; Article 5, Recovery Care Centers; Article 6, Hospices; Article 7, Behavioral Health Residential Facilities; Article 8, Assisted Living Facilities; Article 9, Outpatient Surgical Centers; Article 10, Outpatient Treatment Centers, Article 11, Adult Day Health Care Facilities; Article 13, Behavioral Health Specialized Transitional Facility; Article 14, Substance Abuse Transitional Facilities; Article 16, Behavioral Health Respite Homes; Article 17, Unclassified Health Care Institutions; Article 18, Adult Behavioral Health Therapeutic Homes

Amend: R9-10-323; R9-10-517; R9-10-617; R9-10-721; R9-10-819; R9-10-917; R9-10-1030; R9-10-1116; R9-10-1316; R9-10-1415; R9-10-1610; R9-10-1712; R9-10-1810

GOVERNOR’S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

DATE: December 18, 2018

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

FROM: Council Staff

MEETING: January 8, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (R-18-0104)
Title 9, Chapter 10, Article 3, Behavioral Health Inpatient Facilities; Article 5, Recovery Care Centers; Article 6, Hospices; Article 7, Behavioral Health Residential Facilities; Article 8, Assisted Living Facilities; Article 9, Outpatient Surgical Centers; Article 10, Outpatient Treatment Centers; Article 11, Adult Day Health Care Facilities; Article 13, Behavioral Health Specialized Transactional Facility; Article 14, Substance Abuse Transitional Facilities; Article 16, Behavioral Health Respite Homes; Article 17, Unclassified Health Care Institutions; Article 18, Adult Behavioral Health Therapeutic Homes

Amend: R9-10-323; R9-10-517; R9-10-617; R9-10-72; R9-10-819;
R9-10-917; R9-10-1030; R9-10-1116 ; R9-10-1316;
R9-10-1415;
R9-10-1610; R9-10-1712; R9-10-1810

SUMMARY OF THE RULEMAKING

This expedited rulemaking, from the Department of Health Services (Department), seeks to amend 13 rules in A.A.C. Title 9, Chapter 10. The rules in Chapter 10 establish licensing requirements for health care institutions.

The rulemaking relates to a five-year review report, which was approved by the Council on July 12, 2018. In the report, the Department identified an inconsistency issue between the term “pest control program” in Article 1 and the rules, governing several classes and sub-classes of health care institutions, that require the institutions to implement a pest control program. The defined term states that a pest control program “means activities that minimize the presence of insects and vermin in a health care institution to ensure that a patient’s health and safety is not at risk.” *See* A.A.C. R9-10-101(150). Moreover, R3-8-201(C)(4) requires that an individual be a certified applicator to provide pest management services to a health care institution. The Department is engaging in this rulemaking to revise the rules referring to pest control programs

to address this inconsistency by adding a reference to R3-8-201(C)(4) in the appropriate subsections.

The Department indicates that the use of the expedited rulemaking process is justified by A.R.S. § 41-1027 because the rulemaking does not increase the cost of regulatory compliance or any fees, or reduce procedural rights of regulated persons. The Department received an exemption from the moratorium on September 24, 2018.

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

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 36-405, which requires the Department to “adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to ensure the public health, safety and welfare.”

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

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

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

Yes. The Department received one public comment, from the Arizona Pest Professional Organization, in support of the proposed amendments.¹

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

Not applicable. No changes have been made between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited 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?

No. The Department indicates that no federal laws are applicable to these rules.

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

No. The rules do not require a permit or license.

¹ The comment is included as an attachment to the Notice of Final Expedited Rulemaking.

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?

No. The Department indicates that it did not rely on any study for this rulemaking.

8. Conclusion

If approved, this expedited rulemaking will become effective immediately upon filing with the Secretary of State. Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

November 20, 2018

Gilbert Davidson, Acting Director
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 10 Department of Health Services – Health Care Institutions: Licensing

Dear Mr. Davidson:

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

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

1. The close of record:
The close of record was November 19, 2018. Submission of the rule is within the 120 days allowed for Final Expedited Rulemaking.
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, the rulemaking implements, without material change, a course of action that was proposed in a five-year-review report approved by the Council pursuant to section A.R.S. § 41-1056.
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 10, Article 13 relates to a five-year-review report approved by the Council on July 12, 2018.
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
 - d. Written comment

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

The Department is requesting that the rules be heard at the Council meeting on January 8, 2019.

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

Sincerely,



Robert Lane
Director's Designee

RL:rms

Enclosures

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

PREAMBLE

- | <u>1. Article, Part, of Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R9-10-323 | Amend |
| R9-10-517 | Amend |
| R9-10-617 | Amend |
| R9-10-721 | Amend |
| R9-10-819 | Amend |
| R9-10-917 | Amend |
| R9-10-1030 | Amend |
| R9-10-1116 | Amend |
| R9-10-1316 | Amend |
| R9-10-1415 | Amend |
| R9-10-1610 | Amend |
| R9-10-1712 | Amend |
| R9-10-1810 | 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), 36-136(G)
Implementing Statutes: A.R.S. §§ 36-132(A)(17) and 36-405(A) and (B)
- 3. The effective date of the rules:**
The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.
- 4. Citations to all related notices published in the Register that pertain to the record of the final expedited rulemaking:**
Notice of Docket Opening: 24 A.A.R. 2973, October 19, 2018
Notice of Proposed Expedited Rulemaking: 24 A.A.R. 3178, November 9, 2018
- 5. The agency’s contact person who can answer questions about the expedited rulemaking:**

Name: Colby Bower, Assistant Director
Address: Department of Health Services
Public Health Licensing Services
150 N. 18th Ave., Suite 510
Phoenix, AZ 85007
Telephone: (602) 542-6383
Fax: (602) 364-4808
E-mail: Colby.Bower@azdhs.gov

or

Name: Robert Lane, 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: Robert.Lane@azdhs.gov

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

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 to implement these statutes in Arizona Administrative Code Title 9, Chapter 10. As part of the five-year review of rules in 9 A.A.C. 10, Article 1, the Department identified an issue with the use of the defined term “pest control program.” The definition states that a pest control program “means activities that minimize the presence of insects and vermin in a health care institution to ensure that a patient’s health and safety is not at risk,” and the rules governing several classes and sub-classes of health care institutions require the health care institution to implement and document a pest control program. However, A.A.C. R3-8-201(C)(4), which was adopted in A.A.C. Title 3 in 2017, states that “An individual may not provide pest management services at a school, child care facility, health care institution, or food-handling establishment unless the individual is a certified applicator in the certification category for which services are being provided.” The Department is revising the

rules referring to pest control programs by expedited rulemaking to address this inconsistency to reduce a regulatory burden while achieving the same regulatory objective, comply with statutory requirements, and help eliminate confusion on the part of the public. The Department believes the rulemaking meets the criteria for expedited rulemaking since the changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but implement a course of action proposed in a five-year-review report approved by the Governor's Regulatory Review Council on July 12, 2018.

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

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

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

Not applicable

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

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

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

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

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

The Department received one written stakeholder comments about the rulemaking from the Arizona Pest Professional Organization (AzPPO) supporting the changes in the proposed rules. The Department thanks the AzPPO for the support.

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

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

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

Although other Sections of this Chapter require the issuance of a permit, under A.R.S. 36-407, the Sections included in this rulemaking do not relate to the issuance of a regulatory permit.

Therefore, consideration of a general permit is not applicable to this rulemaking.

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

Federal laws do not apply to the rule.

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

No such analysis was submitted.

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

None

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

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

ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES

Section

R9-10-323. Environmental Standards

ARTICLE 5. RECOVERY CARE CENTERS

Section

R9-10-517. Environmental Standards

ARTICLE 6. HOSPICES

Section

R9-10-617. Environmental Standards for a Hospice Inpatient Facility

ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES

Section

R9-10-721. Environmental Standards

ARTICLE 8. ASSISTED LIVING FACILITIES

Section

R9-10-819. Environmental Standards

ARTICLE 9. OUTPATIENT SURGICAL CENTERS

Section

R9-10-917. Environmental Standards

ARTICLE 10. OUTPATIENT TREATMENT CENTERS

Section

R9-10-1030. Physical Plant, Environmental Services, and Equipment Standards

ARTICLE 11. ADULT DAY HEALTH CARE FACILITIES

Section

R9-10-1116. Environmental Standards

ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY

Section

R9-10-1316. Environmental Standards

ARTICLE 14. SUBSTANCE ABUSE TRANSITIONAL FACILITIES

Section

R9-10-1415. Environmental Standards

ARTICLE 16. BEHAVIORAL HEALTH RESPITE HOMES

Section

R9-10-1610. Environmental Standards

ARTICLE 17. UNCLASSIFIED HEALTH CARE INSTITUTIONS

Section

R9-10-1712. Physical Plant, Environmental Services, and Equipment Standards

ARTICLE 18. ADULT BEHAVIORAL HEALTH THERAPEUTIC HOMES

Section

R9-10-1810. Physical Plant, Environmental Services, and Equipment Standards

ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES

R9-10-323. Environmental Standards

- A. An administrator shall ensure that:
1. The premises and equipment are:
 - a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
 - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
 2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
 3. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
 4. Equipment used at the behavioral health inpatient facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 6. Garbage and refuse are:
 - a. In areas used for food storage, food preparation, or food service, stored in covered containers lined with plastic bags;
 - b. In areas not used for food storage, food preparation, or food service, stored:
 - i. According to the requirements in subsection (6)(a), or
 - ii. In a paper-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;
 7. Heating and cooling systems maintain the behavioral health inpatient facility at a temperature between 70° F and 84° F;
 8. Common areas:
 - a. Are lighted to assure the safety of patients, and

- b. Have lighting sufficient to allow personnel members to monitor patient activity;
- 9. Hot water temperatures are maintained between 95° F and 120° F in the areas of a behavioral health inpatient facility used by patients;
- 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. Soiled linen and soiled clothing stored by the behavioral health inpatient facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
- 12. Oxygen containers are secured in an upright position;
- 13. Poisonous or toxic materials stored by the behavioral health inpatient facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
- 14. Combustible or flammable liquids and hazardous materials stored by a behavioral health inpatient facility are stored in the original labeled containers or safety containers in a locked area inaccessible to patients;
- 15. If pets or animals are allowed in the behavioral health inpatient facility, pets or animals are:
 - a. Controlled to prevent endangering the patients and to maintain sanitation;
 - b. Licensed consistent with local ordinances; and
 - c. For a dog or cat, vaccinated against rabies;
- 16. 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 maintained for at least 12 months after the date of the test; and
- 17. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.

B. An administrator shall ensure that:

- 1. Smoking tobacco products is not permitted within a behavioral health inpatient facility; and

2. Except as provided in R9-10-318(A)(11), smoking tobacco products may be permitted on the premises outside a behavioral health inpatient facility 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 R9-10-303(C)(1)(e) is present in the pool area when a patient is in the pool area, and
 2. At least two personnel members are present in the pool area when two or more patients are in the pool area.

ARTICLE 5. RECOVERY CARE CENTERS

R9-10-517. 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 that complies with A.A.C. R3-8-201(C)(4) 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.

ARTICLE 6. HOSPICES

R9-10-617. Environmental Standards for a Hospice Inpatient Facility

- A. An administrator of a hospice inpatient facility shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
 - a. Cleaning and storing of soiled linens and clothing,
 - b. Housekeeping procedures that ensure a clean environment, and
 - c. Isolation of a patient who may spread an infection;
 2. The 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 other individual to suffer physical injury or illness;
 3. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
 4. Equipment used at the hospice inpatient facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in the hospice inpatient facility's policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 - ~~4.5.~~ Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 - ~~5.6.~~ Garbage and refuse are:
 - a. Stored in covered containers lined with plastic bags, and
 - b. Removed from the premises at least once a week;
 - ~~6.7.~~ 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;

- ~~7.8.~~ Heating and cooling systems maintain the hospice inpatient facility at a temperature between 70° F and 84° F at all times;
- ~~8.9.~~ Common areas:
- a. Are lighted to assure the safety of patients, and
 - b. Have lighting sufficient to allow personnel members to monitor patient activity;
- ~~9.10.~~ 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;
- ~~10.11.~~ Oxygen containers are secured in an upright position;
- ~~11.12.~~ Poisonous or toxic materials stored by the hospice inpatient facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
- ~~12.13.~~ Except for medical supplies needed by a patient, combustible or flammable liquids and hazardous materials are stored by the hospice inpatient facility in the original labeled containers or safety containers in a locked area inaccessible to patients;
- ~~13.14.~~ If pets or animals are allowed in the hospice inpatient facility, pets or animals are:
- a. Controlled to prevent endangering the patients and to maintain sanitation, and
 - b. Licensed consistent with local ordinances;
- ~~14.15.~~ 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
- ~~15.16.~~ 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 of a hospice inpatient facility shall ensure that a patient is allowed to use and display personal belongings.

ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES

R9-10-721. Environmental Standards

- A. Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that:
1. The premises and equipment are:
 - a. Maintained in a condition that allows the premises and equipment to be used for the original purpose of the premises and equipment;
 - b. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
 - c. Free from a condition or situation that may cause a resident or other individual to suffer physical injury;
 2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
 3. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
 4. Equipment used at the behavioral health residential facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 6. Garbage and refuse are:
 - a. Stored in covered containers lined with plastic bags, and
 - b. Removed from the premises at least once a week;
 7. Heating and cooling systems maintain the behavioral health residential facility at a temperature between 70° F and 84° F;
 8. A space heater is not used;
 9. Common areas:
 - a. Are lighted to assure the safety of residents, and
 - b. Have lighting sufficient to allow personnel members to monitor resident activity;

10. Hot water temperatures are maintained between 95° F and 120° F in the areas of the behavioral health residential facility used by residents;
11. 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;
12. Soiled linen and soiled clothing stored by the behavioral health residential facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
13. Oxygen containers are secured in an upright position;
14. Poisonous or toxic materials stored by the behavioral health residential facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
15. Combustible or flammable liquids and hazardous materials stored by a behavioral health residential facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
16. If pets or animals are allowed in the behavioral health residential facility, pets or animals are:
 - a. Controlled to prevent endangering the residents and to maintain sanitation;
 - b. Licensed consistent with local ordinances; and
 - c. For a dog or cat, vaccinated against rabies;
17. 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
18. 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 is not permitted within a behavioral health residential facility; and
2. Smoking tobacco products may be permitted on the premises outside a behavioral health residential facility 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. On each day that a resident uses the swimming pool, an employee:
 - a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
 - i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
 - ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
 - iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
 - b. Records the results of the water quality tests in a log that includes each testing date and test result;
 - 2. Documentation of the water quality test is maintained for at least 12 months after the date of the test;
 - 3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (C)(1)(a);
 - 4. At least one personnel member, with cardiopulmonary resuscitation training that meets the requirements in R9-10-703(C)(1)(e), is present in the pool area when a resident is in the pool area; and
 - 5. At least two personnel members are present in the pool area if two or more residents are in the pool area.

ARTICLE 8. ASSISTED LIVING FACILITIES

R9-10-819. Environmental Standards

- A. A manager shall ensure that:
1. The premises and equipment used at the assisted living facility are:
 - a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
 - b. Free from a condition or situation that may cause a resident or other individual to suffer physical injury;
 2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
 3. Garbage and refuse are:
 - a. Stored in covered containers lined with plastic bags, and
 - b. Removed from the premises at least once a week;
 4. Heating and cooling systems maintain the assisted living facility at a temperature between 70° F and 84° F at all times, unless individually controlled by a resident;
 5. Common areas:
 - a. Are lighted to ensure the safety of residents, and
 - b. Have lighting sufficient to allow caregivers and assistant caregivers to monitor resident activity;
 6. Hot water temperatures are maintained between 95° F and 120° F in areas of an assisted living facility used by residents;
 7. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
 8. A resident has access to a laundry service or a washing machine and dryer in the assisted living facility;
 9. Soiled linen and soiled clothing stored by the assisted living facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
 10. Oxygen containers are secured in an upright position;
 11. Poisonous or toxic materials stored by the assisted living facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;

12. Combustible or flammable liquids and hazardous materials stored by the assisted living facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
13. Equipment used at the assisted living facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
14. If pets or animals are allowed in the assisted living facility, pets or animals are:
 - a. Controlled to prevent endangering the residents and to maintain sanitation;
 - b. Licensed consistent with local ordinances; and
 - c. For a dog or cat, vaccinated against rabies;
15. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
 - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or E. coli bacteria;
 - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
 - c. Documentation of testing is retained for at least 12 months after the date of the test; and
16. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.

B. If a swimming pool is located on the premises, a manager shall ensure that:

1. On a day that a resident uses the swimming pool, an employee:
 - a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
 - i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
 - ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
 - iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and

- b. Records the results of the water quality tests in a log that includes the date tested and test result;
2. Documentation of the water quality test is maintained for at least 12 months after the date of the test; and
3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a).

ARTICLE 9. OUTPATIENT SURGICAL CENTERS

R9-10-917. Environmental Standards

- A.** An administrator shall ensure that:
1. An outpatient surgical 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 that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
 3. Equipment used at the outpatient surgical center to provide care to a patient 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. Stored in covered containers lined with plastic bags, and
 - b. Removed from the premises at least once a week;
 6. Heating and cooling systems maintain the outpatient surgical center at a temperature between 70° F and 84° F at all times;
 7. Common areas:
 - a. Are lighted to assure the safety of patients, and
 - b. Have lighting sufficient to allow personnel members to monitor patient activity; and
 8. 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.
- B.** An administrator shall ensure that an outpatient surgical center has a functional emergency power source.

ARTICLE 10. OUTPATIENT TREATMENT CENTERS

R9-10-1030. Physical Plant, Environmental Services, and Equipment Standards

- A. An administrator shall ensure that:
1. An outpatient treatment center's premises are:
 - a. Sufficient to provide the outpatient treatment center's scope of services;
 - b. Cleaned and disinfected according to the outpatient treatment center's policies and procedures to prevent, minimize, and control illness and infection; and
 - c. Free from a condition or situation that may cause an individual to suffer physical injury;
 2. If an outpatient treatment center collects urine or stool specimens from a patient, except as provided in subsection (B), or is authorized to provide respite services for children on the premises, the outpatient treatment center has at least one bathroom on the premises that:
 - a. Contains:
 - i. A working sink with running water,
 - ii. A working toilet that flushes and has a seat,
 - iii. Toilet tissue,
 - iv. Soap for hand washing,
 - v. Paper towels or a mechanical air hand dryer,
 - vi. Lighting, and
 - vii. A means of ventilation; and
 - b. Is for the exclusive use of the outpatient treatment center;
 3. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
 4. A tobacco smoke-free environment is maintained on the premises;
 5. A refrigerator used to store a medication is:
 - a. Maintained in working order, and
 - b. Only used to store medications;
 6. Equipment at the outpatient treatment center is:
 - a. Sufficient to provide the outpatient treatment center's scope of services;
 - b. Maintained in working condition;
 - c. Used according to the manufacturer's recommendations; and

- d. If applicable, tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 7. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of testing, calibration, or repair.
- B.** An outpatient treatment center may have a bathroom used for the collection of a patient's urine or stool that is not for the exclusive use of the outpatient treatment center if:
 1. The bathroom is located in the same contiguous building as the outpatient treatment center's premises,
 2. The bathroom is of a sufficient size to support the outpatient treatment center's scope of services, and
 3. There is a documented agreement between the licensee and the owner of the building stating that the bathroom complies with the requirements in this Section and allowing the Department access to the bathroom to verify compliance.
- C.** If an outpatient treatment center has a bathroom that is not for the exclusive use of the outpatient treatment center as allowed in subsection (B), an administrator shall ensure that:
 1. Policies and procedures are established, documented, and implemented to:
 - a. Protect the health and safety of an individual using the bathroom; and
 - b. Ensure that the bathroom is cleaned and sanitized to prevent, minimize, and control illness and infection;
 2. Documented instructions are provided to a patient that cover:
 - a. Infection control measures when a patient uses the bathroom, and
 - b. The safe return of a urine or stool specimen to the outpatient treatment center;
 3. The bathroom complies with the requirements in subsection (A)(2)(a); and
 4. The bathroom is free from a condition or situation that may cause an individual using the bathroom to suffer a physical injury.

ARTICLE 11. ADULT DAY HEALTH CARE FACILITIES

R9-10-1116. Environmental Standards

- A. An administrator shall ensure that:
1. The adult day health care facility's premises are:
 - a. Cleaned and disinfected according to policies and procedures to prevent, minimize, and control illness and infection; and
 - b. Free from a condition or situation that may cause a participant 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. Windows and doors opening to the outside are screened if they are kept open at any time for ventilation or other purposes;
 4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
 5. Equipment used at the adult day health care facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 6. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 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 adult day health care facility at a temperature between 70° F and 84° F;
 9. The supply of hot and cold water is sufficient to meet the personal hygiene needs of participants and the cleaning and sanitation requirements in this Article;
 10. Soiled linen and soiled clothing stored by the adult day health care facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;

11. Oxygen containers are secured in an upright position;
12. Poisonous or toxic materials stored by the adult day health care facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to participants;
13. Combustible or flammable liquids and hazardous materials stored by the adult day health care facility are stored in the original labeled containers or safety containers in a locked area inaccessible to participants; and
14. Pets or animals are:
 - a. Controlled to prevent endangering the participants and to maintain sanitation;
 - b. Not allowed in treatment, food storage, food preparation, or dining areas;
 - c. Licensed consistent with local ordinances; and
 - d. For a dog or cat, vaccinated against rabies.

B. If a swimming pool is located on the premises, an administrator shall ensure that:

1. On a day that a participant uses the swimming pool, an employee:
 - a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
 - i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
 - ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
 - iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
 - b. Records the results of the water quality tests in a log that includes the date tested and test result;
2. Documentation of the water quality test is maintained for at least 12 months after the date of the test;
3. A swimming pool is not used by a participant if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a);
4. At least one personnel member with cardiopulmonary resuscitation training, required in R9-10-1106(D), is present in the pool area when a participant is in the pool area; and
5. At least two personnel members are present in the pool area if two or more participants are in the pool area.

ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY

R9-10-1316. Environmental Standards

- A. An administrator shall ensure that:
1. The premises and equipment are:
 - a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
 - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
 2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
 3. Biohazardous medical wastes are identified, stored, and disposed of according to 18 A.A.C. 13, Article 14;
 4. Equipment used at the behavioral health specialized transitional facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 6. Garbage and refuse are:
 - a. Stored in covered containers, and
 - b. Removed from the premises at least once a week;
 7. Heating and cooling systems maintain the behavioral health specialized transitional facility at a temperature between 70° F and 84° F;
 8. Common areas:
 - a. Are lighted to assure the safety of patients, and
 - b. Have lighting sufficient to allow personnel members to monitor patient activity;
 9. Hot water temperatures are maintained between 95° F and 120° F in the areas of a behavioral health specialized transitional facility used by patients;
 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. Soiled linen and soiled clothing stored by the behavioral health specialized transitional facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas; and
 12. Pets and animals, except for service animals, are prohibited on the premises.
- B.** An administrator shall ensure that smoking or tobacco products are not permitted within or on the premises of the facility.
- C.** An administrator shall ensure that:
1. Poisonous or toxic materials stored by the behavioral health specialized transitional facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
 2. Combustible or flammable liquids and hazardous materials stored by a behavioral health specialized transitional facility are stored in the original labeled containers or safety containers in an area inaccessible to patients; and
 3. Poisonous, toxic, combustible, or flammable medical supplies in use for a patient are stored in a locked area according to the behavioral health specialized transitional facility's policies and procedures.
- D.** An administrator shall ensure that:
1. A patient's bedroom is provided with:
 - a. An individual storage space, such as a dresser or chest;
 - b. A bed that:
 - i. Consists of at least a mattress and frame, and
 - ii. Is at least 36 inches wide and 72 inches long; and
 - c. A pillow and linens that include:
 - i. A mattress pad;
 - ii. A top sheet and a bottom sheet are large enough to tuck under the mattress;
 - iii. A pillow case;
 - iv. A waterproof mattress cover, if needed; and
 - v. A blanket or bedspread sufficient to ensure the patient's warmth;
 2. Clean linens and bath towels are provided to a patient as needed and at least once every seven calendar days; and
 3. A patient's clothing may be cleaned according to policies and procedures.

ARTICLE 14. SUBSTANCE ABUSE TRANSITIONAL FACILITIES

R9-10-1415. Environmental Standards

- A. An administrator shall ensure that:
1. The premises and equipment are sufficient to accommodate the activities, treatment, and ancillary services stated in the substance abuse transitional facility's scope of services;
 2. The premises and equipment are:
 - a. Maintained in a condition that allows the premises and equipment to be used for the original purpose of the premises and equipment,
 - b. Clean, and
 - c. Free from a condition or situation that may cause a participant or other individual to suffer physical injury or illness;
 3. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
 4. Biohazardous waste and hazardous waste are identified, stored, used, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
 5. Equipment used at the substance abuse transitional facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 6. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 7. Garbage and refuse are:
 - a. Stored in plastic bags in covered containers, and
 - b. Removed from the premises at least once a week;
 8. Heating and cooling systems maintain the facility at a temperature between 70° F and 84° F at all times;
 9. A space heater is not used;
 10. Common areas:
 - a. Are lighted to assure the safety of participants, and

- b. Have lighting sufficient to allow personnel members to monitor participant activity;
- 11. Hot water temperatures are maintained between 95° F and 120° F in the areas of the substance abuse transitional facility used by participants;
- 12. The supply of hot and cold water is sufficient to meet the personal hygiene needs of participants and the cleaning and sanitation requirements in this Article;
- 13. Soiled linen and soiled clothing stored by the substance abuse transitional facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
- 14. Oxygen containers are secured in an upright position;
- 15. Poisonous or toxic materials stored by the substance abuse transitional facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to participants;
- 16. Combustible or flammable liquids and hazardous materials stored by the substance abuse transitional facility are stored in the original labeled containers or safety containers in a locked area inaccessible to participants;
- 17. 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
- 18. 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 is not permitted within a substance abuse transitional facility; and
- 2. Smoking tobacco products may be permitted on the premises outside a substance abuse transitional facility if:
 - a. Signs designating smoking areas are conspicuously posted, and
 - b. Smoking is prohibited in areas where combustible materials are stored or in use.

ARTICLE 16. BEHAVIORAL HEALTH RESPITE HOMES

R9-10-1610. Environmental Standards

- A. A provider shall ensure that a behavioral health respite home:
1. Is in a building that:
 - a. Is arranged, designed, and used for the living, sleeping, and housekeeping activities for one family on a permanent basis; and
 - b. Is free of any plumbing, electrical, ventilation, mechanical, chemical, or structural hazard that may jeopardize the health or safety of a recipient;
 2. Has a living room accessible at all times to a recipient;
 3. Has a dining area furnished for group meals that is accessible to the provider, recipients, and any other individuals present in the behavioral health respite home;
 4. For each six individuals residing in the behavioral health respite home, including recipients, has at least one bathroom equipped with:
 - a. A working toilet that flushes and has a seat; and
 - b. A sink with running water accessible for use by a recipient;
 5. Has equipment and supplies to maintain a recipient's personal hygiene accessible to the recipient;
 6. Is clean and free from accumulations of dirt, garbage, and rubbish; and
 7. Implements a pest control program that complies with A.A.C. R3-8-201(C)(4) to minimize the presence of insects and vermin at the behavioral health respite home.
- B. A provider shall ensure that any pets or other animals allowed on the premises are:
1. Controlled to prevent endangering a recipient and to maintain sanitation;
 2. Licensed consistent with local ordinances; and
 3. For a dog or cat, vaccinated against rabies.
- C. If a swimming pool is located on the premises, a provider shall ensure that:
1. The swimming pool is equipped with the following:
 - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
 - i. A removable strainer,
 - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and

- iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
 - b. An operational cleaning system;
 - 2. 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 than four inches across;
 - c. Has no horizontal openings, except as described in subsection (C)(2)(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
 - 3. A life preserver or shepherd's crook is available and accessible in the pool area.
- D.** A provider shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (C)(2) is covered and locked when not in use.

ARTICLE 17. UNCLASSIFIED HEALTH CARE INSTITUTIONS

R9-10-1712. Physical Plant, Environmental Services, and Equipment Standards

- A.** If applicable, an administrator shall ensure that a health care institution:
1. Is in a building that:
 - a. Has a certificate of occupancy from the local jurisdiction; and
 - b. Is free of any plumbing, electrical, ventilation, mechanical, or structural hazard that may jeopardize the health or safety of a patient;
 2. Has a living room accessible at all times to a patient;
 3. Has a dining area furnished for group meals that is accessible to the provider, patients, and any other individuals present in the health care institution;
 4. Has:
 - a. At least one bathroom for each six individuals residing in the health care institution, including patients; and
 - b. A bathroom accessible for use by a patient that contains:
 - i. A working sink with running water, and
 - ii. A working toilet that flushes and has a seat; and
 5. Has equipment and supplies to maintain a patient's personal hygiene that are accessible to the patient.
- B.** An administrator shall ensure that:
1. A health care institution's premises are:
 - a. Sufficient to provide the health care institution's scope of services;
 - b. Cleaned and disinfected according to the health care institution's policies and procedures to prevent, minimize, and control illness and infection;
 - c. Clean and free from accumulations of dirt, garbage, and rubbish; and
 - d. Free from a condition or situation that may cause an individual to suffer physical injury;
 2. If a health care institution collects urine or stool specimens from a patient, the health care institution has at least one bathroom that:
 - a. Contains:
 - i. A working sink with running water,
 - ii. A working toilet that flushes and has a seat,
 - iii. Toilet tissue,

- iv. Soap for hand washing,
 - v. Paper towels or a mechanical air hand dryer,
 - vi. Lighting, and
 - vii. A means of ventilation; and
 - b. Is for the exclusive use of the health care institution;
- 3. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
- 4. If pets or animals are allowed in the health care institution, pets or animals are:
 - a. Controlled to prevent endangering the patients and to maintain sanitation;
 - b. Licensed consistent with local ordinances; and
 - c. For a dog or a cat, vaccinated against rabies;
- 5. A smoke-free environment is maintained on the premises;
- 6. A refrigerator used to store a medication is:
 - a. Maintained in working order, and
 - b. Only used to store medications;
- 7. Equipment at the health care institution is:
 - a. Sufficient to provide the health care institution's scope of service;
 - b. Maintained in working condition;
 - c. Used according to the manufacturer's recommendations; and
 - d. If applicable, tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures;
- 8. Documentation of an equipment test, calibration, and repair is maintained for at least 12 months after the date of testing, calibration, or repair; and
- 9. Combustible or flammable liquids and hazardous materials stored by the health care institution are stored in the original labeled containers or safety containers in a storage area that is locked and inaccessible to patients.

ARTICLE 18. ADULT BEHAVIORAL HEALTH THERAPEUTIC HOMES

R9-10-1810. Physical Plant, Environmental Services, and Equipment Standards

- A.** A provider shall ensure that an adult behavioral health therapeutic home:
1. Is in a building that:
 - a. Is arranged, designed, and used for the living, sleeping, and housekeeping activities for one family on a permanent basis; and
 - b. Is free of any plumbing, electrical, ventilation, mechanical, chemical, or structural hazard that may jeopardize the health or safety of a resident;
 2. Has a living room accessible at all times to a resident;
 3. Has a dining area furnished for group meals that is accessible to the provider, residents, and any other individuals present in the adult behavioral health therapeutic home;
 4. For each six individuals residing in the adult behavioral health therapeutic home, including residents, has at least one bathroom equipped with:
 - a. A working toilet that flushes and has a seat; and
 - b. A sink with running water accessible for use by a resident;
 5. Has equipment and supplies to maintain a resident's personal hygiene that are accessible to the resident;
 6. Is clean and free from accumulations of dirt, garbage, and rubbish; and
 7. Implements a pest control program that complies with A.A.C. R3-8-201(C)(4) to minimize the presence of insects and vermin at the adult behavioral health therapeutic home.
- B.** A provider shall ensure that pets and animals are:
1. Controlled to prevent endangering the residents and to maintain sanitation;
 2. Licensed consistent with local ordinances; and
 3. For a dog or cat, vaccinated against rabies.
- C.** If a swimming pool is located on the premises, a provider shall ensure that:
1. The swimming pool is equipped with the following:
 - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
 - i. A removable strainer,
 - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and

- iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
 - b. An operational cleaning system;
 - 2. 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 than four inches across;
 - c. Has no horizontal openings, except as described in subsection (C)(2)(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
 - 3. A life preserver or shepherd's crook is available and accessible in the pool area.
- D.** A provider shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (C)(2) is covered and locked when not in use.
- E.** A provider shall ensure that:
- 1. A bedroom for use by a resident:
 - a. Is separated from a hall, corridors, or other habitable room by floor-to-ceiling walls containing no interior openings except doors and is not used as a passageway to another bedroom or habitable room;
 - b. Provides sufficient space for an individual in the bedroom to have unobstructed access to the bedroom door;
 - c. Contains for each resident using the bedroom:
 - i. A separate, adult-sized, single bed or larger bed with a clean mattress in good repair;
 - ii. Clean bedding appropriate for the season; and
 - iii. An individual dresser and closet for storage of personal possessions and clothing; and
 - d. If used for:
 - i. Single occupancy, contains at least 60 square feet of floor space; or
 - ii. Double occupancy, contains at least 100 square feet of floor space; and

2. A mirror is available to a resident for grooming;
3. A resident does not share a bedroom with an individual who is not a resident;
4. No more than two residents share a bedroom;
5. If two residents share a bedroom, each resident agrees, in writing, to share the bedroom;
and
6. A resident's bedroom is not used to store anything other than the furniture and articles used by the resident and the resident's belongings.



November 19, 2018

Colby Bower, Assistant Director
Arizona Department of Health Services
Public Health Licensing Services
150 N. 18th Ave., Suite 510
Phoenix, AZ 85007

Re: Establishing Minimum Standards and Requirements for Construction, Modification, and Licensure of Health Care Institutions in Arizona

Dear Mr. Colby Bower,

The Arizona Pest Professional Organization (AzPPO) represents professional structural pest management or “pest control” companies in Arizona and appreciates the opportunity to comment in support of the proposed rule published on November 9, 2018, *24 A.A.R. 2973*, regarding the adoption of rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions in Arizona. AzPPO’s member companies manage pests including rats, mice, ants, cockroaches, bed bugs, mosquitoes, spiders, stinging insects, termites and other pests in countless commercial, residential and institutional settings. AzPPO members are committed to providing quality pest management services that protect public health, food and property.

Health care institutions face many challenges to ensure that they meet the highest level of pest control, public health protection and sanitation while caring for sensitive populations. Because pests pose a number of health threats through the spread of bacteria, viruses, and contamination of surfaces, medical supplies and equipment, ensuring that the facility remains pest-free is absolutely vital.

The proposed rule outlines the importance of pest control and requires pest control programs in various medical facilities to comply with *A.A.C. R3-8-201(C)(4)* and states that: “An individual may not provide pest management services at a school, child care facility, health care institution, or food-handling establishment unless the individual is a certified applicator in the certification category for which services are being provided.” AzPPO supports the proposed rule requiring certified applicators for pest control programs at various health care institutions including: Behavioral Health Inpatient Facilities, Recovery Care Centers, Hospices, Behavioral Health

Residential Facilities, Assisted Living Facilities, Outpatient Surgical Centers, Outpatient Treatment Centers, Adult Day Health Care Facilities, Behavioral Health Specialized Transitional Facility, Substance Abuse Transitional Facilities, Behavioral Health Respite Homes, Unclassified Health Care Institutions, and Adult Behavioral Health Therapeutic Homes. This rule ensures that health care institutions, patients, staff, and visitors in Arizona are protected with professional pest control services from dangerous and deadly pests.

Highly Professional, Regulated, and Trained Industry: The U.S. Environmental Protection Agency (EPA) and the Arizona Department of Agriculture are the two primary government agencies that currently regulate the structural pest control industry in our state. In order to serve their customers, certified structural pesticide applicators have to undergo extensive training and certification protocols to meet rigorous federal and state standards and pass an exam with a score of at least a 75% or better. Additionally, structural pesticide applicators must complete continuing education courses to ensure that they are competent and sensitive stewards of our environment.

Pest Management Professionals (PMPs) are highly trained-in and practice Integrated Pest Management (IPM): IPM is a pest management system that uses all suitable techniques in a total management system, to prevent pests from reaching unacceptable levels, or to reduce existing pest populations to acceptable levels. The purpose of IPM is to manage pests with the least possible impact on people, property, and the environment.

IPM Methods include:

- Mechanical control
- Habitat modification
- Biological control
- Sanitation control
- Physical control
- Chemical control

Threats Posed by Dangerous and Deadly Pests in Health Care Facilities:

Cockroaches: Cockroaches spread at least 33 kinds of bacteria, six kinds of parasitic worms and at least seven other kinds of human pathogens. According to the Penn State Department of Entomology, German cockroaches commonly cause:

“Different forms of gastroenteritis (food poisoning, dysentery, diarrhea, and other illnesses) appear to be the principal diseases transmitted by German cockroaches. The organisms causing these diseases are carried on the legs and bodies of cockroaches and are deposited on food and utensils as the cockroaches forage. Cockroach excrement and cast

skins also contain a number of allergens to which many people exhibit allergic responses, such as skin rashes, watery eyes and sneezing, congestion of nasal passages, and asthma.”¹

As vectors for disease, cockroaches often carry bacteria such as *Escherichia coli* and *Salmonella* on their bodies, which not only contaminate food, cooking equipment and food preparation surfaces, but also compromise the sterile environment of operating rooms and the cleanliness of exam rooms and patient rooms.² Cockroaches also are responsible for increasing the severity of asthma and indoor allergy symptoms, especially in children and the elderly. Cockroaches are most likely to be found in locker and break rooms, laundry rooms, janitorial closets, food service areas, restaurants and snack bars, vending machine areas, food carts, floor drains and sink areas, intensive care units (ICUs), kidney dialysis and autopsy rooms as well as loading docks and garbage disposal areas.³

Rodents: Rodents transmit diseases like murine typhus and salmonellosis indirectly through their droppings, saliva, urine and hosting fleas. Rodents exacerbate allergies and asthma attacks due to allergenic proteins in their urine and feces. According to the U.S. Centers for Disease Control and Prevention (CDC), rodents transmit over 35 diseases such as hantavirus, rat bite fever, trichinosis, plague, infectious jaundice, Weil’s disease and leptospirosis.⁴ Leptospirosis results in an estimated 1.03 million annual cases and 58,900 deaths around the world.⁵ While the majority of deaths caused by leptospirosis occur in the developing world, the United States is not immune.

Rodents can enter buildings through almost any opening or crack larger than a dime. Once inside, rodents can cause structural damage as they are able to chew through wallboards, cardboard, wood and plaster and through electrical wiring, increasing the potential risk of fire. Additionally, rodents defecate constantly and can easily contaminate any and all food and food preparation surfaces. It’s important to inspect for rodent droppings, especially in undisturbed areas like cafeteria pantries, storage areas and along walls. Rodents typically are found in laundry rooms, food service areas, food carts, loading docks and garbage disposal areas.

Ants: While ants can contaminate food and food surfaces, the species of ant that is most worrisome in health care settings is the pharaoh ant. These ants can spread more than a dozen disease pathogens including *Salmonella* and *Streptococcus pyogenes* and are problematic because of their attraction to intravenous units, medical preparations and open wounds.⁶ Ants can be found in a wide range of laundry areas, ICUs, kidney dialysis and autopsy rooms.⁷

¹ "German Cockroaches (Department of Entomology)." Department of Entomology (Penn State University). January 2013. <http://ento.psu.edu/extension/factsheets/german-cockroaches>.

² Jim Fredericks, "How to Control Pests in Health Care Facilities." *Health Facilities Management*, www.hfmmagazine.com/articles/1478-how-to-control-pests-in-health-care-facilities.

³ Jim Fredericks, "How to Control Pests in Health Care Facilities."

⁴ "Rodents," Centers for Disease Control and Prevention, Centers for Disease Control and Prevention, www.cdc.gov/rodents/diseases/direct.html.

⁵ F Costa, JE Hagan, J Calcagno, M Kane, P Torgerson, MS Martinez-Silveira, C Stein, B Abela-Ridder, Ko AI (2015). "Global Morbidity and Mortality of Leptospirosis: A Systematic Review" <http://journals.plos.org/plosntds/article/file?id=10.1371/journal.pntd.0003898&type=printable>

⁶ Jim Fredericks, "How to Control Pests in Health Care Facilities."

⁷ Jim Fredericks, "How to Control Pests in Health Care Facilities."

Flies: Flies are much more than a buzzing annoyance, in fact, the threats they pose are serious. According to the Penn State Department of Entomology, flies carry a plethora of harrowing diseases because they feed on fecal matter, discharges from wounds and sores, and excrete and vomit on food among other causes:

“House flies are strongly suspected of transmitting at least 65 diseases to humans, including typhoid fever, dysentery, cholera, poliomyelitis, yaws, anthrax, tularemia, leprosy and tuberculosis. Flies regurgitate and excrete wherever they come to rest and thereby mechanically transmit disease organisms.”⁸

Additionally, a 2013 National Institute of Health (NIH) published study titled, “Role of Flies as Vectors of Foodborne Pathogens in Rural Areas” has shown that various species of flies not only carry harmful bacteria such as, *Campylobacter*, *E. coli*, *Salmonella*, and *Shigella*, but also multiple viruses and contribute to the resistance of antibiotics across the world. This study found that regarding anti-biotic resistance, “...the carriage of antibiotic resistant bacteria by flies in the environment increases the potential for human exposure to drug-resistant bacteria.”⁹

Bedbugs: A 2013 survey conducted by the National Pest Management Association and the University of Kentucky found that 33 percent of pest control professionals have treated for bedbugs in hospitals, while 46 percent did so in nursing homes.¹⁰ Although bedbugs are not considered vectors of disease, their bites can leave itchy, red welts and their presence can cause anxiety and sleeplessness. In some cases, patients also can experience a secondary infection caused by scratching at the bites and causing skin trauma, allowing for a port of entry for infection. Because bedbugs and their eggs hitchhike in bags, shoes and on people, they easily can be brought into a health care facility. Bedbugs most often are found in patient room beds, waiting area furniture, and laundry facilities.¹¹

Conclusion

Pest prevention and management cannot be viewed as being unrelated to the overall safety and cleanliness of health care facilities. Rather, it must be viewed as critical to achieving these goals. Requiring certified pesticide applicators for pest control programs in health care facilities is an investment in the health of patients and staff as well as an investment in maintaining a sound public reputation. The benefits of using a professional pest management company often far outweigh any associated costs and, in the long run, may save the facility valuable funds due to the proactive preventive measures put in place. AzPPO appreciates the opportunity to comment on the proposed rule and we applaud the Arizona Department of Health Services for their commitment to protecting public health by proposing this rule that clarifies that the implemented pest control program in a

⁸ “House Flies (Department of Entomology).” Department of Entomology (Penn State University). January 2013. Accessed July 17, 2017. <http://ento.psu.edu/extension/factsheets/house-flies>.

⁹ C. Barreiro, H. Albano, J. Silva, & P. Teixeira, Role of Flies as Vectors of Foodborne Pathogens in Rural Areas. *ISRN Microbiology*, 2013, 718780. <http://doi.org/10.1155/2013/718780>

¹⁰ Jim Fredericks, “How to Control Pests in Health Care Facilities.”

¹¹ Jim Fredericks, “How to Control Pests in Health Care Facilities.”

health care institution must comply with requirements in *A.A.C. R3-8-201(C)(4)*. Thank you for your time.

Sincerely,

Stu Keenan
President
AzPPO

Chris Gilles
President-Elect
AzPPO

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

ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES

Section

R9-10-323. Environmental Standards

ARTICLE 5. RECOVERY CARE CENTERS

Section

R9-10-517. Environmental Standards

ARTICLE 6. HOSPICES

Section

R9-10-617. Environmental Standards for a Hospice Inpatient Facility

ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES

Section

R9-10-721. Environmental Standards

ARTICLE 8. ASSISTED LIVING FACILITIES

Section

R9-10-819. Environmental Standards

ARTICLE 9. OUTPATIENT SURGICAL CENTERS

Section

R9-10-917. Environmental Standards

ARTICLE 10. OUTPATIENT TREATMENT CENTERS

Section

R9-10-1030. Physical Plant, Environmental Services, and Equipment Standards

ARTICLE 11. ADULT DAY HEALTH CARE FACILITIES

Section

R9-10-1116. Environmental Standards

ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY

Section

R9-10-1316. Environmental Standards

ARTICLE 14. SUBSTANCE ABUSE TRANSITIONAL FACILITIES

Section

R9-10-1415. Environmental Standards

ARTICLE 16. BEHAVIORAL HEALTH RESPITE HOMES

Section

R9-10-1610. Environmental Standards

ARTICLE 17. UNCLASSIFIED HEALTH CARE INSTITUTIONS

Section

R9-10-1712. Physical Plant, Environmental Services, and Equipment Standards

ARTICLE 18. ADULT BEHAVIORAL HEALTH THERAPEUTIC HOMES

Section

R9-10-1810. Physical Plant, Environmental Services, and Equipment Standards

ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES

R9-10-323. Environmental Standards

- A. An administrator shall ensure that:
1. The premises and equipment are:
 - a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
 - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
 2. A pest control program is implemented and documented;
 3. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
 4. Equipment used at the behavioral health inpatient facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 6. Garbage and refuse are:
 - a. In areas used for food storage, food preparation, or food service, stored in covered containers lined with plastic bags;
 - b. In areas not used for food storage, food preparation, or food service, stored:
 - i. According to the requirements in subsection (6)(a), or
 - ii. In a paper-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;
 7. Heating and cooling systems maintain the behavioral health inpatient facility at a temperature between 70° F and 84° F;
 8. Common areas:
 - a. Are lighted to assure the safety of patients, and
 - b. Have lighting sufficient to allow personnel members to monitor patient activity;

9. Hot water temperatures are maintained between 95° F and 120° F in the areas of a behavioral health inpatient facility used by patients;
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. Soiled linen and soiled clothing stored by the behavioral health inpatient facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
12. Oxygen containers are secured in an upright position;
13. Poisonous or toxic materials stored by the behavioral health inpatient facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
14. Combustible or flammable liquids and hazardous materials stored by a behavioral health inpatient facility are stored in the original labeled containers or safety containers in a locked area inaccessible to patients;
15. If pets or animals are allowed in the behavioral health inpatient facility, pets or animals are:
 - a. Controlled to prevent endangering the patients and to maintain sanitation;
 - b. Licensed consistent with local ordinances; and
 - c. For a dog or cat, vaccinated against rabies;
16. 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 maintained for at least 12 months after the date of the test; and
17. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.

B. An administrator shall ensure that:

1. Smoking tobacco products is not permitted within a behavioral health inpatient facility; and
2. Except as provided in R9-10-318(A)(11), smoking tobacco products may be permitted on the premises outside a behavioral health inpatient facility 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 R9-10-303(C)(1)(e) is present in the pool area when a patient is in the pool area, and
 - 2. At least two personnel members are present in the pool area when two or more patients are in the pool area.

ARTICLE 5. RECOVERY CARE CENTERS

R9-10-517. 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.

ARTICLE 6. HOSPICES

R9-10-617. Environmental Standards for a Hospice Inpatient Facility

- A. An administrator of a hospice inpatient facility shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
 - a. Cleaning and storing of soiled linens and clothing,
 - b. Housekeeping procedures that ensure a clean environment, and
 - c. Isolation of a patient who may spread an infection;
 2. The 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 other individual to suffer physical injury or illness;
 3. A pest control program is implemented and documented;
 4. Equipment used at the hospice inpatient facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in the hospice inpatient facility's policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 - ~~4.5.~~ Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 - ~~5.6.~~ Garbage and refuse are:
 - a. Stored in covered containers lined with plastic bags, and
 - b. Removed from the premises at least once a week;
 - ~~6.7.~~ 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;
 - ~~7.8.~~ Heating and cooling systems maintain the hospice inpatient facility at a temperature between 70° F and 84° F at all times;

- ~~8.9.~~ Common areas:
- a. Are lighted to assure the safety of patients, and
 - b. Have lighting sufficient to allow personnel members to monitor patient activity;
- ~~9.10.~~ 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;
- ~~10.11.~~ Oxygen containers are secured in an upright position;
- ~~11.12.~~ Poisonous or toxic materials stored by the hospice inpatient facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
- ~~12.13.~~ Except for medical supplies needed by a patient, combustible or flammable liquids and hazardous materials are stored by the hospice inpatient facility in the original labeled containers or safety containers in a locked area inaccessible to patients;
- ~~13.14.~~ If pets or animals are allowed in the hospice inpatient facility, pets or animals are:
- a. Controlled to prevent endangering the patients and to maintain sanitation, and
 - b. Licensed consistent with local ordinances;
- ~~14.15.~~ 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
- ~~15.16.~~ 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 of a hospice inpatient facility shall ensure that a patient is allowed to use and display personal belongings.

ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES

R9-10-721. Environmental Standards

- A. Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that:
1. The premises and equipment are:
 - a. Maintained in a condition that allows the premises and equipment to be used for the original purpose of the premises and equipment;
 - b. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
 - c. Free from a condition or situation that may cause a resident or other individual to suffer physical injury;
 2. A pest control program is implemented and documented;
 3. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
 4. Equipment used at the behavioral health residential facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 6. Garbage and refuse are:
 - a. Stored in covered containers lined with plastic bags, and
 - b. Removed from the premises at least once a week;
 7. Heating and cooling systems maintain the behavioral health residential facility at a temperature between 70° F and 84° F;
 8. A space heater is not used;
 9. Common areas:
 - a. Are lighted to assure the safety of residents, and
 - b. Have lighting sufficient to allow personnel members to monitor resident activity;

10. Hot water temperatures are maintained between 95° F and 120° F in the areas of the behavioral health residential facility used by residents;
11. 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;
12. Soiled linen and soiled clothing stored by the behavioral health residential facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
13. Oxygen containers are secured in an upright position;
14. Poisonous or toxic materials stored by the behavioral health residential facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
15. Combustible or flammable liquids and hazardous materials stored by a behavioral health residential facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
16. If pets or animals are allowed in the behavioral health residential facility, pets or animals are:
 - a. Controlled to prevent endangering the residents and to maintain sanitation;
 - b. Licensed consistent with local ordinances; and
 - c. For a dog or cat, vaccinated against rabies;
17. 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
18. 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 is not permitted within a behavioral health residential facility; and
2. Smoking tobacco products may be permitted on the premises outside a behavioral health residential facility 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. On each day that a resident uses the swimming pool, an employee:
 - a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
 - i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
 - ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
 - iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
 - b. Records the results of the water quality tests in a log that includes each testing date and test result;
 - 2. Documentation of the water quality test is maintained for at least 12 months after the date of the test;
 - 3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (C)(1)(a);
 - 4. At least one personnel member, with cardiopulmonary resuscitation training that meets the requirements in R9-10-703(C)(1)(e), is present in the pool area when a resident is in the pool area; and
 - 5. At least two personnel members are present in the pool area if two or more residents are in the pool area.

ARTICLE 8. ASSISTED LIVING FACILITIES

R9-10-819. Environmental Standards

- A. A manager shall ensure that:
1. The premises and equipment used at the assisted living facility are:
 - a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
 - b. Free from a condition or situation that may cause a resident or other individual to suffer physical injury;
 2. A pest control program is implemented and documented;
 3. Garbage and refuse are:
 - a. Stored in covered containers lined with plastic bags, and
 - b. Removed from the premises at least once a week;
 4. Heating and cooling systems maintain the assisted living facility at a temperature between 70° F and 84° F at all times, unless individually controlled by a resident;
 5. Common areas:
 - a. Are lighted to ensure the safety of residents, and
 - b. Have lighting sufficient to allow caregivers and assistant caregivers to monitor resident activity;
 6. Hot water temperatures are maintained between 95° F and 120° F in areas of an assisted living facility used by residents;
 7. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
 8. A resident has access to a laundry service or a washing machine and dryer in the assisted living facility;
 9. Soiled linen and soiled clothing stored by the assisted living facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
 10. Oxygen containers are secured in an upright position;
 11. Poisonous or toxic materials stored by the assisted living facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;

12. Combustible or flammable liquids and hazardous materials stored by the assisted living facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
 13. Equipment used at the assisted living facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 14. If pets or animals are allowed in the assisted living facility, pets or animals are:
 - a. Controlled to prevent endangering the residents and to maintain sanitation;
 - b. Licensed consistent with local ordinances; and
 - c. For a dog or cat, vaccinated against rabies;
 15. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
 - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or E. coli bacteria;
 - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
 - c. Documentation of testing is retained for at least 12 months after the date of the test; and
 16. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.
- B.** If a swimming pool is located on the premises, a manager shall ensure that:
1. On a day that a resident uses the swimming pool, an employee:
 - a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
 - i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
 - ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
 - iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and

- b. Records the results of the water quality tests in a log that includes the date tested and test result;
2. Documentation of the water quality test is maintained for at least 12 months after the date of the test; and
3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a).

ARTICLE 9. OUTPATIENT SURGICAL CENTERS

R9-10-917. Environmental Standards

- A. An administrator shall ensure that:
1. An outpatient surgical 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 at the outpatient surgical center to provide care to a patient 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. Stored in covered containers lined with plastic bags, and
 - b. Removed from the premises at least once a week;
 6. Heating and cooling systems maintain the outpatient surgical center at a temperature between 70° F and 84° F at all times;
 7. Common areas:
 - a. Are lighted to assure the safety of patients, and
 - b. Have lighting sufficient to allow personnel members to monitor patient activity; and
 8. 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.
- B. An administrator shall ensure that an outpatient surgical center has a functional emergency power source.

ARTICLE 10. OUTPATIENT TREATMENT CENTERS

R9-10-1030. Physical Plant, Environmental Services, and Equipment Standards

- A. An administrator shall ensure that:
1. An outpatient treatment center's premises are:
 - a. Sufficient to provide the outpatient treatment center's scope of services;
 - b. Cleaned and disinfected according to the outpatient treatment center's policies and procedures to prevent, minimize, and control illness and infection; and
 - c. Free from a condition or situation that may cause an individual to suffer physical injury;
 2. If an outpatient treatment center collects urine or stool specimens from a patient, except as provided in subsection (B), or is authorized to provide respite services for children on the premises, the outpatient treatment center has at least one bathroom on the premises that:
 - a. Contains:
 - i. A working sink with running water,
 - ii. A working toilet that flushes and has a seat,
 - iii. Toilet tissue,
 - iv. Soap for hand washing,
 - v. Paper towels or a mechanical air hand dryer,
 - vi. Lighting, and
 - vii. A means of ventilation; and
 - b. Is for the exclusive use of the outpatient treatment center;
 3. A pest control program is implemented and documented;
 4. A tobacco smoke-free environment is maintained on the premises;
 5. A refrigerator used to store a medication is:
 - a. Maintained in working order, and
 - b. Only used to store medications;
 6. Equipment at the outpatient treatment center is:
 - a. Sufficient to provide the outpatient treatment center's scope of services;
 - b. Maintained in working condition;
 - c. Used according to the manufacturer's recommendations; and

- d. If applicable, tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 7. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of testing, calibration, or repair.
- B.** An outpatient treatment center may have a bathroom used for the collection of a patient's urine or stool that is not for the exclusive use of the outpatient treatment center if:
 1. The bathroom is located in the same contiguous building as the outpatient treatment center's premises,
 2. The bathroom is of a sufficient size to support the outpatient treatment center's scope of services, and
 3. There is a documented agreement between the licensee and the owner of the building stating that the bathroom complies with the requirements in this Section and allowing the Department access to the bathroom to verify compliance.
- C.** If an outpatient treatment center has a bathroom that is not for the exclusive use of the outpatient treatment center as allowed in subsection (B), an administrator shall ensure that:
 1. Policies and procedures are established, documented, and implemented to:
 - a. Protect the health and safety of an individual using the bathroom; and
 - b. Ensure that the bathroom is cleaned and sanitized to prevent, minimize, and control illness and infection;
 2. Documented instructions are provided to a patient that cover:
 - a. Infection control measures when a patient uses the bathroom, and
 - b. The safe return of a urine or stool specimen to the outpatient treatment center;
 3. The bathroom complies with the requirements in subsection (A)(2)(a); and
 4. The bathroom is free from a condition or situation that may cause an individual using the bathroom to suffer a physical injury.

ARTICLE 11. ADULT DAY HEALTH CARE FACILITIES

R9-10-1116. Environmental Standards

- A. An administrator shall ensure that:
1. The adult day health care facility's premises are:
 - a. Cleaned and disinfected according to policies and procedures to prevent, minimize, and control illness and infection; and
 - b. Free from a condition or situation that may cause a participant or an individual to suffer physical injury;
 2. A pest control program is implemented and documented;
 3. Windows and doors opening to the outside are screened if they are kept open at any time for ventilation or other purposes;
 4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
 5. Equipment used at the adult day health care facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 6. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 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 adult day health care facility at a temperature between 70° F and 84° F;
 9. The supply of hot and cold water is sufficient to meet the personal hygiene needs of participants and the cleaning and sanitation requirements in this Article;
 10. Soiled linen and soiled clothing stored by the adult day health care facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
 11. Oxygen containers are secured in an upright position;

12. Poisonous or toxic materials stored by the adult day health care facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to participants;
13. Combustible or flammable liquids and hazardous materials stored by the adult day health care facility are stored in the original labeled containers or safety containers in a locked area inaccessible to participants; and
14. Pets or animals are:
 - a. Controlled to prevent endangering the participants and to maintain sanitation;
 - b. Not allowed in treatment, food storage, food preparation, or dining areas;
 - c. Licensed consistent with local ordinances; and
 - d. For a dog or cat, vaccinated against rabies.

B. If a swimming pool is located on the premises, an administrator shall ensure that:

1. On a day that a participant uses the swimming pool, an employee:
 - a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
 - i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
 - ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
 - iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
 - b. Records the results of the water quality tests in a log that includes the date tested and test result;
2. Documentation of the water quality test is maintained for at least 12 months after the date of the test;
3. A swimming pool is not used by a participant if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a);
4. At least one personnel member with cardiopulmonary resuscitation training, required in R9-10-1106(D), is present in the pool area when a participant is in the pool area; and
5. At least two personnel members are present in the pool area if two or more participants are in the pool area.

ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY

R9-10-1316. Environmental Standards

- A. An administrator shall ensure that:
1. The premises and equipment are:
 - a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
 - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
 2. A pest control program is implemented and documented;
 3. Biohazardous medical wastes are identified, stored, and disposed of according to 18 A.A.C. 13, Article 14;
 4. Equipment used at the behavioral health specialized transitional facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 6. Garbage and refuse are:
 - a. Stored in covered containers, and
 - b. Removed from the premises at least once a week;
 7. Heating and cooling systems maintain the behavioral health specialized transitional facility at a temperature between 70° F and 84° F;
 8. Common areas:
 - a. Are lighted to assure the safety of patients, and
 - b. Have lighting sufficient to allow personnel members to monitor patient activity;
 9. Hot water temperatures are maintained between 95° F and 120° F in the areas of a behavioral health specialized transitional facility used by patients;
 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. Soiled linen and soiled clothing stored by the behavioral health specialized transitional facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas; and
 12. Pets and animals, except for service animals, are prohibited on the premises.
- B.** An administrator shall ensure that smoking or tobacco products are not permitted within or on the premises of the facility.
- C.** An administrator shall ensure that:
1. Poisonous or toxic materials stored by the behavioral health specialized transitional facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
 2. Combustible or flammable liquids and hazardous materials stored by a behavioral health specialized transitional facility are stored in the original labeled containers or safety containers in an area inaccessible to patients; and
 3. Poisonous, toxic, combustible, or flammable medical supplies in use for a patient are stored in a locked area according to the behavioral health specialized transitional facility's policies and procedures.
- D.** An administrator shall ensure that:
1. A patient's bedroom is provided with:
 - a. An individual storage space, such as a dresser or chest;
 - b. A bed that:
 - i. Consists of at least a mattress and frame, and
 - ii. Is at least 36 inches wide and 72 inches long; and
 - c. A pillow and linens that include:
 - i. A mattress pad;
 - ii. A top sheet and a bottom sheet are large enough to tuck under the mattress;
 - iii. A pillow case;
 - iv. A waterproof mattress cover, if needed; and
 - v. A blanket or bedspread sufficient to ensure the patient's warmth;
 2. Clean linens and bath towels are provided to a patient as needed and at least once every seven calendar days; and
 3. A patient's clothing may be cleaned according to policies and procedures.

ARTICLE 14. SUBSTANCE ABUSE TRANSITIONAL FACILITIES

R9-10-1415. Environmental Standards

- A. An administrator shall ensure that:
1. The premises and equipment are sufficient to accommodate the activities, treatment, and ancillary services stated in the substance abuse transitional facility's scope of services;
 2. The premises and equipment are:
 - a. Maintained in a condition that allows the premises and equipment to be used for the original purpose of the premises and equipment,
 - b. Clean, and
 - c. Free from a condition or situation that may cause a participant or other individual to suffer physical injury or illness;
 3. A pest control program is implemented and documented;
 4. Biohazardous waste and hazardous waste are identified, stored, used, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
 5. Equipment used at the substance abuse transitional facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 6. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 7. Garbage and refuse are:
 - a. Stored in plastic bags in covered containers, and
 - b. Removed from the premises at least once a week;
 8. Heating and cooling systems maintain the facility at a temperature between 70° F and 84° F at all times;
 9. A space heater is not used;
 10. Common areas:
 - a. Are lighted to assure the safety of participants, and
 - b. Have lighting sufficient to allow personnel members to monitor participant activity;

11. Hot water temperatures are maintained between 95° F and 120° F in the areas of the substance abuse transitional facility used by participants;
12. The supply of hot and cold water is sufficient to meet the personal hygiene needs of participants and the cleaning and sanitation requirements in this Article;
13. Soiled linen and soiled clothing stored by the substance abuse transitional facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
14. Oxygen containers are secured in an upright position;
15. Poisonous or toxic materials stored by the substance abuse transitional facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to participants;
16. Combustible or flammable liquids and hazardous materials stored by the substance abuse transitional facility are stored in the original labeled containers or safety containers in a locked area inaccessible to participants;
17. 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
18. 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 is not permitted within a substance abuse transitional facility; and
2. Smoking tobacco products may be permitted on the premises outside a substance abuse transitional facility if:
 - a. Signs designating smoking areas are conspicuously posted, and
 - b. Smoking is prohibited in areas where combustible materials are stored or in use.

ARTICLE 16. BEHAVIORAL HEALTH RESPITE HOMES

R9-10-1610. Environmental Standards

- A.** A provider shall ensure that a behavioral health respite home:
1. Is in a building that:
 - a. Is arranged, designed, and used for the living, sleeping, and housekeeping activities for one family on a permanent basis; and
 - b. Is free of any plumbing, electrical, ventilation, mechanical, chemical, or structural hazard that may jeopardize the health or safety of a recipient;
 2. Has a living room accessible at all times to a recipient;
 3. Has a dining area furnished for group meals that is accessible to the provider, recipients, and any other individuals present in the behavioral health respite home;
 4. For each six individuals residing in the behavioral health respite home, including recipients, has at least one bathroom equipped with:
 - a. A working toilet that flushes and has a seat; and
 - b. A sink with running water accessible for use by a recipient;
 5. Has equipment and supplies to maintain a recipient's personal hygiene accessible to the recipient;
 6. Is clean and free from accumulations of dirt, garbage, and rubbish; and
 7. Implements a pest control program to minimize the presence of insects and vermin at the behavioral health respite home.
- B.** A provider shall ensure that any pets or other animals allowed on the premises are:
1. Controlled to prevent endangering a recipient and to maintain sanitation;
 2. Licensed consistent with local ordinances; and
 3. For a dog or cat, vaccinated against rabies.
- C.** If a swimming pool is located on the premises, a provider shall ensure that:
1. The swimming pool is equipped with the following:
 - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
 - i. A removable strainer,
 - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and

- iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
 - b. An operational cleaning system;
 - 2. 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 than four inches across;
 - c. Has no horizontal openings, except as described in subsection (C)(2)(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
 - 3. A life preserver or shepherd's crook is available and accessible in the pool area.
- D.** A provider shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (C)(2) is covered and locked when not in use.

ARTICLE 17. UNCLASSIFIED HEALTH CARE INSTITUTIONS

R9-10-1712. Physical Plant, Environmental Services, and Equipment Standards

- A.** If applicable, an administrator shall ensure that a health care institution:
1. Is in a building that:
 - a. Has a certificate of occupancy from the local jurisdiction; and
 - b. Is free of any plumbing, electrical, ventilation, mechanical, or structural hazard that may jeopardize the health or safety of a patient;
 2. Has a living room accessible at all times to a patient;
 3. Has a dining area furnished for group meals that is accessible to the provider, patients, and any other individuals present in the health care institution;
 4. Has:
 - a. At least one bathroom for each six individuals residing in the health care institution, including patients; and
 - b. A bathroom accessible for use by a patient that contains:
 - i. A working sink with running water, and
 - ii. A working toilet that flushes and has a seat; and
 5. Has equipment and supplies to maintain a patient's personal hygiene that are accessible to the patient.
- B.** An administrator shall ensure that:
1. A health care institution's premises are:
 - a. Sufficient to provide the health care institution's scope of services;
 - b. Cleaned and disinfected according to the health care institution's policies and procedures to prevent, minimize, and control illness and infection;
 - c. Clean and free from accumulations of dirt, garbage, and rubbish; and
 - d. Free from a condition or situation that may cause an individual to suffer physical injury;
 2. If a health care institution collects urine or stool specimens from a patient, the health care institution has at least one bathroom that:
 - a. Contains:
 - i. A working sink with running water,
 - ii. A working toilet that flushes and has a seat,
 - iii. Toilet tissue,

- iv. Soap for hand washing,
 - v. Paper towels or a mechanical air hand dryer,
 - vi. Lighting, and
 - vii. A means of ventilation; and
 - b. Is for the exclusive use of the health care institution;
- 3. A pest control program is implemented and documented;
- 4. If pets or animals are allowed in the health care institution, pets or animals are:
 - a. Controlled to prevent endangering the patients and to maintain sanitation;
 - b. Licensed consistent with local ordinances; and
 - c. For a dog or a cat, vaccinated against rabies;
- 5. A smoke-free environment is maintained on the premises;
- 6. A refrigerator used to store a medication is:
 - a. Maintained in working order, and
 - b. Only used to store medications;
- 7. Equipment at the health care institution is:
 - a. Sufficient to provide the health care institution's scope of service;
 - b. Maintained in working condition;
 - c. Used according to the manufacturer's recommendations; and
 - d. If applicable, tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures;
- 8. Documentation of an equipment test, calibration, and repair is maintained for at least 12 months after the date of testing, calibration, or repair; and
- 9. Combustible or flammable liquids and hazardous materials stored by the health care institution are stored in the original labeled containers or safety containers in a storage area that is locked and inaccessible to patients.

ARTICLE 18. ADULT BEHAVIORAL HEALTH THERAPEUTIC HOMES

R9-10-1810. Physical Plant, Environmental Services, and Equipment Standards

- A.** A provider shall ensure that an adult behavioral health therapeutic home:
1. Is in a building that:
 - a. Is arranged, designed, and used for the living, sleeping, and housekeeping activities for one family on a permanent basis; and
 - b. Is free of any plumbing, electrical, ventilation, mechanical, chemical, or structural hazard that may jeopardize the health or safety of a resident;
 2. Has a living room accessible at all times to a resident;
 3. Has a dining area furnished for group meals that is accessible to the provider, residents, and any other individuals present in the adult behavioral health therapeutic home;
 4. For each six individuals residing in the adult behavioral health therapeutic home, including residents, has at least one bathroom equipped with:
 - a. A working toilet that flushes and has a seat; and
 - b. A sink with running water accessible for use by a resident;
 5. Has equipment and supplies to maintain a resident's personal hygiene that are accessible to the resident;
 6. Is clean and free from accumulations of dirt, garbage, and rubbish; and
 7. Implements a pest control program to minimize the presence of insects and vermin at the adult behavioral health therapeutic home.
- B.** A provider shall ensure that pets and animals are:
1. Controlled to prevent endangering the residents and to maintain sanitation;
 2. Licensed consistent with local ordinances; and
 3. For a dog or cat, vaccinated against rabies.
- C.** If a swimming pool is located on the premises, a provider shall ensure that:
1. The swimming pool is equipped with the following:
 - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
 - i. A removable strainer,
 - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and

- iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
 - b. An operational cleaning system;
 - 2. 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 than four inches across;
 - c. Has no horizontal openings, except as described in subsection (C)(2)(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
 - 3. A life preserver or shepherd's crook is available and accessible in the pool area.
- D.** A provider shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (C)(2) is covered and locked when not in use.
- E.** A provider shall ensure that:
- 1. A bedroom for use by a resident:
 - a. Is separated from a hall, corridors, or other habitable room by floor-to-ceiling walls containing no interior openings except doors and is not used as a passageway to another bedroom or habitable room;
 - b. Provides sufficient space for an individual in the bedroom to have unobstructed access to the bedroom door;
 - c. Contains for each resident using the bedroom:
 - i. A separate, adult-sized, single bed or larger bed with a clean mattress in good repair;
 - ii. Clean bedding appropriate for the season; and
 - iii. An individual dresser and closet for storage of personal possessions and clothing; and
 - d. If used for:
 - i. Single occupancy, contains at least 60 square feet of floor space; or
 - ii. Double occupancy, contains at least 100 square feet of floor space; and

2. A mirror is available to a resident for grooming;
3. A resident does not share a bedroom with an individual who is not a resident;
4. No more than two residents share a bedroom;
5. If two residents share a bedroom, each resident agrees, in writing, to share the bedroom;
and
6. A resident's bedroom is not used to store anything other than the furniture and articles used by the resident and the resident's belongings.

Statutory Authority for 9 A.A.C. 10

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.
13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; 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. Whenever 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 no 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 fund-raising 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) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. 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 obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods 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.

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 the preservation or storage of 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 preparation of 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 food for commercial purposes pursuant to paragraph 4 of this subsection.

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. For the purposes of this section, "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 the construction, modification and licensure of 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 the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. 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 the selection of 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, and fees for architectural plans and specifications reviews.
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

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.

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DEPARTMENT OF REVENUE (R-19-0105)
Title 15, Chapter 5, Article 18.1, Sales of Food

Amend: R15-5-1860

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

DATE: December 21, 2018

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

FROM: Council Staff

MEETING: January 8, 2018

SUBJECT: DEPARTMENT OF REVENUE (R-19-0105)
Title 15, Chapter 5, Article 18.1, Sales of Food

Amend: R15-5-1860

SUMMARY OF THE RULEMAKING

This rulemaking, from the Department of Revenue (Department), seeks to amend one rule in A.A.C. Title 15, Chapter 5, Article 18.1, related to sales of food.

The Department is engaging in the rulemaking to implement 2018 changes to A.R.S. § 42-5102(A)(5) that removed “a mobile facility, motor vehicle or other such conveyance” from the list of retailers that are permitted to sell food that is tax exempt. The definition of “qualified retailer” in R15-5-1860 is being amended accordingly.

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

Yes. The Department cites to both general and specific statutory authority for the rule.

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

No. The rule does not establish a new fee or contain a fee increase.

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

Not applicable. No public comments were received.

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

No. No substantive changes were made between the Notice of Proposed Rulemaking and the Notice of 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?

No. The rule is not more stringent than any federal laws.

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

No. The rule does not require issuance of a permit or license.

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

No. The Department indicates that it did not rely on any study for the rulemaking.

8. Conclusion

The rule will become effective immediately upon filing with the Secretary of State. Council staff recommends approval of the rulemaking.



November 20, 2018

Ms. Nicole Ong Colyer
The Governor's Review Regulatory Council
100 N 15th Ave., Ste 402
Phoenix, Arizona 85007

Douglas A. Ducey
Governor

David Briant
Director

Re: Notice of Final Expedited Rule Making

Dear Ms. Ong Colyer:

In accordance with A.R.S. § 41-1027, the Department submits the enclosed Notice of Final Expedited Rulemaking amending the following rule for the Council's approval:

Article 18.1. Sales of Food
A.A.C R15-5-1860. Definitions

HB2371 (Laws 2018, chapter 286) amended A.R.S. § 42-5102(A)(5) to remove "a mobile facility, motor vehicle or other such conveyance" from the list of retailers permitted to sell tax exempt food. As a result, A.A.C. R15-5-1860(12)(v) which defines a qualified retailer as including "a mobile facility, motor vehicle or other such conveyance" is outdated and no longer necessary for the operation of state government. The Department's final rule amendment removes the outdated terms from A.A.C. R15-5-1860(12)(v). In addition, the final rule amendment would not increase the cost of regulatory compliance, increase a fee or reduce the procedural rights of persons. Therefore, it qualifies for the expedited rulemaking process under A.R.S. § 41-1027(A)(6).

The rulemaking activity does not relate to a five year rule review report.

The Department received a rulemaking waiver from The Governor's Office on August 14, 2018.

The Department filed a Notice of Rulemaking Docket Opening and Notice of Proposed Expedited Rulemaking with the Arizona Secretary of State on August 27, 2018. The Notice of Rulemaking Docket Opening and Notice of Proposed Expedited Rulemaking were published in the 2018 Arizona Administrative Register, Volume 24 Issue 38 on September 21, 2018. The close of record date was November 9, 2018.

The Department did not receive any study relevant to the rule. Accordingly, the Department certifies that the preamble discloses no reference to any study, and it did not

rely on any study in its evaluation of or justification for amending the rule. The Department does not believe that it will be necessary to engage any additional full-time employees to implement and enforce the rules.

Pursuant to A.R.S. § 41-1027(H), the Department is requesting an immediate effective date.

The following documents are enclosed:

- The Notice of Final Rulemaking, including the preamble and the text of the rule being amended
- Reference materials: authorizing and implementing statutes
- E-mail approving the Department's request for an exception to the rulemaking moratorium

The agency's contact person who can answer questions about the Notice of Final Expedited Rulemaking is as follows:

Name: Lisa Querard, Attorney IV
Address: 1600 W. Monroe St. – Mail Code 1300, Phoenix, AZ 85007
Telephone: (602) 716-6813
Fax: (602) 716-7996
E-mail: lquerard@azdor.gov
Web site: <http://www.azdor.gov>

Please let me know if you have any questions or concerns.

Sincerely,



Dr. Grant Nülle
Deputy Director
Arizona Department of Revenue

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE – TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
R15-5-1860. Definitions	Amend

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

Authorizing statute: A.R.S. § 42-1005(A)(1).

Implementing statutes: A.R.S. § 42-5102, A.R.S. § 42-5106.

3. The effective date of the rule:

Pursuant to A.R.S. § 41-1027(H), the Department is requesting an immediate effective date

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

Notice of Docket Opening, 24 A.A.R. 2635, September 21, 2018

Notice of Proposed Expedited Rulemaking, 24 A.A.R. 2621, September 21, 2018

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

Name: Lisa Querard

Address: 1600 W. Monroe St., Mail Code 1300, Phoenix, AZ 85007

Telephone: (602) 716-6813

Fax: (602) 716-7996

E-mail: lquerard@azdor.gov

Web site: <http://www.azdor.gov>

6. The agency’s explanation why the proposed expedited rule should be made, amended, repealed, or renumbered under A.R.S. § 41-1027(A) and why expedited proceedings are justified under A.R.S. § 41-1001(16)(c):

HB2371 (Laws 2018, chapter 286) amended A.R.S. § 42-5102(A)(5) to remove “a mobile facility, motor vehicle or other such conveyance” from the list of retailers permitted to sell tax exempt food. As a result, A.A.C. R15-5-1860(12)(v) which defines a qualified retailer as including “a mobile facility, motor vehicle or other such conveyance” is outdated. The Department’s final expedited rule amendment removes those terms from A.A.C. R15-5-1860(12)(v).

A.R.S § 41-1027(A)(6) provides that an agency is permitted to make expedited rules if the proposed rule amendment would not increase the cost of regulatory compliance, increase a fee or reduce the procedural rights of persons. In addition to removing an outdated reference, the proposed rule amendment would not increase the cost of regulatory compliance, increase a fee or reduce the procedural rights of persons. Therefore, it qualifies for the expedited rulemaking process under A.R.S. § 41-1027(A)(6).

The Department received a rulemaking waiver from the Governor’s Office on August 14, 2018.

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:

Not applicable.

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

Not applicable.

9. A statement that the agency is exempt from the requirements under A.R.S. §

41-1055(G) to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2):

Pursuant to A.R.S. § 41-1055(D)(2), an agency is not required to prepare an economic, small business and consumer impact statement where the agency is submitting proposed expedited rulemakings. Thus, no economic impact statement is required with this rulemaking.

10. A description of any changes between the proposed expedited rulemaking and the final expedited rulemaking.

Technical changes were made at the request of Council staff.

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

Oral proceedings were not held for this rulemaking. Pursuant to A.R.S. § 41-1027(C), the Department published the notice of the proposed expedited rulemaking on its website on September 14, 2018 and it remained there for at least thirty days. The Department did not receive any stakeholder comments about the rulemaking.

12. Any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additional matters shall include but are not limited to:

a. Whether the rule requires a permit, license, or agency authorization under A.R.S. § 41-1037(A), and whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.

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

No such analysis was submitted.

13. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE – TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 18.1. SALES OF FOOD

R15-5-1860. Definitions

ARTICLE 18.1. SALES OF FOOD

R15-5-1860. Definitions

For the purpose of these rules, unless the context requires otherwise, the following definitions will apply:

1. "Accessory food items" means coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments and spices, and other non-staple foods.
2. "Attendant" means a person, generally the employee of the retailer, who waits on the customers, or tends to their needs.
3. "Automatic retailer" means a coin operated mechanical device or system which sells tangible personal property. Such device or system must itself vend or sell the items, i.e., a device or system which delivers the subject of the sale, or by automatic action physically delivers the thing sold. Vending machines are considered automatic retailers.
4. "Caterer" means a person engaged in the business of serving meals, food and drinks on the premises used by his customer, but does not include employees hired by the hour of day.
5. "Delicatessen" means a business which sells specialty food items, such as prepared cold meats, perishable food and grocery items kept under refrigeration.
6. "Facilities for the consumption of food" means appropriate furniture, tableware, or parking areas for sitting both in or on the premises of the business, either in or out of a motor vehicle.
7. "Food"
 - a. Under A.R.S. § 42-1387, the Department is required to promulgate rules defining food as those items that may be purchased from an eligible grocery business with food coupons, but in no event may such definition of food include food for consumption on the premises, alcoholic beverages or tobacco. Even though alcoholic beverages and food for consumption on the premises may be intended for human consumption, such items are not considered food by the statutory provisions. In these rules, items that are considered food by the Statutes, and therefore tax exempt if sold by a qualified retailer, shall be referred to as "tax exempt foods." Other

items that may be intended for human consumption but are excluded from the definition of food by the Statute, and are therefore subject to the Sales Tax, shall be referred to herein as “taxable foods.”

- b. “Food” means: Items intended for human consumption. Food is deemed to be intended for human consumption when its intended or ordinary use is as a food for human consumption or is an ingredient used in preparing food for human consumption. For example, even though animal food may be used by some humans, its ordinary or intended use is not for human consumption. Also, even though vitamins and other medication may be ingested, its intended or ordinary use is as a health aid or therapeutic agent or a deficiency corrector and is not intended for use as food. Following is a numeration of items which the Department does not consider food for human consumption:
 - i. Pet food and supplies
 - ii. Cosmetics and grooming items
 - iii. Tobacco products
 - iv. Soaps and paper products and household supplies
 - v. Dietary supplements such as vitamins or protein supplements
 - vi. Medicines
 - vii. Fertilizer
8. “Food for consumption on the premises”
- a. “Food for consumption on the premises” means the following:
 - i. Hot prepared food, including products, items or ingredients of food which are prepared and sold or are intended to be sold in a heated condition. This also includes a combination of hot and cold food items or ingredients if a single price is charged by the retailer.
 - ii. Hot or cold sandwiches including frozen sandwiches.
 - iii. Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters and within parking areas (for in-car consumption).

- iv. Food served with trays, glasses, dishes or other tableware. Food which is generally selected by the customer from available displays and then taken by the customer to a checkout stand for payment is not considered to be served by the retailer.
 - v. Beverages sold in cups, glasses or open containers. Beverages shall include items such as milk shakes and ice cream floats.
 - vi. Food sold by caterers.
 - vii. Food sold within the premises of theaters, exhibitions, fairs, amusement parks, bowling alleys, athletic events, and other shows or contests and any businesses which charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction. While food for consumption on the premises includes any food sold within the premises of certain businesses, including businesses that charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction, food for consumption on premises does not include sales of tax exempt food by a qualified retailer within the premises of a full time educational institution that charges tuition for a full course of studies.
- b. Any item enumerated in subparagraph (a) which is sold on a take-out or to-go basis is still considered to be food for consumption on the premises and therefore taxable.
9. "Food intended for home consumption" means food, other than food for consumption on the premises, which is usually intended to be consumed at home. Unless the taxpayer can establish to the contrary, food delivered by a retailer to an office or other business establishment shall not be considered food intended for home consumption.
10. "Home" means a natural person's usual or habitual dwelling place, including rest homes, nursing homes, jails and other such institutions.
11. "Premises" means the total space and facilities, including buildings, grounds and parking lot that are made available for use by the retailer for the purpose of consuming food sold by such retailer.
12. "Qualified retailer"

- a. A qualified retailer or qualified retail business is one that may be eligible to sell tax exempt food without including the sale of tax exempt food items in its taxable base. A retailer other than a qualified retailer must pay a tax measured by the sale of otherwise exempt food even though the sale of such items would be exempt if sold by a qualified retailer.
- b. Qualified retailers are:
 - i. An eligible grocery business, which includes retailers who are eligible to participate in the United States Department of Agriculture Food Stamp Program, whether such retailer actually participates in the food stamp program. If a retailer is eligible to participate in the food stamp program, but does not participate in such program, such retailer may only be an eligible grocery business if the retailer first makes application to the Department to sell food tax exempt. Examples of retailers that might be considered eligible grocery businesses include:
 - (1) Grocery stores;
 - (2) Convenience stores;
 - (3) Butcher shops;
 - (4) Bakeries;
 - (5) Dairy stores;
 - (6) Cheese stores;
 - (7) Farmer's markets.
 - ii. Retailers whose primary business is not the sale of food, but who sell food in a manner similar to grocery stores. This category includes stores such as department stores, drug stores, and gas stations.
 - iii. Retailers who sell food and who do not provide any facilities for consumption of food on the premises. This category may include certain health food stores, and certain outlets retailing soda and other similar beverages in bottles or cans, but not cups.
 - iv. Delicatessen business, if such retailer conducts his business so that the sale of tax exempt foods and other taxable items may be separately accounted for,

through, for example, the use of two (2) cash registers, or a cash register with at least two (2) tax computing keys which are used to record taxable and tax exempt sales.

- v. A retailer who is a street or sidewalk vendor who uses a pushcart, ~~mobile facility, motor vehicle, or other such conveyance. Such retailers include:~~
 - ~~(1) Snackmobile;~~
 - ~~(2) Chuck wagon;~~
 - ~~(3) Mobile hot dog stands.~~
 - vi. Vending machines and other automatic retailers.
13. "Staple food" means those food items intended for home preparation and consumption, which includes meat, poultry, fish, bread and bread stuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products.
14. "Taxable foods" are items which may be intended for human consumption, but are still subject to the Sales Tax when sold. Examples of taxable foods would be alcoholic beverages, and food for consumption on the premises.
15. Tax-exempt foods
- a. "Tax exempt foods" are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1979, to be purchased with food coupons issued by the United States Department of Agriculture.
 - b. Tax-exempt food shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1979.
 - c. The following are examples of items which the Department will consider as tax exempt food:
 - bread and flour products
 - vegetables and vegetable products
 - candy and confectionery

sugar, sugar products and substitutes
cereal and cereal products
butter, oleomargarine, shortening and cooking oils
cocoa and cocoa products
coffee and coffee substitutes
milk and milk products
eggs and egg products
tea
meat and meat products
spices, condiments, extracts and food colorings
fish and fish products
frozen foods
soft drinks and soda (including bottles on which a deposit is required to be paid)
fruit and fruit products
packaged ice cream products
dietary substitutes
ice cubes and bottled water including carbonated and mineral water
purchases of seed and plants for use in gardens to produce food items for personal consumption

16. "Two tax computing keys" shall mean the mechanical or electronic function in a cash register which can separately record and accumulate taxable and nontaxable items without having the items presorted.

AUTHORIZING GENERAL AND SPECIFIC IMPLEMENTING STATUTES

A.R.S. § 42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.
2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.
3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.
4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.
5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.
6. Provide such assistance to the governor and the legislature as they may require.
7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation.

Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

A.R.S. § 42-5102. Tax exemption for sales of food; nonexempt sales

A. Except for the gross proceeds of sales or gross income from the sale of food for consumption on the premises, the taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of food by any of the following:

1. A retailer who conducts an eligible grocery business.
2. A retailer who conducts a business whose primary business is not the sale of food but who sells food which is displayed, packaged and sold in a similar manner as an eligible grocery business.
3. A retailer who sells food and does not provide or make available any facilities for the consumption of food on the premises.
4. A retailer who conducts a delicatessen business either from a counter which is separate from the place and cash register where taxable sales are made or from a counter which has two cash registers which are used to record taxable and tax exempt sales or a retailer who conducts a delicatessen business and who uses a cash register which has at least two tax computing keys which are used to record taxable and tax exempt sales.
5. A retailer who is a street or sidewalk vendor and who uses a pushcart.
6. Vending machines and other types of automatic retailers.

B. The taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of food by a state university or community college or its designee on its campuses to students using a validated meal ticket or to patients purchasing or consuming food at the Arizona health sciences center.

C. The taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of food by a retailer to:

1. A regularly organized private or parochial school that offers an educational program for grade twelve or under which may be attended in substitution for a public school pursuant to section 15-802.
2. A child care facility that is licensed under section 36-882 or a child care group home certified under section 36-897.01.

3. A facility which provides on a regular basis care and supervision of persons who, because of age or a mental or physical condition, are incapable of caring for themselves and where they are unaccompanied by their custodians or guardians for periods of less than twenty-four hours a day.

4. An organization which is tax exempt under section 501(c)(3) of the internal revenue code and which provides the articles to persons with a nominal charge or without a monetary charge.

5. A prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff for consumption on the premises.

D. Notwithstanding subsection A of this section, the taxes imposed by this chapter do not apply to the gross proceeds of sales or gross income from sales of low or reduced cost articles of food or drink to eligible elderly or homeless persons or persons with a disability by a business subject to tax under section 42-5074 that contracts with the department of economic security and that is approved by the food and nutrition service of the United States department of agriculture pursuant to the supplemental nutrition assistance program established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the purchases are made with the benefits issued pursuant to the supplemental nutrition assistance program.

A.R.S. § 42-5106. Rules

A. The department shall adopt rules defining food consistent with section 42-5101 and this section.

B. The department shall include as food:

1. Returnable containers for which a deposit is collected.
2. Ice and dry ice used in packing, shipping or transporting food.
3. Seeds and plants to grow food for personal consumption.

C. The department shall not include food for consumption on the premises, alcoholic beverages, tobacco, medicines or dietary supplements, such as vitamins and protein supplements, as food, unless the item is otherwise deemed to be food under this section.

D. Notwithstanding section 42-5101, any ready-to-drink, nonalcoholic beverage that is contained in a closed or sealed bottle, can or carton, that is intended for human consumption and that is intended for home consumption is deemed to be food.

E. The department shall adopt rules that, other than for those items specifically included or excluded by subsections B, C and D of this section, define food to be those items that are intended for human consumption and that are intended for home consumption. In adopting these rules, the department shall give strong consideration to those specific items that are then eligible for purchase with supplemental nutrition assistance program benefits so as to effectuate the intent of the legislature as specified in this article.

DEPARTMENT OF ADMINISTRATION (F-18-1204)

**Title 2, Chapter 11, Article 1, General; Article 2, Traffic and Parking; Article 3, Solicitation;
Article 4, Special Events; Article 5, Severability**

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM -- FIVE-YEAR REVIEW REPORT

DATE: December 21, 2018

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

FROM: Council Staff

MEETING: January 8, 2019

SUBJECT: DEPARTMENT OF ADMINISTRATION (F-18-1204)
Title 2, Chapter 11, Article 1, General; Article 2, Traffic and Parking; Article 3, Solicitation; Article 4, Special Events; Article 5, Severability

This five-year review report relates to the Department of Administration (Department) and its General Services Division. The report covers 40 rules in A.A.C. Title 2, Chapter 11, related to maintenance of public buildings.

Proposed Action

The rules have not been amended since 2004, as the Department did not complete the course of action indicated in the two previous five-year review reports on this chapter. However, the Department has made progress in its goal to amend Article 3, related to solicitation, and repeal Article 4, related to special events. In the Department's view, the articles are almost identical, thereby causing confusion for the public in understanding the different application processes. The Department has filed a Notice of Docket Opening and Notice of Proposed Rulemaking, available in the November 23, 2018 issue of the *Arizona Administrative Register*.¹

In a separate rulemaking, the Department intends to amend Section 107 to include fire life safety systems. The Department anticipates filing a Notice of Docket Opening for that rulemaking by December 2020.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to relevant statutory authority for the rules. Of particular note is A.R.S. § 41-791(D), under which the Department "may establish rules for the operation, maintenance and security of buildings and grounds" within the Department's jurisdiction.

¹ See https://apps.azsos.gov/public_services/register/2018/47/contents.pdf

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Department has determined that the economic impact of the Articles 1, 2, 3, 4, and 5 does not differ significantly from what was originally determined by the economic impact statement. The Department notes that the enforcement of the rules in Article 2 has been transferred to the Department of Public Safety as a result of legislative changes since the most recent five-year-review report was approved by the Council in November 2013.

The stakeholders include the Department, all other state agencies, state contractors, and the general public.

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

The Department has determined that the rules under review impose minimal burdens and costs to entities regulated by these rules. The Department has also identified ways that the rules can be improved by eliminating confusion. Once the Department completes a rulemaking that eliminates confusion with the rules, they will impose the least costs and burdens on those who are regulated.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department indicates that it has not received any written criticism of these rules in the last five years.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Department indicates that the rules are generally clear, concise and understandable, consistent with other rules and statutes, and effective.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are enforced as written.

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

No. The Department indicates that federal law does not apply to the rules.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable, as the rules were adopted prior to July 29, 2010.

9. Conclusion

As noted above, the Department has already filed a Notice of Docket Opening and Notice of Proposed Rulemaking for one rulemaking related to this chapter, and intends to amend Section 107 in a separate rulemaking by December 2020. This report complies with A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval of this report.

Douglas A. Ducey
Governor



Gilbert Davidson
Chief of Operations and
Interim Director

ARIZONA DEPARTMENT OF ADMINISTRATION
1110 WEST WASHINGTON STREET · SUITE 155
PHOENIX, ARIZONA 85007
(602) 542-1500

November 7, 2018

Gilbert Davidson, Interim Director
Governor's Regulatory Review Council
100 North 15th Avenue; Suite 305
Phoenix, Arizona 85007

Re: Arizona Department of Administration; Five-year Review Report
Arizona Administrative Code (A.A.C.) Title 2, Chapter 11, Department of Administration
Public Building Maintenance

Dear Mr. Davidson,

In compliance with A.R.S. § 41-1056, the Arizona Department of Administration, General Services Division submits a report of its five-year review of Title 2, Chapter 11 of the Arizona Administrative Code. I certify the Department is in compliance with A.R.S. § 41-1091.

If you have any questions regarding this five year review report or need additional information, please contact Jobalena Yates, General Services Division, by phone at 602-542-6252 or by email at jobalena.yates@azdoa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Nola Barnes".

Nola Barnes
Assistant Director, ADOA, GSD

cc: Gilbert Davidson, Chief of Operations and Interim Director
Kevin Donnellan, Deputy Director and Policy Advisor to Governor Ducey

Governor's Regulatory Review Council

Five-Year-Review Report

1. Authorization of the rule by existing statutes

General Statutory Authority:

Specific Statutory Authority: A.R.S. §§ 41-703, 41-791(D), and 41-796(A)

2. The objective of each rule:

Rule	Objective
R2-11-101. Definitions	Is to help state employees and the public understand the terminology that is used throughout this Article.
R2-11-102. Alcoholic Beverages	Is to ban alcohol on state property. The rule is necessary to protect the health and safety of state employees and the public.
R2-11-103. Altering Buildings or Grounds	is to prevent a person from altering, remodeling, or redecorating state property without prior approval from the Director. The rule is necessary to protect state property and the safety of state employees and the public.
R2-11-104. Animals	is to prevent animals on state property with the exception of an animal guide or service animal without prior approval from the Director. The rule is necessary to protect the safety of state employees and the public.
R2-11-105. Bicycles, Rollerblades, Rollerskates, and Skateboards	is to prevent the use of bicycles, rollerblades, rollerskates, and skateboards on state property unless that person is an on-duty police officer on bicycle patrol or a state employee using a bicycle for transportation to and from work. The rule is necessary for the safety of state employees and the public.
R2-11-106. Electrical or Plumbing Systems	is to prevent a person from installing or modifying an electrical or plumbing system on state property without prior approval from the Director. The rule is necessary to prohibit unauthorized work on electrical or plumbing systems on state property that could affect the health and safety of state employees and the public.
R2-11-107. Heating or Cooling Equipment	is to prevent a person from tampering with or adjusting heating and cooling equipment or controls on state property without prior approval from the Director. The rule is necessary to prohibit unauthorized work on cooling and heating equipment on state property that could affect the health and safety of state employees and the public.

R2-11-108. Noise	is to prevent a person from creating loud noises on state property that interferes with the work of an employee or daily business of an agency. The rule is necessary to prevent workplace disruptions to state employees.
R2-11-109. Plants	is to prevent a person from picking, cutting, or removing flowers, shrubs, trees, or other parts of plants from state property without prior approval from the Director.
R2-11-110. Roofs	is to prevent a person from being on the roof of a state building without prior approval from the Director. The rule is necessary for the health and safety of state employees and the public.
R2-11-111. Signs	is to prevent a person from installing a sign of any type on state property without prior approval from the Director. The rule is necessary to prohibit altering of state property with unauthorized signs and protects the health and safety of state employees and the public.
R2-11-112. Smoking	Notice of Rule Expiration sent to SOS – Expired 7/13/17
R2-11-113. Waste	is to prevent littering, dumping of residential or commercial materials and to prevent waste disposal that could potentially affect the health and safety of state employees and the public. The rule is necessary for the health and safety of state employees and the public.
R2-11-114. Windows	is to prevent the waste of finite resources by requiring prior approval from the Director before a person is allowed to open a window in a state building.
R2-11-201. Definitions	Is to help state employees and the public understand the terminology that is used throughout this Article.
R2-11-202. General Provisions	is to provide general provisions regarding responsibility of those parking on state property, those who have parking permits and what the Department is not responsible for.
R2-11-203. Parking Prohibitions	is to outline specific parking prohibitions on or around state property. The rule is necessary to maintain safe traffic and parking conditions on state property for state employees and the public.
R2-11-204. Parking Decals	is to state the requirements and criteria for using parking decals. The rule is necessary so that a state employee understands how to properly place their parking permit so that it is visible.

R2-11-205. Operation of Vehicles on State Property	is to authorize the Department to enforce all state laws governing the operation of vehicles. The rule is necessary to provide safe traffic and parking conditions for state employees and the public.
R2-11-206. Penalties	Notice of Rule Expiration sent to SOS – Expired 7/13/17
R2-11-207. Hearings	Notice of Rule Expiration sent to SOS – Expired 7/13/17
R2-11-208. Rehearing	Notice of Rule Expiration sent to SOS – Expired 7/13/17
R2-11-209. Removal of Vehicles from State Property	is to authorize the Department to remove any vehicle on state property that is parked in a prohibitive manner under the provisions of this Article and requires the registered owner of the vehicle to pay all costs for removal. The rule is necessary to maintain safe traffic and parking conditions on state property for state employees and the public.
R2-11-301. Definitions	is to define the terms and phrases used in Article 3. The rule is necessary for clarity and understanding of the rules.
R2-11-302. Unauthorized Solicitation Prohibited	is to prevent a solicitation on state property without express written permission from the Director.
R2-11-303. Application	outlines the application requirements to conduct a solicitation on state property.
R2-11-304. Processing Procedure	is to explain the processing procedure for applications of solicitations.
R2-11-305. Permit Issuance; Denial	is to explain the permit issuance and denial process for applications of solicitations.
R2-11-306. Bulletin Boards	is to authorize the Director to designate one bulletin board in every state building where the solicitor shall post solicitation material.
R2-11-307. State Resources	is to prevent a person from using state materials, supplies, equipment or other resources, such as payroll stuffing or interoffice mail, to conduct a solicitation.
R2-11-308. Work Sites	is to prevent a person from conducting a solicitation at a work site except for posting material on a bulletin board designated by the Director.
R2-11-309. Exemptions	is to exempt certain state programs from the solicitation requirements.

R2-11-310. Suspension or Revocation	is to authorize the Director to suspend or revoke a permit for failure to comply with this Article.
R2-11-311. Review of Denial or Summary Suspension	is to explain the process that a solicitor may obtain a hearing on a denial or summary suspension of a permit and outlines the timelines for both the Department and the applicant on process.
R2-11-401. Definitions	is to define of terms and phrases used in Article 4. The rule is necessary for clarity and understanding of the rules.
R2-11-402. Unauthorized Special Event Prohibited	is to prevent unauthorized use of state buildings or grounds without express written permission from the Director.
R2-11-403. Application	is to explain the application requirements for special events.
R2-11-404. Processing Procedure	is to explain the processing procedure for applications of special events.
R2-11-405. Permit Issuance; Denial	is to explain the permit issuance and denial process for applications of special events.
R2-11-406. Monitors	is to require all sponsors of special events must designate one monitor for every 50 persons expected to attend an event.
R2-11-407. Risk Management	is to set forth requirements by the Director for the sponsor to abide by all conditions set forth by the Director in ensuring the public health and safety at an event.
R2-11-408. Suspension or Revocation	is to authorize the Director to suspend or revoke a permit for failure to comply with this Article.
R2-11-409. Review of Denial or Summary Suspension	stipulates that a sponsor may obtain a hearing on a denial or summary suspension of a permit and outlines the timelines for both the Department and the applicant on the process.
R2-11-501. Validity of Rules	is to ensure that if a rule or portion of a rule in this Chapter is held unconstitutional or invalid, the holding does not affect the validity of the remaining rules. The rule is necessary so that in the event a section is held invalid, the rest of the rules remain whole and unaffected.

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

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

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison:**

The information provided with the previous five-year-review report approved by Council in November 2013 indicated that the economic impact of the rules had not differed significantly from that projected in the economic impact statement submitted in the final rulemaking and made effective on August 8, 2003. Article 2 rules could have an impact on public and private individuals or small businesses that use the state parking facilities, if the use

is inappropriate. Articles 3 and 4 can impact small businesses looking to conduct a solicitation or special event on state property. Impacts can occur regarding the special events rules in cases where special events are cancelled due to increased costs for insurance coverage required by the Director. However, the rules on special events can have a favorable impact on small businesses as well, specifically insurance agents who provide coverage for such events.

The administrative costs for compliance of these rules are minimal to the Department. There are no viable alternative methods of compliance that would apply to small business.

The Department did not see any impacts as a result of the 2003 economic impact statement and its estimations as noted nor received comments on the EIS. In addition, there are no changes from the previous economic impact statements provided to Council.

Since the previous five-year-review report was approved by Council, the Arizona Department of Public Safety (DPS) is now responsible for enforcement of the Article 2 traffic and parking rules. As a result of legislative changes, the former Capitol Police who enforced the Article 2 rules previously was transitioned into DPS. The Department believes what was reported in the 2003 EIS remains the same. Article 2 rules will have a negative impact on the small businesses that use the state parking facilities, if the use is inappropriate. The Department may subcontract the collection duties to a collection agency, and that would have a positive impact on the collection agency's revenues. There is no practical method to reduce the impact on small businesses that use the state parking in the conduct of business, without diluting the corrective effects sought in 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?**

The Department did not complete the course of action indicated in the previous five-year review report.

The Department stated in the previous five-year-review report, approved by Council on November 4, 2008, that it was considering amending Article 2, Sections R2-11-201 and R2-11-206 to update the rules relating to the removal of vehicles on state property and the current penalty structure for violators. The Department also indicated the possibility of amending Articles 3 and 4 and was in the process of considering draft amendments with the goal to open a docket in November 2008. Due to personnel changes, these course of action was delayed. An exemption from Executive Order 2017-02 was obtained for this rulemaking by Mara Mellstrom, Policy Advisor in the Governor's Office, in an e-mail dated April 27, 2017 and ADOA will be filing a Notice of Rulemaking Docket in August 2018. ADOA intends to eliminate R2-11-112, R2-11-206, R2-11-207 and

R2-11-208 via repeal. The Department intends to amend Article 3, Solicitation, under J of EO2017-02 in addition repeal Article 4, Special Events, and consolidate both articles into one to improve clarification and understanding for the public. Both articles are almost identical; however, the articles cause confusion for the public in understanding the application process for either a solicitation or special event on state property.

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 believes that the rules impose the least burden and costs to individuals, public and private entities regulated by these rules. The Department has made every effort to ensure the procedures outlined for individuals regulated by the rules are efficient, cost effective, and necessary to achieving the regulatory objectives.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Federal law does not apply 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:**

The Department indicates that the rules are not applicable to the requirements imposed by A.R.S. § 41-1037 as the rules were adopted prior to July 29, 2010.

14. **Proposed course of action**

The Department intends to take the following course of action:

Docket Opening: November 2018

Improvement Via Amendment

Article 3. Solicitation. Regulates the use of state property for solicitation of material.

R2-11-301 through R2-11-311.

Article 4. Special Events. Regulates the use of state property for special events.

R2-11-401 through R2-11-409.

The Department wishes to review and amend Article 3 under J of EO2017-02 in addition repeal Article 4. Special Events and consolidate both articles into one to improve clarification and understanding for the public.

Specifically, both articles are almost identical, however, cause confusion for the public in understanding the application process for either a solicitation or special event on state property.

Docket Opening: December 2020

Improvement Via Amendment

R2-11-107

The Department wishes to review and amend R2-11-107 to include Fire Life Safety Systems.

TITLE 2. ADMINISTRATION

CHAPTER 11. DEPARTMENT OF ADMINISTRATION
PUBLIC BUILDINGS MAINTENANCE

Editor's Note: 2 A.A.C. 11 made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003. Under A.R.S. § 41-1026(E) these rules repeal and replace the emergency rules made at 9 A.A.R. 3046 (Supp. 03-3).

Editor's Note: 2 A.A.C. 11 made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). The public buildings maintenance rules were previously in 2 A.A.C. 6, which expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

ARTICLE 1. GENERAL

Section	
R2-11-101.	Definitions
R2-11-102.	Alcoholic Beverages
R2-11-103.	Altering Buildings or Grounds
R2-11-104.	Animals
R2-11-105.	Bicycles, Rollerblades, Rollerskates, and Skateboards
R2-11-106.	Electrical or Plumbing Systems
R2-11-107.	Heating or Cooling Equipment
R2-11-108.	Noise
R2-11-109.	Plants
R2-11-110.	Roofs
R2-11-111.	Signs
R2-11-112.	Smoking
R2-11-113.	Waste
R2-11-114.	Windows

ARTICLE 2. TRAFFIC AND PARKING

Section	
R2-11-201.	Definitions
R2-11-202.	General Provisions
R2-11-203.	Parking Prohibitions
R2-11-204.	Parking Decals
R2-11-205.	Operation of Vehicles on State Property
R2-11-206.	Penalties
R2-11-207.	Hearings
R2-11-208.	Rehearing
R2-11-209.	Removal of Vehicles from State Property

ARTICLE 3. SOLICITATION

Section	
R2-11-301.	Definitions
R2-11-302.	Unauthorized Solicitation Prohibited
R2-11-303.	Application
R2-11-304.	Processing Procedure
R2-11-305.	Permit Issuance; Denial
R2-11-306.	Bulletin Boards
R2-11-307.	State Resources
R2-11-308.	Work Sites
R2-11-309.	Exemptions
R2-11-310.	Suspension or Revocation
R2-11-311.	Review of Denial or Summary Suspension

ARTICLE 4. SPECIAL EVENTS

Section	
R2-11-401.	Definitions
R2-11-402.	Unauthorized Special Event Prohibited
R2-11-403.	Application
R2-11-404.	Processing Procedure
R2-11-405.	Permit Issuance; Denial
R2-11-406.	Monitors
R2-11-407.	Risk Management
R2-11-408.	Suspension or Revocation
R2-11-409.	Review of Denial or Summary Suspension

ARTICLE 5. SEVERABILITY

Section	
R2-11-501.	Validity of Rules

ARTICLE 1. GENERAL

R2-11-101. Definitions

The following definitions apply in this Chapter:

1. "Agency" has the meaning in A.R.S. § 41-1001.
2. "Department" means the Department of Administration.
3. "Director" means the Director of the Department of Administration or the Director's designated agent.
4. "Person" has the meaning in A.R.S. § 1-215 but includes an agency, unless the agency is listed in A.R.S. § 41-791(B)(3).
5. "State building" means a building under the jurisdiction of the Director.
6. "State property" means all real property and buildings under the jurisdiction of the Department, as prescribed by A.R.S. § 41-791.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-102. Alcoholic Beverages

A person shall not possess or consume alcoholic beverages on state property.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-103. Altering Buildings or Grounds

A person shall not alter, remodel, or redecorate state property without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-104. Animals

A person shall not bring an animal, other than an animal guide or service animal, onto state property without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under

A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-105. Bicycles, Rollerblades, Rollerskates, and Skateboards

A person shall not use or operate bicycles, rollerblades, roller-skates, or skateboards on state property, unless that person is an on-duty police officer on bicycle patrol or a state employee using a bicycle for transportation to and from work.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-106. Electrical or Plumbing Systems

A person shall not install or modify an electrical or plumbing system on state property, or any part of such a system, without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-107. Heating or Cooling Equipment

A person shall not tamper with or adjust heating or cooling equipment or controls on state property without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-108. Noise

A person shall not create loud noises on state property that interfere with the work of an employee or daily business of an agency.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-109. Plants

A person shall not pick, cut, or remove flowers, shrubs, trees, or other plants or parts of plants from state property without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-110. Roofs

A person shall not be on the roof of a state building without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-111. Signs

A person shall not install a sign of any type on state property without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-112. Smoking

A person shall not smoke in a state building unless the person is in a designated smoking area or exempt under A.R.S. § 36-601.02(B).

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-113. Waste

- A. A person shall not leave garbage, litter, trash, human or animal waste, or any other kind of waste on state property unless the waste is deposited in a container the Department maintains for that kind of waste.
- B. A person shall not deposit waste collected from a private residence or commercial business on state property.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-114. Windows

A person shall not open windows in air-conditioned state buildings without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

ARTICLE 2. TRAFFIC AND PARKING

R2-11-201. Definitions

The following definitions apply in this Article:

1. "Citation" means a document, issued by the Department's Capitol Police under A.R.S. § 41-796, that contains a notice to appear.

2. “Decal” means a graphic designed label, placard, sticker, or tag that, when properly displayed, authorizes preferential parking privileges in state parking lots for the driver of a vehicle.
3. “Designate” means to identify with signs or markings.
4. “Employee” means any person elected, appointed, or employed by the state, either on a part-time or full-time basis, whether paid by payroll or under contract or serving as a volunteer.
5. “Loading zone” means an area that is painted yellow, designating a place for business pickups and deliveries.
6. “No-parking zone” means an area that is painted red, designating a place where parking is not permitted.
7. “Parking” means stopping or placing a vehicle in an area, regardless of whether the vehicle is attended or unattended.
8. “Parking space” means an area that the Department outlines with painted white lines, designating a place for parking a vehicle.
9. “Reserved parking space” means any parking space designated for a special purpose or a special class, such as physically disabled persons, travel reduction program participants, or visitors.
10. “Safety zone” means an area or space that is both:
 - a. Officially set apart within a roadway for the exclusive use of pedestrians; and
 - b. Protected, marked, or indicated by adequate signs as to be plainly visible at all times.
11. “Vehicle” has the meaning in A.R.S. § 28-101 and includes a “motor vehicle,” a term also defined in A.R.S. § 28-101.
12. “Visitor” means any person other than an employee.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-202. General Provisions

- A. The state is not responsible for the care and protection of any vehicle or its contents at any time the vehicle is operated or parked on state property.
- B. The person to whom a parking permit is issued is responsible for all parking violations involving the person’s vehicle.
- C. If parking lot or area reservation hours are altered, the Department shall post notices at the parking lot or area, and the changes are effective immediately.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-203. Parking Prohibitions

- A. A person shall not park a vehicle in a:
 1. Bicycle rack or area;
 2. Loading zone, unless the person is making a pickup or delivery and the person’s vehicle has commercial license plates or is state owned. Loading zone parking is permitted during the time the person is actually engaged in loading or unloading;
 3. Location that is not designated as a parking space;

4. No parking zone;
 5. Reserved parking space without authorization, unless the person is a visitor using parking reserved for visitors; or
 6. Safety zone.
- B. A person shall not obstruct any of the following with a vehicle:
 1. Building entrance,
 2. Driveway,
 3. Fire lane,
 4. Loading dock, or
 5. Properly parked vehicle.
 - C. A person shall not drive or park a vehicle:
 1. On a pedestrian path or sidewalk; or
 2. In any area on state property closed by barricades, chain, tape, rope, traffic cones, or other traffic-control devices.
 - D. A person shall not park outside of the area designated by painted white lines when using a parking space.
 - E. In an emergency the Department may impose parking limitations or prohibitions required by the particular circumstances.
 - F. For special events the Department may impose parking limitations or prohibitions based on all of the following factors:
 1. Previous experience with similar events, and
 2. Risk data.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-204. Parking Decals

- A. Unless a person is a visitor using parking reserved for visitors, the person shall properly display a reserved parking space decal in the manner prescribed in this Section to be authorized to park in a reserved parking space.
- B. To park in a parking space reserved for the physically disabled, a person shall obtain a removable windshield placard or special plates, bearing the international symbol of access, from the Department of Transportation, Motor Vehicle Division, and display the placard or plates as prescribed by rules of the Department of Transportation.
- C. A person with a decal for any other kind of reserved parking space shall display the decal from the rearview mirror, attach the decal to the left side of the windshield, or display the decal on the left side of the dashboard. The person shall ensure that the decal is visible through the windshield so it can be read by someone standing outside the vehicle.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-205. Operation of Vehicles on State Property

- A. On state property the Department shall enforce all state laws governing the operation of vehicles.
- B. A person driving or parking a vehicle on state property shall obey posted traffic and parking signs.
- C. The Department’s Capitol Police shall enforce a maximum speed limit of 5 miles per hour in all state parking lots under the Department’s jurisdiction.
- D. Any person who has been in an accident involving a moving vehicle on state property shall immediately report the accident to the Department’s Capitol Police.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-206. Penalties

- A.** The registered owner of a vehicle involved in a violation of R2-11-203, R2-11-204, or R2-11-205 shall pay the monetary penalties prescribed in this Section.
- B.** Capitol Police officers or Capitol Police security aides shall issue citations, containing the notice to appear described in A.R.S. § 41-796(E), according to the following schedule:
1. Parking in a bicycle rack or area: \$16.00.
 2. Parking in a loading zone: \$20.00.
 3. Parking in a location that is not designated as a parking space: \$20.00.
 4. Parking in a no parking zone: \$20.00.
 5. Unauthorized parking in a space reserved for the physically disabled: \$50.00.
 6. Unauthorized parking in any other kind of reserved parking space: \$16.00.
 7. Parking in a safety zone: \$20.00.
 8. Obstructing a building entrance, driveway, fire lane, loading dock, or properly parked vehicle: \$20.00.
 9. Driving or parking on a pedestrian path or sidewalk: \$25.00.
 10. Driving or parking in any area on state property closed by barricades, chain, tape, rope, traffic cones, or other traffic-control devices: \$25.00.
 11. Parking outside of parking space lines: \$16.00.
 12. Improperly displaying a parking decal: \$10.00.
 13. Failing to obey a state law governing the operation of a vehicle while on state property: \$16.00.
 14. Failing to obey posted traffic or parking signs on state property: \$16.00.
 15. Exceeding the maximum speed limit of 5 miles per hour in a state parking lot: \$16.00.
 16. Failing to immediately report an accident involving a moving vehicle on state property to the Department's Capitol Police: \$16.00.
- C.** For the purposes of this Article, service of a notice to appear is complete when the police officer or security aide issuing the citation secures it to the vehicle in a conspicuous place.
- D.** Within 10 business days from the issuance date of a citation, the registered owner of the vehicle shall pay the appropriate monetary penalty to the Department, admitting the violation or indicating no contest, or contest the citation under A.R.S. § 41-796(E) and the procedures in R2-11-207. The registered owner may pay the penalty by checking the appropriate box and mailing the payment and citation to the Department, using the address printed on the citation.
- E.** If the registered owner does not pay the monetary penalty within 10 business days of the citation date and fails to request a hearing under R2-11-207, the Department shall treat the failure to respond as an admission of the violation, declare the penalty to be in default, and serve a notice of default on the registered owner with a bill for the amount of the original penalty and an additional monetary penalty of \$20.00 for failure to respond. The Department may take appropriate action to collect these monetary penalties, based on the resources available for pursuing collection.

Historical Note

New Section made by emergency rulemaking under

A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-207. Hearings

- A.** If a registered owner wishes to contest a citation, the registered owner shall request a hearing within 10 days after issuance of the notice to appear described in A.R.S. § 41-796(E) by checking the appropriate box and mailing the citation to the Department, using the address printed on the citation.
- B.** Upon receipt of a request for hearing, the Department shall schedule a hearing and serve notice of the hearing, according to A.R.S. § 41-1092.05.
- C.** The Director or an administrative law judge from the Office of Administrative Hearings shall conduct each hearing as a contested case, in the manner prescribed in A.R.S. Title 41, Chapter 6, Article 10. The Department shall serve its decision on the registered owner. If the Director or the administrative law judge determines that a violation has occurred and imposes a monetary penalty, a bill for the amount of the penalty shall be served with the decision. The registered owner shall pay the monetary penalty within 10 business days from the date on the decision or within the time prescribed by the administrative law judge. If the registered owner does not pay the monetary penalty within this time, the registered owner shall pay an additional monetary penalty of \$20.00. The Department may take appropriate action to collect any monetary penalty imposed, based on the resources available for pursuing collection.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-208. Rehearing

- A.** A party in a contested case before the Department may file a motion for rehearing or review within 30 days after service of the final administrative decision, as prescribed in A.R.S. § 41-1092.09. The party shall attach a supporting memorandum, specifying the grounds for the motion. A party is not required to file a motion for rehearing or review of the final administrative decision to exhaust the party's administrative remedies.
- B.** An opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The party shall support the response with a memorandum discussing relevant legal and factual issues.
- C.** Any party may request oral argument.
- D.** The Director may grant a rehearing or review for any of the following causes materially affecting a party's rights:
1. Irregularity in the administrative proceedings or any order or abuse of discretion, that deprived the moving party of a fair hearing;
 2. Misconduct of the Department, the 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 or insufficient penalties;

6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
 7. That the findings of fact or decision are not justified by the evidence or are contrary to law.
- E.** The Director may affirm or modify the 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, and any rehearing shall cover only those matters specified. The Director may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- F.** Not later than 15 days after the date of the decision, the Director may grant a rehearing or review on the Director's own initiative for any reason for which the Director might have granted relief on motion of a party.
- G.** If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within five days after service, serve opposing affidavits.
- H.** The Director shall rule on the motion as prescribed in A.R.S. § 41-1092.09. If a rehearing is granted, the Department shall hold the rehearing within 30 days after the date on the order granting the rehearing.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-209. Removal of Vehicles from State Property

The Department shall remove any vehicle on state property parked in a barricaded area, abandoned, or parked in a manner that constitutes a hazard or impediment to vehicular or pedestrian traffic or to the movement and operation of emergency equipment. The registered owner of the vehicle shall pay for all costs of removal.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

ARTICLE 3. SOLICITATION**R2-11-301. Definitions**

The following definitions apply in this Article:

1. "Solicitation" means any activity that can be interpreted as being for the promotion, sale, or transfer of products, services, memberships, or causes. Distribution or posting of advertising, circulars, flyers, handbills, leaflets, posters, or other printed information for these purposes is solicitation.
2. "Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.
3. "Solicitor" means a person conducting a solicitation.
4. "Work site" means any location within a state building where public employees or officers conduct the daily business of an agency. Cafeterias and break rooms are not work sites.

Historical Note

New Section made by emergency rulemaking under

A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-302. Unauthorized Solicitation Prohibited

A person shall not conduct a solicitation on state property without express written permission from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-303. Application

- A.** Any person who would like to conduct a solicitation on state property may apply for a permit by filing, either in person or by mail, a Department-approved solicitation application form with the Director's Office.
- B.** The completed application form shall be submitted at least 15 days before the desired date of the solicitation. A completed application form is one that is legible and contains, at a minimum, all of the following information:
1. The name, address, and telephone number of the solicitor;
 2. The proposed date of the solicitation and the approximate starting and concluding times;
 3. The specific, proposed location for the solicitation;
 4. A general description of the solicitation's purpose; and
 5. Copies of solicitation materials to be used.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-304. Processing Procedure

- A.** Within three days of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
- B.** An applicant with an incomplete application shall supply the missing information within five days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.
- C.** Upon receipt of all missing information within five days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.
- D.** The Department shall not process an application for a permit until the applicant has fully complied with R2-11-303.
- E.** The Director shall render a permit decision no later than three days after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.
- F.** For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
1. Administrative completeness review time-frame: three days.
 2. Substantive review time-frame: three days.
 3. Overall time-frame: six days.

Historical Note

New Section made by emergency rulemaking under

A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-305. Permit Issuance; Denial

- A. Before issuing a permit, the Director shall review the application.
- B. After consideration of the factors in subsection (C), the Director may issue a permit to an applicant who has complied with the application requirements in R2-11-303.
- C. The Director may deny a permit for one or more of the following reasons:
 1. The solicitation interferes with the work of an employee or daily business of an agency;
 2. The solicitation conflicts with the time, place, manner, or duration of other events or solicitations for which permits have been issued or are pending;
 3. The solicitation creates a risk of injury or illness to persons or risk of danger to property; or
 4. The applicant or solicitation fails to comply with the requirements of this Article.
- D. A permit shall not be issued earlier than 60 days before the solicitation.
- E. If the Director denies a permit, the Department shall send the applicant a written notice explaining:
 1. The reason for denial, with citations to supporting statutes or rules,
 2. The applicant's right to seek a hearing to challenge the denial,
 3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06, and
 4. The time periods for appealing the denial.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-306. Bulletin Boards

- A. The Director shall designate at least one bulletin board for solicitation material in each state building.
- B. A person conducting a solicitation shall post solicitation material only on bulletin boards designated under subsection (A).
- C. The Department shall remove solicitation material that is outdated or improperly posted.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-307. State Resources

A person shall not use state materials, supplies, or equipment or other resources, such as payroll stuffing or interoffice mail, to conduct a solicitation.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under

A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-308. Work Sites

Except for posting solicitation material on a bulletin board designated under R2-11-306, a person shall not conduct a solicitation at a work site.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-309. Exemptions

- A. This Article does not apply to the following state programs:
 1. The State Deferred Compensation Program,
 2. The State Employees Charitable Campaign,
 3. The U.S. Savings Bond Drive,
 4. The United Blood Services Blood Drive,
 5. The Capitol Rideshare Commuter Club,
 6. The Capitol Rideshare Clean Air Campaign,
 7. The Employee Wellness Program, and
 8. The employee recognition programs of each agency subject to these rules.
- B. An employee association composed principally of employees of state government agencies may apply under this Article for a permit to conduct a solicitation at a work site.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 5184, effective December 7, 2004 under A.R.S. § 41-1052(E) (Supp. 04-4).

R2-11-310. Suspension or Revocation

- A. The Director may suspend or revoke a permit for failure to comply with this Article or other applicable laws.
- B. Before the Director suspends or revokes a permit, the Department shall send the solicitor written notice, explaining:
 1. The reason for suspension or revocation, with citations to supporting statutes or rules;
 2. The solicitor's right to a hearing before suspension or revocation;
 3. The time and place of the hearing concerning the suspension or revocation.
- C. If the Director finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, the Director may summarily suspend the permit pending proceedings for revocation or other action, based on circumstances of the emergency.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-311. Review of Denial or Summary Suspension

- A. Under A.R.S. Title 41, Chapter 6, Article 10, an applicant or solicitor may obtain a hearing on a denial or summary suspension.
- B. An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-11-305(E).
- C. If the Director summarily suspends a permit under R2-11-310(C), the Department shall promptly prepare and serve a notice of hearing under A.R.S. § 41-1092.05.
- D. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

ARTICLE 4. SPECIAL EVENTS**R2-11-401. Definitions**

The following definitions apply in this Article:

1. "Special event" or "event" means an assembly, demonstration, display, festival, parade, or rally conducted by a person other than a ceremony, gathering, or press conference conducted by a person authorized by the head of a state agency using the agency's own office space.
2. "Sponsor" means the person holding a special event.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-402. Unauthorized Special Event Prohibited

A person shall not use state buildings or grounds for a special event without express written permission from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-403. Application

- A. Any person who would like to hold a special event may apply for a permit by filing, either in person or by mail, a Department-approved event application form with the Office of Special Events.
- B. The completed application form shall be submitted at least two days before the desired date of the special event. A completed application form is one that is legible and contains, at a minimum, all of the following information:
 1. The name, address, and telephone number of the sponsor;
 2. The proposed date of the event and the approximate starting and concluding times;
 3. The specific, proposed location for the event;
 4. A general description of the event, including equipment and facilities to be used;
 5. Approximate number of persons expected to be in attendance;

6. The name, address, and telephone number of the person responsible for clean-up of the area after the activity, if different from the person in subsection (B)(1);
 7. The name, address, and telephone number of any chief monitor who will be designated to direct the event;
 8. A description of the badge or article of clothing used to identify monitors;
 9. A copy of any insurance policy for the special event; and
 10. A copy of any contract for medical, sanitary, and security services.
- C. The Director may accept a completed application form submitted less than two days before a press conference if the Director determines that enforcing the two-day requirement would nullify the need for the press conference. In this situation, R2-11-404 does not apply.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-404. Processing Procedure

- A. Within one day of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete application shall supply the missing information within five days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.
- C. Upon receipt of all missing information within five days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.
- D. The Department shall not process an application for a permit until the applicant has fully complied with R2-11-403.
- E. The Director shall render a permit decision no later than one day after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.
- F. For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
 1. Administrative completeness review time-frame: one day.
 2. Substantive review time-frame: one day.
 3. Overall time-frame: two days.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-405. Permit Issuance; Denial

- A. Before issuing a permit, the Director shall review the application.
- B. After consideration of the factors in subsection (C), the Director may issue a permit to an applicant who has:
 1. Complied with the application requirements in R2-11-403;
 2. Posted any deposit necessary under R2-11-407;
 3. Obtained any insurance necessary under R2-11-407; and
 4. Submitted evidence that the applicant will provide any medical, sanitary, and security services necessary under

- R2-11-407. Submission of a copy of the contract for these services will satisfy this requirement.
- C.** The Director may deny a permit for one or more of the following reasons:
1. The event interferes with the work of an employee or daily business of an agency;
 2. The event conflicts with the time, place, manner, or duration of other events for which permits have been issued or are pending;
 3. The event creates a risk of injury or illness to persons or risk of danger to property; or
 4. The applicant or permit fails to comply with the requirements of this Article.
- D.** A permit shall not be issued earlier than 60 days before the special event.
- E.** If the Director denies a permit, the Department shall send the applicant a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a hearing to challenge the denial;
 3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 4. The time periods for appealing the denial.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-406. Monitors

The sponsor shall designate one monitor for every 50 persons expected to be in attendance. The monitors shall wear a uniform, distinctive badge, or a distinctive article of clothing at all times during the event for identification purposes.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-407. Risk Management

- A.** The Director may take one or more of the following actions to the extent it is necessary and in the best interests of the state:
1. Impose conditions on the conduct of the event in the permit;
 2. Require the applicant to post a deposit against damage and clean-up expense;
 3. Require the applicant to carry liability insurance and provide the certificate of insurance; and
 4. Require the applicant to provide medical, sanitary, and security services.
- B.** The Director shall consider all of the following criteria to determine whether one or more of the actions in subsection (A) is necessary and in the best interests of the state:
1. Previous experience with similar events;
 2. Deposits required for similar events in Arizona;
 3. Risk data;
 4. Medical, sanitary, and security services required for similar events in Arizona and the cost of those services.
- C.** The Department shall not provide insurance or guarantee against damage to equipment or personal property of any person using state buildings or grounds.
- D.** If the Director requires insurance for a special event, the sponsor shall list the state of Arizona and the Department of Administration as additional insured entities.
- E.** The sponsor is liable to the state for any injury done to its property and for any expense arising out of the sponsor's use of state buildings or grounds.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-408. Suspension or Revocation

- A.** The Director may suspend or revoke a permit for failure to comply with this Article, permit conditions, or other applicable laws.
- B.** Before the Director suspends or revokes a permit, the Department shall send the sponsor written notice, explaining:
1. The reason for suspension or revocation, with citations to supporting statutes or rules;
 2. The sponsor's right to a hearing before suspension or revocation.
- C.** If the Director finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, the Director may summarily suspend a permit pending proceedings for revocation or other action, based on the circumstances of the emergency.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-409. Review of Denial or Summary Suspension

- A.** Under A.R.S. Title 41, Chapter 6, Article 10, an applicant or sponsor may obtain a hearing on a denial or summary suspension.
- B.** An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-11-405(E).
- C.** The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.
- D.** If the Director summarily suspends a permit under R2-11-408(C), the Department shall promptly prepare and serve a notice of hearing under A.R.S. § 41-1092.05.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

ARTICLE 5. SEVERABILITY**R2-11-501. Validity of Rules**

If a rule or portion of a rule contained in this Chapter is held unconstitutional or invalid, the holding does not affect the validity of the remaining rules.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

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.

41-791. Powers and duties relating to public buildings maintenance; compensation of personnel

A. The department is responsible for the direction and control of public buildings maintenance as prescribed in this article.

B. The department is responsible for the allocation of space, operation, alteration, renovation and security of the following buildings:

1. The state capitol executive tower of the state capitol building.
2. The state office buildings in Tucson.
3. The state office buildings located at:
 - (a) 519 East Beale Street in Kingman.
 - (b) 2910 North 44th Street in Phoenix.
 - (c) 417 West Roosevelt Street in Phoenix.
 - (d) 9535 East Doubletree Ranch Road in Scottsdale.
 - (e) 9545 East Doubletree Ranch Road in Scottsdale.
4. All other buildings owned or leased by the state and located near the state capitol building and the state office buildings in Tucson, except for:
 - (a) Buildings occupied, operated and maintained by the following state agencies:
 - (i) The department of transportation.

(ii) The Arizona power authority.

(b) The state capitol museum, the legislative services wing, the house of representatives and senate wings of the state capitol building and the building located at 1716 West Adams street in Phoenix.

(c) The department of economic security facilities purchased with federal funding assistance and exclusively and continuously operated and maintained for the department's own occupancy.

(d) The Arizona courts building.

(e) The mining, mineral and natural resources educational museum.

C. The department is responsible for the maintenance of the following buildings and grounds:

1. The entire state capitol building and the grounds adjacent to it.

2. The state office buildings in Tucson and the grounds adjacent to them.

3. Other buildings and grounds owned or leased by the state if the function is not otherwise assigned, except for the interior of the Arizona courts building.

D. The director may establish rules for the operation, maintenance and security of buildings and grounds under the director's jurisdiction.

E. The department shall:

1. Employ engineers and maintenance and operations personnel as required, including a buildings manager for the state office buildings in Tucson.

2. Determine the hours of duty and assignment of personnel.

F. All personnel employed under this article are eligible to receive compensation as determined under section 38-611.

41-796. Regulation of traffic and parking; monetary penalties; hearing; state traffic and parking control fund; definition

A. The department of administration may adopt and administratively enforce rules for the control of vehicles on state property with respect only to the following:

1. Maximum speed of vehicles.

2. Direction of travel.

3. Place, method and time of parking.

4. Nonparking areas.

5. Designation of special parking areas for state employees and the general public.

6. Prohibiting parking in vehicle emissions control areas as defined in section 49-541 of those vehicles which fail to comply with section 49-542.

B. The department shall adopt and administratively enforce rules requiring the designation of preferential parking areas, such as reserved, close-in or covered parking, to state employees with offices in vehicle emissions control areas as defined in section 49-541 who are car pool operators as defined in section 28-4032 or who drive vehicles powered by alternative fuel as defined in section 1-215.

C. The department may prescribe and collect reasonable monetary penalties for violations of the rules adopted pursuant to subsection A of this section.

D. The department shall:

1. Cause signs, markings and notices to be posted on the property for the regulation of vehicles.

2. Maintain parking lots and structures.

E. On the failure of a person who is issued a citation for a violation of a rule adopted pursuant to this section to appear, the administrative law judge may proceed to determine whether a violation has occurred and, if so, the penalty to be imposed.

F. Penalties that are imposed pursuant to this section and that are not paid within the time prescribed by the administrative law judge may be collected by an action filed with the justice court.

G. A state traffic and parking control fund is established consisting of monetary penalties collected pursuant to this section. The department shall administer the fund. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

H. All monetary penalties collected by the department for violations of the rules adopted pursuant to subsection A of this section shall be deposited in the state traffic and parking control fund.

I. Except as provided in section 41-1092.08, subsection H, a person who has received a final administrative ruling concerning a penalty imposed on the person as a result of a violation of a rule adopted pursuant to this section may have that ruling reviewed by the superior court in the county in which the institution involved is located pursuant to title 12, chapter 7, article 6.

J. For the purposes of this section, "state property" means property that is the responsibility of the department under section 41-791 and property that is the responsibility of the speaker of the house of representatives or the president of the senate under section 41-1304.05.