

E-1

AHCCCS (R-18-0506)

Title 9, Chapter 22, Articles 2, 3, 7, 12, 15, and 19

Title 9, Chapter 28, Article 4

Title 9, Chapter 29, Article 2

Amend: R9-22-202; R9-22-703; R9-22-1202; R9-22-1501; R9-28-401.01; R9-29-210

Repeal: R9-22-303; R9-22-1910

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: June 5, 2018

AGENDA ITEM: E-1

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

FROM: Council Staff

DATE: May 22, 2018

SUBJECT: AHCCCS (R-18-0506, R-18-0507, R-18-0508)
Title 9, Chapter 22, Articles 2, 3, 7, 12, 15, and 19
Title 9, Chapter 28, Article 4
Title 9, Chapter 29, Article 2

Amend: R9-22-202; R9-22-703; R9-22-1202; R9-22-1501; R9-28-401.01;
R9-29-210

Repeal: R9-22-303; R9-22-1910

SUMMARY OF THE RULEMAKINGS

These rulemakings, from the Arizona Health Care Cost Containment System Administration (AHCCCS or Administration), seek to amend six rules and repeal two rules in A.A.C. Title 9, Chapters 22, 28, and 29. The Administration received an exception from the moratorium on January 23, 2018. This rulemaking relates to a pending waiver request from the Administration to the Centers for Medicare and Medicaid Services (CMS) for implementation of the federal "prior quarter coverage" eligibility requirement specified in 42 CFR 435.915.¹

On its website,² the Administration explains that because of prior quarter coverage, if an "individual is determined to qualify for AHCCCS during any one or more of the three months prior to the month of application, then the individual will be determined to have 'Prior Quarter Coverage' eligibility during those months. As a result, AHCCCS will pay for AHCCCS covered services provided during those months." CMS has required AHCCCS to provide prior quarter coverage since January 1, 2014.

The Administration is currently seeking a waiver from CMS so that AHCCCS would no longer be required to provide prior quarter coverage eligibility. Under the proposed rules, claimants would only be eligible for coverage in the month of application. In the preambles to

¹ A copy of the waiver request can be viewed at <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/az/az-hccc-pa7.pdf>

² See <https://www.azahcccs.gov/PlansProviders/RatesAndBilling/FFS/priorqtrcoverage.html>

the Notices of Final Rulemaking, AHCCCS states that repealing prior quarter coverage eligibility will encourage beneficiaries to obtain and maintain health coverage, thereby improving continuity of care by reducing gaps in coverage for those who may subsequently lose coverage or sign up for Medicaid only when sick. AHCCCS also states that repealing prior quarter coverage eligibility will allow the Administration to more effectively and efficiently utilize its resources.

Substantive or Procedural Concerns

As of the writing of this memorandum, AHCCCS' pending waiver request has not yet been approved by CMS. Unless and until that waiver request is approved, the proposed rules are inconsistent with corresponding federal law. As such, Council staff cannot recommend approval of the rulemakings unless and until that waiver request is approved. See A.R.S. § 41-1052(D)(5) and (D)(9).

Proposed Action

- R9-22-202, *General Requirements*: Subsection (F)(4), related to the provision of prior quarter coverage, is repealed.
- R9-22-303, *Prior Quarter Eligibility*: The rule is repealed.
- R9-22-703, *Payments by the Administration*: Subsection (H), related to prior quarter reimbursement, is repealed.
- R9-22-1202, *ADHS, Contractor, Administration, and CRS Responsibilities*: A sentence in subsection (D)(1), related to the payment of behavioral health services during prior quarter coverage, is repealed.
- R9-22-1501, *General Information*: A reference to R9-22-303 is removed.
- R9-22-1910, *Prior Quarter Eligibility*: The rule is repealed.
- R9-28-401.01, *General*: A reference to R9-22-303 is removed.
- R9-29-210, *Effective Date of Eligibility*: A sentence in subsection (C), related to the provision of prior quarter coverage, is repealed.

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

Yes, if the Administration's pending waiver request receives approval from CMS.

AHCCCS cites to A.R.S. §§ 36-2903, 36-2903.01, 36-2904, 36-2932, and 36-2933 as authority for the rules. Of particular note is A.R.S. §§ 36-2903(A), which states, in relevant part, "[e]xcept as specifically required by federal law and by section 36-2909, the system is only responsible for providing care on or after the date that the person has been determined eligible for the system, and is only responsible for reimbursing the cost of care rendered on or after the date that the person was determined eligible for the system."

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:

Since prior quarter coverage was implemented in January 2014, the following number of claimants have used these provisions:

- FY 2014 - 4,396
- FY 2015 - 13,596
- FY 2016 - 14,855
- FY 2017 - 16,936

Total payment amounts under prior quarter coverage were as follows (figures may differ from the EIS due to rerunning the report after adjustments):

- FY 2014 - \$7,831,015
- FY 2015 - \$23,480,029
- FY 2016 - \$21,329,087
- FY 2017 - \$25,735,063

Payments under prior quarter coverage are made to a variety of different medical providers. The three largest recipients of these payments are Hospitals, MD-Physicians, and Emergency Transportation Services. The distribution of payments by providers for FY 2017 is:

- Hospital - \$18,121,611 (70.4%)
- MD-Physician - \$3,484,679 (13.5%)
- Emergency Transportation - \$1,130,660 (4.4%)
- All Other Providers - \$2,998,113 (11.6%)

Prior quarter coverage payments can also be categorized by the type of service provided. The largest categories are Inpatient Hospital, Outpatient Facility Fees, Medicine, Emergency Transportation, and Surgery. The distribution of payments by type of service for FY 2017 is:

- Inpatient Hospital - \$10,342,940 (40.2%)
- Outpatient Facility Fees - \$8,848,565 (34.4%)
- Medicine - \$2,854,969 (11.1%)
- Emergency Transportation - \$1,422,365 (5.5%)
- Surgery - \$1,139,502 (4.4%)
- All Other Services - \$1,126,722 (4.4%)

Prior quarter coverage expenditures are shared between state and federal sources. The federal share differs depending on the eligibility group. The Administration notes that, on average, 15% of prior quarter coverage funding is from state sources and 85% is from federal sources.

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 Administration will benefit from eliminating a labor-intensive workload, and the state general fund will benefit because 15% of the PQC expenditures will be saved. Hospitals and other health care providers will bear the burdens associated with uncompensated care for eligible individuals who do not file expeditiously for coverage and experience a medical emergency.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Administration, hospitals, other health care providers, individuals eligible for health care coverage from AHCCCS, and the general fund.

- The Administration will benefit from this rulemaking because PQC determinations are a labor-intensive process. Eliminating PQC will reduce administrative burden for the Administration. The Administration also believes that eliminating PQC will encourage eligible Arizonans to apply for coverage through AHCCCS while healthy. Working to ensure that all eligible claimants are also entitled can improve health care outcomes for Arizonans.
- Hospitals are the businesses that will bear most of the costs associated with this rulemaking. In SFY 2017, hospitals received 70% of the payments (\$18.1 million) associated with PQC. If claimants can no longer receive PQC, then hospitals will be responsible for the costs of emergency care for individuals who are eligible for coverage but not entitled. The Administration notes that if all eligible individuals apply for coverage expeditiously, then there would not be any additional uncompensated health care costs borne upon hospitals.
- Other health care providers will also be burdened with uncompensated health care costs. In SFY 2017, other health care providers received 30% of the payments (\$7.6 million). The impacts for other health care providers will be similar to the impacts for hospitals listed above.
- Individuals who are eligible for AHCCCS coverage but not entitled will be impacted by this rulemaking. In SFY 2017, 16,936 eligible individuals incurred medical costs before filing their applications for coverage. Without PQC, this population will still require emergency health care, but they will be responsible for the costs. Since the income eligibility for AHCCCS coverage is 133% of the Federal Poverty Level for adults under the age of 65, it is reasonable to assume that eligible individuals lack the financial means to pay large emergency health care bills. The Administration notes that any potential costs can be avoided by eligible individuals if they apply for coverage expeditiously, even when healthy.
- The general fund will save costs due to this rulemaking. In SFY 2017, there were \$25.7 million PQC expenditures. The Administration estimates that 15% (\$3.9 million) of these expenditures were paid from the state's general fund and 85% (\$21.9 million) were paid from federal sources. These general fund savings would not be realized if all eligible individuals file for coverage expeditiously, even when healthy.

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

Yes. The Administration indicates that it received two public comments on the proposed rules.³ Council staff believes that AHCCCS has adequately addressed these comments. Additional public comments, which have been made on the proposed waiver and not directly on these rulemakings, are available for review as part of the Administration's waiver request.

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

No. Only non-substantive clarifying changes have been made between the Notice of Proposed Rulemakings and the Notice of Final Rulemakings.

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, if the Administration's pending waiver request receives approval from CMS.

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 Administration indicates that it did not review or rely on any study for these rulemakings.

11. Conclusion

If approved, these rulemakings will become effective 60 days after filing with the Secretary of State. As noted above, Council staff cannot recommend approval of the rulemakings unless and until the Administration's pending waiver request is approved by CMS.

³ Copies of these public comments, along with the Administration's responses, can be found on Pages 3-7 of the Notices of Final Rulemaking.

March 20, 2018

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

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

- 9 A.A.C. 22, Article 2, Scope of Service
- 9 A.A.C. 22, Article 3. General Eligibility Requirements
- 9 A.A.C. 22, Article 7, Standards for Payments
- 9 A.A.C. 22, Article 12, Behavioral Health Services
- 9 A.A.C. 22, Article 15, AHCCCS Medical Coverage for People Who are Aged, Blind, or Disabled
- 9 A.A.C. 22, Article 19, Freedom to Work
- 9 A.A.C. 28, Article 4, Eligibility and Enrollment
- 9 A.A.C. 29, Article 2, Eligibility

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

- a. The close of record date was 5 p.m., March, 19, 2018.
- b. Definitions of terms contained in statute or other rules and used in the rule are either cross-referenced or attached.
- c. The rulemaking does not relate to a 5-year-review.
- d. The rulemaking contains no new fees.
- e. The rulemaking contains no fee increase.
- f. Documents enclosed:
 - 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;
 - If applicable, copy of definitions of terms, contained in statutes or other rules, used in the rule.
- g. All written comments submitted by the public concerning the proposed rule,
- h. The adopted rules contain no materials incorporated by reference,
- i. The adopted rules do not require a permit,

- j. The rule is not more stringent than federal law and the citation to the statutory authority does not exceed the requirements of federal law.
- k. 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, and
- l. The AHCCCS Administration has not notified the Joint Legislative Budget Committee (JLBC) of a 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.
- m. 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. An immediate effective date is requested. I respectfully request that the Council consider and approve the adopted rules.

Sincerely,



Matthew Devlin
Assistant Director - Office of Legal Assistance
Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ADMINISTRATION – ADMINISTRATION

PREAMBLE

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

Rulemaking Action:

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| R9-22-202 | Amend |
| R9-22-303 | Repeal |
| R9-22-703 | Amend |
| R9-22-1202 | Amend |
| R9-22-1501 | Amend |
| R9-22-1910 | Repeal |

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

Authorizing statute: A.R.S. §§ 36-2903.01, 36-2903, 36-2932
Implementing statutes: A.R.S. §§ 36-2904, 36-2933

3. The effective date of the rule:

AHCCCS 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. 353, February 16, 2018
Notice of Proposed Rulemaking 24 A.A.R. 337, February 16, 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:

The Administration is in the process of requesting a waiver from CMS from implementing the federal prior quarter coverage eligibility requirement specified in 42 CFR 435.915. Therefore, AHCCCS is requesting authorization to initiate the process of repealing and amending rules regarding prior quarter coverage so that the repeal can be implemented expeditiously upon federal approval. CMS has recently approved similar prior quarter coverage waiver requests submitted by several other State Medicaid Agencies. Failure to amend and repeal AHCCCS prior quarter coverage to conform to an approved waiver will impair the Agency's ability to further the objectives of the Medicaid Act and will also result in continued expenditures by AHCCCS for the substantial administrative and operational costs associated with implementation of the prior quarter coverage eligibility process for the low percentage of AHCCCS members who qualify for prior quarter coverage eligibility.

More specifically, 42 CFR 435.915 requires the Administration to provide Prior Quarter (PQ) eligibility for persons who qualify for Title XIX eligibility in any one of the three previous months prior to application. While A.R.S. § 36-2903(A) provides that the system's reimbursement responsibility is prospective from the date of the eligibility determination, AHCCCS has implemented prior quarter coverage to ensure federal financial participation for Arizona's Medicaid Program. Although AHCCCS had previously obtained federal approval waiving compliance from prior quarter coverage eligibility, as of January 1, 2014, AHCCCS was required by CMS to implement prior quarter eligibility. However, the Administration is seeking a new waiver from CMS so that the Administration is not required to provide Title XIX eligibility for any of the three previous months prior to the month of application.

Repealing quarter coverage promotes the objectives of title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. Incentivizing members to retain health care coverage will increase continuity of care by reducing gaps in coverage for Medicaid beneficiaries who subsequently lose coverage or who sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, a waiver from prior quarter coverage will encourage beneficiaries to apply for Medicaid expeditiously when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services if the need arises. Also, a waiver from prior quarter coverage and the corresponding repeal of these rules promote alignment between Medicaid and commercial coverage to facilitate smoother beneficiary transition. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter coverage eligibility will allow the Agency to utilize resources more effectively and efficiently.

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

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

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

The rulemaking will not diminish a previous grant of authority of a political subdivision.

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

In fiscal year 2017, AHCCCS reimbursed providers for member expenses that met the qualification of prior quarter coverage to the cost of \$21, 347,700. A large portion of those funds are received from the federal government as federal financial participation. If the rulemaking changes are made, the savings would be beneficial to the state as well as other political subdivisions that contribute to these funds.

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

There were no changes between the proposed and final rulemaking.

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

| Comment From and Date rec'd. | Comment | Agency Response |
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| <p>Ellen Sue Katz 03/15/18 On behalf of Arizona Center for Disability Law, Arizona Center for Law in the Public Interest, and the William E. Morris Institute for Justice</p> | <p>Dear Office of Administrative Legal Services:</p> <p>The Arizona Center for Disability Law ("ACDL"), Arizona Center for Law in the Public Interest ("Center") and William E. Morris Institute for Justice ("Institute") submit these comments to the Arizona Health Care Cost Containment System ("AHCCCS") rulemaking to eliminate prior quarter coverage as required by 42 C.F.R. § 435.915 from the state Medicaid program, the Arizona Long Term Care System ("ALTCS") and the Medicare Cost Sharing Program. The ACDL is the protection and advocacy program in Arizona and works on issues concerning access to health care for persons with disabilities. The, Center is a public interest law firm that has a major focus on access to health care issues. The Institute is a non-profit program that advocates on behalf of low income Arizonans. As part of our work, we focus on public benefit programs, such as Medicaid.</p> <p>The ACDL, Center and Institute strongly supported Arizona's decision to restore Medicaid services to the Proposition 204 adults and to expand Medicaid to all persons with incomes up to 138% of the federal poverty level, with income disregard of 5%. Arizona's</p> | <p>AHCCCS thanks Ms. Katz for her comments and her ongoing involvement with AHCCCS' member populations. AHCCCS has requested a waiver to make changes to its Title XIX program. The purpose of the waiver from prior quarter coverage, and the corresponding repeal of the prior quarter coverage rules, are to further the objectives of the Medicaid Act. Although, the approval of the prior quarter coverage waiver will</p> |

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| <p>restoration and expansion have been highly successful. Approximately 1.9 million persons are on AHCCCS as of January 2018. www.azahcccs.gov/Resources/Downloads/PopulationStatistics/2018/Jan/AHCCCS_Populations_by_Category.pdf. Of this number, 313,000 are the Proposition 204 population (0-100% of federal poverty level) and 80,300 are the adult expansion (100-133% of the federal poverty level).</p> <p>AHCCCS' rulemaking proposes to eliminate prior quarter coverage required by 42 U.S.C. § 1396a(a)(34) and 42 C.F.R. § 435.915. Prior quarter coverage provides applicants for medical coverage with eligibility starting the date of application and going back up to three, months as long as the person was eligible for coverage. The agency's justification for the proposed rulemaking is that it has requested a waiver of this requirement from the federal government pursuant to 42 U.S.C. § 1315(a), and on the assumption that if the waiver is granted, AHCCCS wants to implement the change without any delay.</p> <p>AHCCCS' sole reason for the rulemaking is to save money. In fiscal year 2017, AHCCCS states it reimbursed medical providers \$21,347,700 for prior quarter coverage. Of this amount only 9% (\$1,983,800) came from the state funds because of the high reimbursement rate provided by the federal government.</p> <p>AHCCCS proposes to repeal Prior Quarter Eligibility from the state Medicaid program in R9-22-303 and R9-22-191 O (Freedom to Work) and amend by deletion the requirement or a reference to the requirement from R9-22-202 (F)(4), R9-22-703(H), R22-1202(D)(I) and R9-22-1501(F). For the ALTCS program, AHCCCS proposes to amend R9-28-401.01(D)(I). Finally, for the Medicare Cost Sharing Program, AHCCCS proposes to amend R9-29-210(C)</p> <p>For the reasons below, the ACDL, Center and the Institute request that the proposed rulemaking not be approved.</p> <p>I. Prior Quarter Coverage is an Important Part of the Medicaid, ALTCS and Medicare Cost Sharing Programs</p> <p>When the Medicaid retroactive coverage guarantee was established in 1972, the Senate Finance Committee noted that the provision would "protect[] persons who are eligible for [M]edicaid but do not apply for assistance until after they have received care, either because they did not know about the [M]edicaid eligibility requirements or because the sudden nature of their illness prevented their applying." Senate Report No. 92-1230 at 209 (Discussing Section 255 of H.R. 1) (Sept. 26, 1972). This statement is just as true now as it was 45 'years ago. A person in need of health care cannot be expected to make instantaneous applications for Medicaid coverage. She may be hospitalized after an accident or unforeseen medical emergency. She may also be unfamiliar with Medicaid, or unsure about' when her declining financial resources might fall within the Medicaid eligibility threshold. The three-month retroactivity window is a rational and humane response to these concerns. Retroactive eligibility is only available to persons who</p> | <p>result in decreased cost to the State, the request was not submitted exclusively as a cost-saving measure.</p> <p>The waiver amendment is intended to promote the objectives of Title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. The Administration believes this will improve continuity of care by reducing gaps in coverage when beneficiaries previously would transition often on and off Medicaid or sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, this waiver will encourage beneficiaries to apply for Medicaid when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services when the need arises. This waiver amendment will improve the alignment between Medicaid and commercial coverage to facilitate smoother beneficiary transition. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter</p> |
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| | <p>meet Medicaid eligibility standards for the month[s] in question. The same arguments apply to the AL TCS and Medicare Cost Sharing programs.</p> <p>Because all the affected persons are low-income and Medicaid eligible, elimination of the prior quarter coverage will simply shift the cost of care to medical facilities who with reduced funding for uncompensated care, may not be able to obtain reimbursement. With the expansion of Medicaid coverage to more persons, the Affordable Care Act ("ACA") intended to reduce the number of persons who were uninsured. Correspondingly, the ACA also reduced the Disproportionate Share Hospital Program ("DSH") that provided additional funds to hospitals for uncompensated care under Medicaid and Medicare. <i>See</i> "Q and A: Disproportionate Share Hospital Payments and the Medicaid Expansion." https://www.healthlaw.org/issues/medicaid/qadisporportionate-share-hospital-payinents-and-the-medicaid-expansion. This proposed rulemaking conflicts with that intent to provide coverage directly on behalf of the uninsured and, instead, will result in more medical facilities providing uncompensated care with no available federal funds to cover their costs.</p> <p>Finally, this proposal is very short-sighted. While in one year, the state may save \$1,983,800, it will forgo approximately 20 million dollars in federal payments that could provide medical care for persons all over the state. To spend one dollar and get nine dollars back is a great return on the use of state funds in general and in this case the funds go to provide much needed medical care for our most vulnerable Arizonans. As these numbers show, prior quarter coverage is truly a win-win situation.</p> <p>II. AHCCCS' Request for a Waiver under 42 U.S.C. § 1315 Must Promote the Objectives of the Medicaid Act and Test Experimental Goals</p> <p>AHCCCS predicates its proposed rulemaking on the waiver request it submitted to the federal government that it be allowed to not provide prior quarter coverage. A waiver request must meet very specific criteria. The Social Security Act grants the Secretary of the United States Department of Health and Human Services limited authority to waive the requirements of the Medicaid Act. The Social Security Act allows the Secretary grant a "[w]aiver of State plan requirements" in 42 U.S.C. § 1396a in the case of an "experimental, pilot, or demonstration project." 42 U.S.C. § 1315(a) ("section 1315"). The Secretary may only approve a project which is "likely to assist in promoting the objectives" of the Title XIX and may only "waive compliance with any of the requirements [of the act] ... to the extent and for the period necessary" for the state to carry out the project. <i>Id.</i> AHCCCS' waiver amendment requests would impede rather than promote the objectives of the Medicaid program by creating unnecessary barriers to enrollment and access to care.</p> <p>Legislative history confirms that Congress meant for section 1315 projects to test experimental ideas. According to Congress, section 1315 was intended to allow only for "experimental projects designed to test out new ideas and ways of dealing with the problems of</p> | <p>coverage eligibility will allow the Agency to utilize resources more effectively and efficiently.</p> <p>The federal funds Ms. Katz is concerned will no longer be available to the Administration following this repeal, were funds exclusively available for the prior quarter coverage requirement.</p> |
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public welfare recipients" that are "to be selectively approved," "designed to improve the techniques of administering assistance and related rehabilitative services," and "usually cannot be statewide in operation." S. Rep. No. 87-1589, at 19-20, *as reprinted in* 1962 U.S.C.C.A.N. 1943, 1961-62, 1962 WL 4692 (1962). *See also* H. R. Rep. No. 3982, pt. 2 at 307-08 (1981) ("States can apply to HHS for a waiver of existing law in order to test a unique approach to the delivery and financing of services to Medicaid beneficiaries.").

In addition, the Secretary is bound by the Ninth Circuit's precedent for any waiver requests under 42 U.S.C. § 1315. The Ninth Circuit described section 1315's application to "experimental; pilot or demonstration" projects as follows:

"The statute was not enacted to enable states to save money or to evade federal requirements but to 'test out new ideas and ways of dealing with the problems of public welfare recipients'. [Citation omitted] . . . A simple benefits cut, which might save money, but has no research or experimental goal, would not satisfy this requirement." *Beno v. Shalala*, 30 F.3d 1057, 1069 (9th Cir. 1994).

AHCCCS' waiver request must meet these requirements. As explained below, AHCCCS' waiver request fails to establish any demonstration value and instead is a cost saving proposal only.

III. AHCCCS' Waiver Request Serves No Experimental Purpose, Creates Barriers to Health Care and Will Impede, Not Further, the Objectives of the Medicaid Act

The only reason for the proposed rulemaking is AHCCCS' pending waiver request. The waiver request does not serve any valid experimental purpose and, moreover, represents bad policy for low-income Arizonans and working Arizonans with disabilities who need coverage. Such a limit on access to Medicaid only creates a barrier to access to care and does not promote the objectives of the Medicaid Act. Moreover, AHCCCS proposes to limit prior quarter coverage solely to save money. AHCCCS concedes this is solely a request to save money. As explained above, a proposal to save money, is not a valid reason for a Section 1315 waiver. *See Beno*, 30 F.3d at 1069.

The waiver request has no evidentiary or experimental basis and will impede not further access to care and the objectives of the Medicaid Act. Therefore, the proposed rulemaking based on the flawed waiver request should not be approved.

Conclusion

For all the above reasons, the proposed rulemaking should not be approved.

Thank you for the opportunity to comment on the proposed rulemaking. If you have any questions concerning this letter, please contact Ellen Katz at (602) 252-3432 or at eskatz@qwestoffice.net or Rose Daly-Rooney at 520-327-9547, ext. 323.

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| <p>Jennifer A. Carusetta 03/16/18 Executive Director, Health System Alliance of Arizona</p> | <p>The purpose of this letter is to provide comment on the Notice of Proposed Rule-Making: Prior Quarter Coverage.</p> <p>As stated in previous correspondence on the proposed Waiver Amendment, prior quarter coverage has proven to be a critical source of reimbursement for hospital systems, who are required to provide care to patients in emergencies, regardless of whether they have healthcare coverage or not. Despite the decreasing rate of uninsured in our communities, we still see uninsured in our emergency departments. Prior quarter coverage, which provides reimbursement for medical bills incurred during months of eligibility in the quarter prior to AHCCCS enrollment, provides a critical opportunity for hospitals to obtain reimbursement for what would otherwise be uncompensated care.</p> <p>As noted previously, behavior between the Medicaid and commercially insured populations does tend to be aligned in most instances. However, one critical difference is that we do tend to see more “churn” in coverage in the Medicaid population, who are more frequently engaged in part-time and seasonal employment, than in the commercially insured population. For this reason, coverage for individuals in the Medicaid population will be more inconsistent than it is for those in the commercial market. Prior quarter coverage provides an important “stopgap” in coverage for those Medicaid enrollees who may move in and out of employment throughout the year. The availability of prior quarter coverage assures that eligible expenses incurred during a period of employment when a person may not have access to healthcare coverage will be covered and will not become an incurred medical debt or uncompensated cost to our healthcare delivery system.</p> <p>Finally, when commenting on the Proposed Waiver Amendment, we made the request that fiscal analysis be conducted on the impact of eliminating prior quarter coverage on our hospital systems in Arizona. While we understand that an analysis was conducted on the impact of this repeal on the entire healthcare industry, this analysis was not specific to hospital systems, who as the safety net providers charged with providing emergency care for the uninsured regardless of coverage, will bear the majority of this impact. We find it concerning that this rule is being promulgated absent a full understanding of what economic impact this policy change will have on this critical network of care.</p> <p>I sincerely appreciate your consideration and am happy to answer any questions or provide additional information.</p> | <p>AHCCCS thanks Ms. Carusetta for her comments. The waiver amendment is intended to promote the objectives of Title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. The Administration believes this will improve continuity of care by reducing gaps in coverage when beneficiaries previously would transition often on and off Medicaid or sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, this waiver will encourage beneficiaries to apply for Medicaid when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services when the need arises. Those beneficiaries who obtain coverage, either through Medicaid or commercial insurance, will then have existing resources available to pay for the medical services they receive, whether emergent or non-emergent.</p> |
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12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters have been prescribed.

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

The rule does 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:

The rules were updated to align with CMS's requirement that AHCCCS implement prior quarter coverage eligibility rules found at 42 CFR 435.915. This regulation requires the Administration to provide Prior Quarter (PQ) eligibility. However, the Administration is submitting a new waiver amendment whereby AHCCCS would be exempted from the prior quarter coverage eligibility requirement similar to the waivers recently approved by CMS for other States and similar to the waiver previously approved for Arizona. This rulemaking will proceed only if the waiver amendment is approved by CMS.

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:

No material is 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:

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

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

ARTICLE 2. SCOPE OF SERVICE

Section

R9-22-202. General Requirements

ARTICLE 3. GENERAL ELIGIBILITY REQUIREMENTS

Section

R9-22-303. Prior Quarter Eligibility

ARTICLE 7. STANDARD FOR PAYMENTS

Section

R9-22-703. Payments by the Administration

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

Section

R9-22-1202. ADHS, Contractor, Administration and CRS Responsibilities

**ARTICLE 15. AHCCCS MEDICAL COVERAGE FOR PEOPLE WHO ARE AGED, BLIND, OR
DISABLED**

Section

R9-22-1501. General Information

ARTICLE 19. FREEDOM TO WORK

Section

R9-22-1910. Prior Quarter Eligibility

ARTICLE 2. SCOPE OF SERVICE

R9-22-202. General Requirements

- A.** For the purposes of this Article, the following definitions apply:
1. “Authorization” means written, verbal, or electronic authorization by:
 - a. The Administration for services rendered to a fee-for-service member, or
 - b. The contractor for services rendered to a prepaid capitated member.
 2. Use of the phrase “attending physician” applies only to the fee-for-service population.
- B.** In addition to other requirements and limitations specified in this Chapter, the following general requirements apply:
1. Only medically necessary, cost effective, and federally reimbursable and state-reimbursable services are covered services.
 2. Covered services for the federal emergency services program (FESP) are under R9-22-217.
 3. The Administration or a contractor may waive the covered services referral requirements of this Article.
 4. Except as authorized by the Administration or a contractor, a primary care provider, attending physician, practitioner, or a dentist shall provide or direct the member’s covered services. Delegation of the provision of care to a practitioner does not diminish the role or responsibility of the primary care provider.
 5. A contractor shall offer a female member direct access to preventive and routine services from gynecology providers within the contractor’s network without a referral from a primary care provider.
 6. A member may receive physical and behavioral health services as specified in Articles 2 and 12.
 7. The Administration or a contractor shall provide services under the Section 1115 Waiver as defined in A.R.S. § 36-2901.
 8. An AHCCCS registered provider shall provide covered services within the provider’s scope of practice.
 9. In addition to the specific exclusions and limitations otherwise specified under this Article, the following are not covered:
 - a. A service that is determined by the AHCCCS Chief Medical Officer to be experimental or provided primarily for the purpose of research;
 - b. Services or items furnished gratuitously, and
 - c. Personal care items except as specified under R9-22-212.
 10. Medical or behavioral health services are not covered services if provided to:
 - a. An inmate of a public institution; or
 - b. A person who is in residence at an institution for the treatment of tuberculosis.
- C.** The Administration or a contractor may deny payment of non-emergency services if prior authorization is not obtained as specified in this Article and Article 7 of this Chapter. The Administration or a contractor shall not provide prior authorization for services unless the provider submits documentation of the medical necessity of the treatment along with the prior authorization request.
- D.** Services under A.R.S. § 36-2908 provided during the prior period coverage do not require prior authorization.

- E. Prior authorization is not required for services necessary to evaluate and stabilize an emergency medical condition. The Administration or a contractor shall not reimburse services that require prior authorization unless the provider documents the diagnosis and treatment.
- F. A service is not a covered service if provided outside the GSA unless one of the following applies:
 1. A member is referred by a primary care provider for medical specialty care outside the GSA. If a member is referred outside the GSA to receive an authorized medically necessary service, the contractor shall also provide all other medically necessary covered services for the member;
 2. There is a net savings in service delivery costs as a result of going outside the GSA that does not require undue travel time or hardship for a member or the member's family;
 3. The contractor authorizes placement in a nursing facility located out of the GSA; or
 4. ~~Services are provided during prior period coverage or during the prior quarter coverage.~~
- G. If a member is traveling or temporarily residing outside of the GSA, covered services are restricted to emergency care services, unless otherwise authorized by the contractor.
- H. A contractor shall provide at a minimum, directly or through subcontracts, the covered services specified in this Chapter and in contract.
- I. The Administration shall determine the circumstances under which a FFS member may receive services, other than emergency services, from service providers outside the member's county of residence or outside the state. Criteria considered by the Administration in making this determination shall include availability and accessibility of appropriate care and cost effectiveness.
- J. The restrictions, limitations, and exclusions in this Article do not apply to a contractor electing to provide noncovered services.
 1. The Administration shall not consider the costs of providing a noncovered service to a member in the development or negotiation of a capitation rate.
 2. A contractor shall pay for noncovered services from administrative revenue or other contractor funds that are unrelated to the provision of services under this Chapter.
 3. If a member requests a service that is not covered or is not authorized by a contractor, or the Administration, an AHCCCS-registered service provider may provide the service according to R9-22-702.
- K. Subject to CMS approval, the restrictions, limitations, and exclusions specified in the following subsections do not apply to American Indians receiving services through IHS or a tribal health program operating under P.L. 93-638 when those services are eligible for 100 percent federal financial participation:
 1. R9-22-205(A)(8),
 2. R9-22-206,
 3. R9-22-207,
 4. R9-22-212(C),
 5. R9-22-212(D),
 6. R9-22-212(E)(8),
 7. R9-22-215(C)(5), (C)(6), and

8. R9-22-215(C)(4).

ARTICLE 3. GENERAL ELIGIBILITY REQUIREMENTS

R9-22-303. ~~Prior Quarter Eligibility Repealed~~

~~A. Prior Quarter eligibility shall be effective no earlier than January 1, 2014. An applicant may be eligible during any of the three months prior to application if the applicant:~~

- ~~1. Received one or more covered services described in 9 A.A.C. 22, Article 2 and Article 12, and 9 A.A.C. 28, Article 2 during the month; and~~
- ~~2. Would have qualified for Medicaid at the time services were received if the person had applied regardless of whether the person is alive when the application is made.~~

~~B. The Prior Quarter requirements do not apply to:~~

- ~~1. Qualified Medicare Beneficiaries~~
- ~~2. KidsCare~~

ARTICLE 7. STANDARD FOR PAYMENTS

R9-22-703. Payments by the Administration

- A.** General requirements. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of October 1, 2012, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B.** Timely submission of claims.
1. Under A.R.S. § 36-2904, the Administration shall deem a paper or electronic claim to be submitted on the date that it is received by the Administration. The Administration shall do one or more of the following for each claim it receives:
 - a. Place a date stamp on the face of the claim,
 - b. Assign a system-generated claim reference number, or
 - c. Assign a system-generated date-specific number.
 2. Unless a shorter time period is specified in contract, the Administration shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
 - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
 - b. Six months from the date of eligibility posting.
 3. Unless a shorter time period is specified in contract, the Administration shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
 - a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
 - b. Twelve months from the date of eligibility posting.
 4. Unless a shorter time period is specified in contract, the Administration shall not pay a claim submitted by an HIS or tribal facility for a covered service unless the claim is initially submitted within 12 months from the date of service, date of discharge, or eligibility posting, whichever is later.
- C.** Claims processing.
1. The Administration shall notify the AHCCCS-registered provider with a remittance advice when a claim is processed for payment.
 2. The Administration shall reimburse a hospital for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and in the manner and at the rate described in A.R.S. § 36-2903.01:

- a. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
 - b. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
 - c. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a fee of one percent per month for each month or portion of a month following the 60th day of receipt of the bill until date of payment.
- 3. A claim is paid on the date indicated on the disbursement check.
 - 4. A claim is denied as of the date of the remittance advice.
 - 5. The Administration shall process a hospital claim under this Article.
- D. Prior authorization.**
- 1. An AHCCCS-registered provider shall:
 - a. Obtain prior authorization from the Administration for non-emergency hospital admissions, covered services as specified in Articles 2 and 12 of this Chapter, and for administrative days as described in R9-22-712.75,
 - b. Notify the Administration of hospital admissions under Article 2 of this Chapter, and
 - c. Make records available for review by the Administration upon request.
 - 2. The Administration may deny a claim if the provider fails to comply with subsection (D)(1).
 - 3. If the Administration issues prior authorization for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the Administration shall adjust the claim payment.
- E. Review of claims and coverage for hospital supplies.**
- 1. The Administration may conduct prepayment and postpayment review of any claims, including but not limited to hospital claims.
 - 2. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
 - a. Patient care kit,
 - b. Toothbrush,
 - c. Toothpaste,
 - d. Petroleum jelly,
 - e. Deodorant,
 - f. Septi soap,
 - g. Razor or disposable razor,
 - h. Shaving cream,
 - i. Slippers,
 - j. Mouthwash,
 - k. Shampoo,

- l. Powder,
 - m. Lotion,
 - n. Comb, and
 - o. Patient gown.
3. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
- a. Arm board,
 - b. Diaper,
 - c. Underpad,
 - d. Special mattress and special bed,
 - e. Gloves,
 - f. Wrist restraint,
 - g. Limb holder,
 - h. Disposable item used instead of a durable item,
 - i. Universal precaution,
 - j. Stat charge, and
 - k. Portable charge.
4. The Administration shall determine in a hospital claims review whether services rendered were:
- a. Covered services as defined in Article 2;
 - b. Medically necessary;
 - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
 - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2903.01.
5. If the Administration adjudicates a claim, a person may file a claim dispute challenging the adjudication under 9 A.A.C. 34.

F. Overpayment for AHCCCS services.

- 1. An AHCCCS-registered provider shall notify the Administration when the provider discovers the Administration made an overpayment.
- 2. The Administration shall recoup an overpayment from a future claim cycle if an AHCCCS-registered provider fails to return the overpaid amount to the Administration.
- 3. The Administration shall document any recoupment of an overpayment on a remittance advice.
- 4. An AHCCCS-registered provider may file a claim dispute under 9 A.A.C. 34 if the AHCCCS-registered provider disagrees with a recoupment action.

G. For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.

~~**H.** Prior quarter reimbursement. A provider shall:~~

1. ~~Bill the Administration for services provided during a prior quarter eligibility period upon verification of eligibility or upon notification from a member of AHCCCS eligibility.~~
2. ~~Reimburse a member when payment has been received from the Administration for covered services during a prior quarter eligibility period. All funds paid by the member shall be reimbursed.~~
3. ~~Accept payment received by the Administration as payment in full.~~

I.H. Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.

J.I. Payment for out-of-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an out-of-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).

K.J. Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. The Administration shall reimburse an in-state or out-of-state provider of inpatient hospital services rendered with a discharge date on or after October 1, 2014, the DRG rate established by the Administration.

L.K. The Administration may enter into contracts for the provisions of transplant services.

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-22-1202. ADHS, Contractor, Administration and CRS Responsibilities

- A.** ADHS responsibilities. ADHS is responsible for payment of behavioral health services provided to members, except as specified under subsection (D). ADHS' responsibility for payment of behavioral health services includes claims for inpatient hospital services, which may include physical health services, when the principal diagnosis on the hospital claim is a behavioral health diagnosis. Behavioral health diagnoses are identified as "mental disorders" in the latest International Classification of Diseases (ICD) code set as required by AHCCCS claims and encounters.
- B.** ADHS/DBHS may contract with a TRBHA for the provision of behavioral health services for American Indian members. American Indian members may receive covered behavioral health services:
1. From an IHS or tribally operated 638 facility,
 2. From a TRBHA, or
 3. From a RBHA.
- C.** Contractor responsibilities. A contractor shall:
1. Refer a member to a RBHA under the contract terms;
 2. Provide EPSDT developmental and behavioral health screening as specified in R9-22-213;
 3. Coordinate a member's transition of care and medical records; and
 4. Be responsible for providing covered inpatient hospital services, which may include behavioral health inpatient hospital services, when the principal diagnosis on the hospital claim is not a behavioral health diagnosis.
- D.** Administration and CRS responsibilities.
1. The Administration shall be responsible for payment of behavioral health services provided to an ALTCS FFS or an FES member and for behavioral health services provided by IHS and tribally operated 638 facilities. ~~The Administration is also responsible for payment of behavioral health services provided to these members during prior quarter coverage.~~
 2. CRS shall be responsible for payment of behavioral health services provided to members enrolled with CRS.

ARTICLE 15. AHCCCS MEDICAL COVERAGE FOR PEOPLE WHO ARE AGED, BLIND, OR DISABLED

R9-22-1501. General Information

- A.** General. The Administration shall determine eligibility for AHCCCS medical coverage for the following applicants or members using the eligibility criteria and requirements in this Article:
1. A person who is aged, blind, or disabled and does not receive SSI cash; and
 2. A person terminated from the SSI cash program under R9-22-1505.
- B.** Definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:
- “Aged” means a person who is 65 years of age or older as specified in 42 U.S.C. 1382c(a)(1)(A).
- “Blind” means a person who has been determined blind by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(2).
- “Disabled” means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E).
- C.** Confidentiality. The Administration shall maintain the confidentiality of an applicant’s or member’s records and limit the release of safeguarded information under R9-22-512.
- D.** Application process.
1. A person may apply for AHCCCS medical coverage by submitting a signed application to any Administration office or outstation location under R9-22-1406.
 2. The provisions in R9-22-1406(B), (C), and (E) apply to this Section.
 3. The application date is the date a signed application is received at any Administration office or outstation location approved by the Director.
 4. An applicant who files an application may withdraw the application, either orally or in writing. If an applicant withdraws an application, the Administration shall send the applicant a denial notice under subsection (G).
 5. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 90 days for an applicant applying on the basis of disability and 45 days for all other applicants.
 6. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
 7. The Administration shall complete an eligibility determination on an application filed on behalf of a deceased applicant, if the application is filed in the month of the applicant’s death.
- E.** Redetermination of eligibility for a person terminated from the SSI cash program.
1. Continuation of AHCCCS medical coverage. The Administration shall continue AHCCCS medical coverage for a person terminated from the SSI cash program until a redetermination of eligibility under subsection (E)(2) is completed.
 2. Coverage group screening. The Administration shall screen a person for eligibility under any coverage group under A.R.S. §§ 36-2901(6)(a)(i), (ii), (iii), (iv), and (v) and 36-2934.

- a. If a person files an application for Arizona Long Term Care System (ALTCS) coverage, the Administration shall determine eligibility under 9 A.A.C. 28, Article 4.
 - b. If an applicant or member is aged, blind, or disabled, but not in need of long-term care services, the Administration shall determine eligibility under this Article.
 - c. For all other persons, the Administration shall refer the applicant's case to the Department for an eligibility decision under Article 14.
- 3. Eligibility decision.
 - a. If a person is eligible under this Article or 9 A.A.C. 28, Article 4, the Administration shall send a notice as under subsection (G) informing the applicant that AHCCCS medical coverage is approved.
 - b. If a person is ineligible, the Administration shall send a notice as under subsection (G) to deny AHCCCS medical coverage.
- F.** ~~Eligibility effective date.~~ Eligibility is effective on the first day of the month that all eligibility requirements are met, ~~including the period described under R9-22-303.~~
- G.** Notice for approval or denial. The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the intended action, and:
 - 1. If approved, the notice shall contain the effective date of eligibility.
 - 2. If approved under FESP, the notice shall also contain:
 - a. The emergency services certification end date,
 - b. A statement detailing the reason for the denial of full services,
 - c. The legal authority supporting the decision,
 - d. Where the legal authority supporting the decision can be found,
 - e. An explanation of the right to request a hearing, and
 - f. The date by which a request for hearing shall be received by the Administration.
 - 3. If denied, the notice shall contain:
 - a. The effective date of the denial;
 - b. The reason for the denial, including specific financial calculations and the financial eligibility standard, if applicable;
 - c. Legal authority supporting the decision;
 - d. Where the legal authority supporting the decision can be found;
 - e. An explanation of the right to request a hearing; and
 - f. The date by which a request for hearing shall be received by the Administration.
- H.** Reporting and verifying changes.
 - 1. An applicant or a member shall report to the Administration the following changes for the applicant or member, the applicant's or member's spouse, and the applicant or member's dependent children:
 - a. Change of address;

- b. Change in the household's members;
 - c. Change in income;
 - d. Death;
 - e. Change in marital status;
 - f. Change in school attendance;
 - g. Change in Arizona state residency; and
 - h. Any other change that may affect the member's or applicant's eligibility.
2. A member shall report to the Administration the following changes:
- a. Admission to a penal institution,
 - b. Change in U.S. citizenship or immigrant status,
 - c. Receipt of a Social Security number, and
 - d. Change in first- or third-party liability that may contribute to the payment of all or a portion of the person's medical costs.
3. A person other than a member or an applicant who reports a change to the Administration either orally or in writing shall include the:
- a. Name of the affected applicant or member;
 - b. Description of the change;
 - c. Date the change occurred;
 - d. Name of the person reporting the change; and
 - e. Social Security or case number of the applicant or member, if known.
4. An applicant or a member shall provide verification of changes if requested by the Administration.
5. An applicant or a member shall report anticipated changes in eligibility to the Administration as soon as the person knows that the change will occur.
6. An applicant or a member shall report an unanticipated change to the Administration within 10 days following the date the change occurred.
- I.** Processing of changes and redeterminations. If a member receives AHCCCS medical coverage under subsection (A), the Administration shall redetermine the member's eligibility at least once every 12 months or more frequently when changes occur that may affect eligibility.
- J.** Actions that may result from a redetermination or change. In processing a redetermination or change, the Administration shall determine whether there should be:
- 1. No change in eligibility,
 - 2. Discontinuance of eligibility if a condition of eligibility is no longer met, or
 - 3. A change in the program under which a person receives AHCCCS medical coverage.
- K.** Notice of discontinuance.
- 1. Contents of notice. The Administration shall issue a notice when it takes action to discontinue a member's eligibility. The notice shall contain the following information:
 - a. A statement of the action that is being taken;

- b. The effective date of the action;
 - c. The reason for the discontinuance, including specific financial calculations and the financial eligibility standard if applicable;
 - d. The legal authority that supports the action proposed by the Administration;
 - e. Where the legal authority supporting the decision can be found;
 - f. An explanation of the right to request a hearing; and
 - g. The date by which a hearing request shall be received by the Administration and the right to continue medical coverage pending appeal.
2. Advance notice of changes in eligibility. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (K)(3), the Administration shall issue an advance notice when an adverse action is taken to suspend, reduce or discontinue eligibility.
3. Exceptions from advance notice. The Administration shall issue a notice to a member to discontinue eligibility no later than the effective date of the action if:
- a. The member provides to the Administration a clearly written statement, signed by that member, that:
 - i. Services are no longer wanted; or
 - ii. Gives information that requires a discontinuance or reduction of services and indicates that the member understands that this is the result of supplying the information;
 - b. The member provides information to the Administration that requires a discontinuance of eligibility and a member signs a written statement waiving advance notice;
 - c. The member cannot be located and mail sent to the member's last known address has been returned as undeliverable under 42 CFR 431.213(d) subject to reinstatement of discontinued eligibility;
 - d. The member has been admitted to a public institution where a member is ineligible for coverage;
 - e. The member has been approved for Medicaid in another state; or
 - f. The Administration receives information confirming the death of the member.
- L.** Request for hearing. An applicant or member may request a hearing under Chapter 34 for any of the following adverse actions:
- 1. Complete or partial denial of eligibility,
 - 2. Discontinuance or reduction of AHCCCS medical coverage, or
 - 3. Delay in the eligibility determination beyond the timeframes listed in R9-22-1501(D).
- M.** Assignment of rights. A person determined eligible assigns rights to all types of medical benefits to which the person is entitled under operation of law under A.R.S. § 36-2903.

ARTICLE 19. FREEDOM TO WORK

R9-22-1910. ~~Prior Quarter Eligibility Repealed~~

~~A person may be made eligible during a prior quarter period when applying for the Freedom to Work program, as described under Article 3.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

- ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

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

R9-28-401.01

Rulemaking Action:

Amend

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

Authorizing statute: A.R.S. § 36-2932(G)

Implementing statutes: A.R.S. §§ 36-2933, 36-2934

3. The effective date of the rule:

AHCCCS 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. 354, February 16, 2018

Notice of Proposed Rulemaking 24 A.A.R. 348, February 16, 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:

The Administration is in the process of requesting a waiver from CMS from implementing the federal prior quarter coverage eligibility requirement specified in 42 CFR 435.915. Therefore, AHCCCS is requesting authorization to initiate the process of repealing and amending rules regarding prior quarter coverage so that the

repeal can be implemented expeditiously upon federal approval. CMS has recently approved similar prior quarter coverage waiver requests submitted by several other State Medicaid Agencies. Failure to amend and repeal AHCCCS prior quarter coverage to conform to an approved waiver will impair the Agency's ability to further the objectives of the Medicaid Act and will also result in continued expenditures by AHCCCS for the substantial administrative and operational costs associated with implementation of the prior quarter coverage eligibility process for the low percentage of AHCCCS members who qualify for prior quarter coverage eligibility.

More specifically, 42 CFR 435.915 requires the Administration to provide Prior Quarter (PQ) eligibility for persons who qualify for Title XIX eligibility in any one of the three previous months prior to application. While A.R.S. § 36-2903(A) provides that the system's reimbursement responsibility is prospective from the date of the eligibility determination, AHCCCS has implemented prior quarter coverage to ensure federal financial participation for Arizona's Medicaid Program. Although AHCCCS had previously obtained federal approval waiving compliance from prior quarter coverage eligibility, as of January 1, 2014, AHCCCS was required by CMS to implement prior quarter eligibility. However, the Administration is seeking a new waiver from CMS so that the Administration is not required to provide Title XIX eligibility for any of the three previous months prior to the month of application.

Repealing quarter coverage promotes the objectives of title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. Incentivizing members to retain health care coverage will increase continuity of care by reducing gaps in coverage for Medicaid beneficiaries who subsequently lose coverage or who sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, a waiver from prior quarter coverage will encourage beneficiaries to apply for Medicaid expeditiously when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services if the need arises. Also, a waiver from prior quarter coverage and the corresponding repeal of these rules promote alignment between Medicaid and commercial coverage to facilitate smoother beneficiary transition. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter coverage eligibility will allow the Agency to utilize resources more effectively and efficiently.

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

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

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

The rulemaking will not diminish a previous grant of authority of a political subdivision.

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

In fiscal year 2017, AHCCCS reimbursed providers for member expenses that met the qualification of prior quarter coverage to the cost of \$21, 347,700. A large portion of those funds are received from the federal government as federal financial participation. If the rulemaking changes are made, the savings would be beneficial to the state as well as other political subdivisions that contribute to these funds.

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

There were no changes between the proposed and final rulemaking.

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

| Comment From and Date rec'd. | Comment | Agency Response |
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| <p>Ellen Sue Katz 03/15/18 On behalf of Arizona Center for Disability Law, Arizona Center for Law in the Public Interest, and the William E. Morris Institute for Justice</p> | <p>Dear Office of Administrative Legal Services:</p> <p>The Arizona Center for Disability Law ("ACDL"), Arizona Center for Law in the Public Interest ("Center") and William E. Morris Institute for Justice ("Institute") submit these comments to the Arizona Health Care Cost Containment System ("AHCCCS") rulemaking to eliminate prior quarter coverage as required by 42 C.F.R. § 435.915 from the state Medicaid program, the Arizona Long Term Care System ("ALTCS") and the Medicare Cost Sharing Program. The ACDL is the protection and advocacy program in Arizona and works on issues concerning access to health care for persons with disabilities. The, Center is a public interest law firm that has a major focus on access to health care issues. The Institute is a non-profit program that advocates on behalf of low income Arizonans. As part of our work, we focus on public benefit programs, such as Medicaid.</p> <p>The ACDL, Center and Institute strongly supported Arizona's decision to restore Medicaid services to the Proposition 204 adults and to expand Medicaid to all persons with incomes up to 138% of the federal poverty level, with income disregard of 5%. Arizona's restoration and expansion have been highly successful. Approximately 1.9 million persons are on AHCCCS as of January 2018.</p> <p>www.azahcccs.gov/Resources/Downloads/PopulationStatistics/2018/Jan/AHCCCS_Populations_by_Category.pdf. Of this number, 313,000 are the Proposition 204 population (0-100% of federal poverty level) and 80,300 are the adult expansion (100-133% of the federal poverty level).</p> <p>AHCCCS' rulemaking proposes to eliminate prior quarter coverage</p> | <p>AHCCCS thanks Ms. Katz for her comments and her ongoing involvement with AHCCCS' member populations. AHCCCS has requested a waiver to make changes to its Title XIX program. The purpose of the waiver from prior quarter coverage, and the corresponding repeal of the prior quarter coverage rules, are to further the objectives of the Medicaid Act. Although, the approval of the prior quarter coverage waiver will result in decreased cost to the State, the request was not submitted exclusively as a cost-saving measure.</p> <p>The waiver amendment is intended to promote</p> |

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| <p>required by 42 U.S.C. § 1396a(a)(34) and 42 C.F.R. § 435.915. Prior quarter coverage provides applicants for medical coverage with eligibility starting the date of application and going back up to three, months as long as the person was eligible for coverage. The agency's justification for the proposed rulemaking is that it has requested a waiver of this requirement from the federal government pursuant to 42 U.S.C. § 1315(a), and on the assumption that if the waiver is granted, AHCCCS wants to implement the change without any delay.</p> <p>AHCCCS' sole reason for the rulemaking is to save money. In fiscal year 2017, AHCCCS states it reimbursed medical providers \$21,347,700 for prior quarter coverage. Of this amount only 9% (\$1,983,800) came from the state funds because of the high reimbursement rate provided by the federal government.</p> <p>AHCCCS proposes to repeal Prior Quarter Eligibility from the state Medicaid program in R9-22-303 and R9-22-191 O (Freedom to Work) and amend by deletion the requirement or a reference to the requirement from R9-22-202 (F)(4), R9-22-703(H), R22-1202(D)(I) and R9-22-1501(F). For the ALTCS program, AHCCCS proposes to amend R9-28-401.01(D)(I). Finally, for the Medicare Cost Sharing Program, AHCCCS proposes to amend R9-29-210(C)</p> <p>For the reasons below, the ACDL, Center and the Institute request that the proposed rulemaking not be approved.</p> <p>I. Prior Quarter Coverage is an Important Part of the Medicaid, ALTCS and Medicare Cost Sharing Programs</p> <p>When the Medicaid retroactive coverage guarantee was established in 1972, the Senate Finance Committee noted that the provision would "protect[] persons who are eligible for [M]edicaid but do not apply for assistance until after they have received care, either because they did not know about the [M]edicaid eligibility requirements or because the sudden nature of their illness prevented their applying." Senate Report No. 92-1230 at 209 (Discussing Section 255 of H.R. 1) (Sept. 26, 1972). This statement is just as true now as it was 45 years ago. A person in need of health care cannot be expected to make instantaneous applications for Medicaid coverage. She may be hospitalized after an accident or unforeseen medical emergency. She may also be unfamiliar with Medicaid, or unsure about when her declining financial resources might fall within the Medicaid eligibility threshold. The three-month retroactivity window is a rational and humane response to these concerns. Retroactive eligibility is only available to persons who meet Medicaid eligibility standards for the month[s] in question. The same arguments apply to the ALTCS and Medicare Cost Sharing programs.</p> <p>Because all the affected persons are low-income and Medicaid eligible, elimination of the prior quarter coverage will simply shift the cost of care to medical facilities who with reduced funding for uncompensated care, may not be able to obtain reimbursement. With the expansion of Medicaid coverage to more persons, the Affordable Care Act ("ACA") intended to reduce the number of</p> | <p>the objectives of Title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. The Administration believes this will improve continuity of care by reducing gaps in coverage when beneficiaries previously would transition often on and off Medicaid or sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, this waiver will encourage beneficiaries to apply for Medicaid when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services when the need arises. This waiver amendment will improve the alignment between Medicaid and commercial coverage to facilitate smoother beneficiary transition. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter coverage eligibility will allow the Agency to utilize resources more effectively and efficiently.</p> <p>The federal funds Ms. Katz is concerned will no longer be available to the Administration</p> |
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| <p>persons who were uninsured. Correspondingly, the ACA also reduced the Disproportionate Share Hospital Program ("DSH") that provided additional funds to hospitals for uncompensated care under Medicaid and Medicare. <i>See</i> "Q and A: Disproportionate Share Hospital Payments and the Medicaid Expansion." https://www.healthlaw.org/issues/medicaid/qadisporpotionate-share-hospital-payinents-and-the-medicaid-expansion. This proposed rulemaking conflicts with that intent to provide coverage directly on behalf of the uninsured and, instead, will result in more medical facilities providing uncompensated care with no available federal funds to cover their costs.</p> <p>Finally, this proposal is very short-sighted. While in one year, the state may save \$1,983,800, it will forgo approximately 20 million dollars in federal payments that could provide medical care for persons all over the state. To spend one dollar and get nine dollars back is a great return on the use of state funds in general and in this case the funds go to provide much needed medical care for our most vulnerable Arizonans. As these numbers show, prior quarter coverage is truly a win-win situation.</p> <p>II. AHCCCS' Request for a Waiver under 42 U.S.C. § 1315 Must Promote the Objectives of the Medicaid Act and Test Experimental Goals</p> <p>AHCCCS predicates its proposed rulemaking on the waiver request it submitted to the federal government that it be allowed to not provide prior quarter coverage. A waiver request must meet very specific criteria. The Social Security Act grants the Secretary of the United States Department of Health and Human Services limited authority to waive the requirements of the Medicaid Act. The Social Security Act allows the Secretary grant a "[w]aiver of State plan requirements" in 42 U.S.C. § 1396a in the case of an "experimental, pilot, or demonstration project." 42 U.S.C. § 1315(a) ("section 1315"). The Secretary may only approve a project which is "likely to assist in promoting the objectives" of the Title XIX and may only "waive compliance with any of the requirements [of the act] ... to the extent and for the period necessary" for the state to carry out the project. <i>Id.</i> AHCCCS' waiver amendment requests would impede rather than promote the objectives of the Medicaid program by creating unnecessary barriers to enrollment and access to care.</p> <p>Legislative history confirms that Congress meant for section 1315 projects to test experimental ideas. According to Congress, section 1315 was intended to allow only for "experimental projects designed to test out new ideas and ways of dealing with the problems of public welfare recipients" that are "to be selectively approved," "designed to improve the techniques of administering assistance and related rehabilitative services," and "usually cannot be statewide in operation." S. Rep. No. 87-1589, at 19-20, <i>as reprinted in</i> 1962 U.S.C.C.A.N. 1943, 1961-62, 1962 WL 4692 (1962). <i>See also</i> H. R. Rep. No. 3982, pt. 2 at 307-08 (1981) ("States can apply to HHS for a waiver of existing law in order to test a unique approach to the delivery and financing of services to Medicaid beneficiaries.").</p> <p>In addition, the Secretary is bound by the Ninth Circuit's precedent</p> | <p>following this repeal, were funds exclusively available for the prior quarter coverage requirement.</p> |
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| | <p>for any waiver requests under 42 U.S.C. § 1315. The Ninth Circuit described section 1315's application to "experimental; pilot or demonstration" projects as follows: “The statute was not enacted to enable states to save money or to evade federal requirements but to 'test out new ideas and ways of dealing with the problems of public welfare recipients'. [Citation omitted] . . . A simple benefits cut, which might save money, but has no research or experimental goal, would not satisfy this requirement.” <i>Beno v. Shalala</i>, 30 F.3d 1057, 1069 (9th Cir. 1994).</p> <p>AHCCCS' waiver request must meet these requirements. As explained below, AHCCCS' waiver request fails to establish any demonstration value and instead is a cost saving proposal only.</p> <p>III. AHCCCS’ Waiver Request Serves No Experimental Purpose, Creates Barriers to Health Care and Will Impede, Not Further, the Objectives of the Medicaid Act</p> <p>The only reason for the proposed rulemaking is AHCCCS' pending waiver request. The waiver request does not serve any valid experimental purpose and, moreover, represents bad policy for low-income Arizonans and working Arizonans with disabilities who need coverage. Such a limit on access to Medicaid only creates a barrier to access to care and does not promote the objectives of the Medicaid Act. Moreover, AHCCCS proposes to limit prior quarter coverage solely to save money. AHCCCS concedes this is solely a request to save money. As explained above, a proposal to save money, is not a valid reason for a Section 1315 waiver. <i>See Beno</i>, 30 F.3d at 1069.</p> <p>The waiver request has no evidentiary or experimental basis and will impede not further access to care and the objectives of the Medicaid Act. Therefore, the proposed rulemaking based on the flawed waiver request should not be approved.</p> <p>Conclusion</p> <p>For all the above reasons, the proposed rulemaking should not be approved.</p> <p>Thank you for the opportunity to comment on the proposed rulemaking. If you have any questions concerning this letter, please contact Ellen Katz at (602) 252-3432 or at eskatz@qwestoffice.net or Rose Daly-Rooney at 520-327-9547, ext. 323.</p> | |
| <p>Jennifer A. Carusetta 03/16/18 Executive Director, Health System Alliance of Arizona</p> | <p>The purpose of this letter is to provide comment on the Notice of Proposed Rule-Making: Prior Quarter Coverage.</p> <p>As stated in previous correspondence on the proposed Waiver Amendment, prior quarter coverage has proven to be a critical source of reimbursement for hospital systems, who are required to provide care to patients in emergencies, regardless of whether they have healthcare coverage or not. Despite the decreasing rate of uninsured in our communities, we still see uninsured in our emergency departments. Prior quarter coverage, which provides reimbursement for medical bills incurred during months of eligibility in the quarter prior to AHCCCS enrollment, provides a critical</p> | <p>AHCCCS thanks Ms. Carusetta for her comments. The waiver amendment is intended to promote the objectives of Title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. The Administration</p> |

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| | <p>opportunity for hospitals to obtain reimbursement for what would otherwise be uncompensated care.</p> <p>As noted previously, behavior between the Medicaid and commercially insured populations does tend to be aligned in most instances. However, one critical difference is that we do tend to see more “churn” in coverage in the Medicaid population, who are more frequently engaged in part-time and seasonal employment, than in the commercially insured population. For this reason, coverage for individuals in the Medicaid population will be more inconsistent than it is for those in the commercial market. Prior quarter coverage provides an important “stopgap” in coverage for those Medicaid enrollees who may move in and out of employment throughout the year. The availability of prior quarter coverage assures that eligible expenses incurred during a period of employment when a person may not have access to healthcare coverage will be covered and will not become an incurred medical debt or uncompensated cost to our healthcare delivery system.</p> <p>Finally, when commenting on the Proposed Waiver Amendment, we made the request that fiscal analysis be conducted on the impact of eliminating prior quarter coverage on our hospital systems in Arizona. While we understand that an analysis was conducted on the impact of this repeal on the entire healthcare industry, this analysis was not specific to hospital systems, who as the safety net providers charged with providing emergency care for the uninsured regardless of coverage, will bear the majority of this impact. We find it concerning that this rule is being promulgated absent a full understanding of what economic impact this policy change will have on this critical network of care.</p> <p>I sincerely appreciate your consideration and am happy to answer any questions or provide additional information.</p> | <p>believes this will improve continuity of care by reducing gaps in coverage when beneficiaries previously would transition often on and off Medicaid or sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, this waiver will encourage beneficiaries to apply for Medicaid when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services when the need arises. Those beneficiaries who obtain coverage, either through Medicaid or commercial insurance, will then have existing resources available to pay for the medical services they receive, whether emergent or non-emergent.</p> |
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12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters have been prescribed.

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

The rule does 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:

The rules were updated to align with CMS's requirement that AHCCCS implement prior quarter coverage eligibility rules found at 42 CFR 435.915. This regulation requires the Administration to provide Prior Quarter (PQ) eligibility. However, the Administration is submitting a new waiver amendment whereby AHCCCS would be exempted from the prior quarter coverage eligibility requirement similar to the waivers recently approved by CMS for other States and similar to the waiver previously approved for Arizona. This rulemaking will proceed only if the waiver amendment is approved by CMS.

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:

No material is 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:

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

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES
CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
– ARIZONA LONG TERM CARE SYSTEM
ARTICLE 4. ELIGIBILITY AND ENROLLMENT

Section

R9-28-401.01. General

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

R9-28-401.01. General

- A.** Application for ALTCS coverage.
1. The Administration shall provide a person the opportunity to apply for ALTCS as described under Chapter 22, Article 3, unless specified otherwise in this Section.
 2. To apply for ALTCS, a person shall submit an application to an ALTCS eligibility office.
 - a. The application shall contain the applicant's name and address.
 - b. Before the application is approved, a person listed in A.A.C. R9-22-302(2) shall sign the application.
 - c. A witness shall also sign the application if an applicant signs the application with a mark.
 - d. The date of application is the date the application is received by the Administration or its designee as described in R9-22-302.
 3. Except as provided in R9-22-306, the Administration shall determine eligibility within 45 days from the date of application.
 4. An applicant or representative who files an ALTCS application may withdraw the application for ALTCS coverage either orally or in writing to the ALTCS eligibility office where the application was filed. The Administration shall provide the applicant with a denial notice under subsection (E).
 5. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
 6. If a person dies before an application is filed, the Administration shall complete an eligibility determination on an application filed on behalf of the deceased applicant, if the application is filed in the month of the person's death.
- B.** Conditions of ALTCS eligibility. Except for persons identified in subsection (C), the Administration shall approve a person for ALTCS if all conditions of eligibility are met. The conditions of eligibility are:
1. Citizenship and alien status under Chapter 22, Article 3;
 2. SSN under Chapter 22, Article 3;
 3. Living arrangements under R9-28-406;
 4. Resources under R9-28-407;
 5. Income under R9-28-408;
 6. Transfers under R9-28-409;
 7. A legally authorized person shall assign rights to the Administration for medical support and for payment of medical care from any first- and third-parties as described under R9-22-311;
 8. A person shall take all necessary steps to obtain annuity, pension, retirement, and disability benefits for which a person may be entitled;
 9. State residency under R9-22-305;
 10. Medical eligibility as specified in Chapter 28, Article 3; and
 11. Providing information and verification as specified under Chapter 22, Article 3.
- C.** Persons eligible for Title IV-E or Title XVI are only required to meet the conditions under subsection (B)(6), (B)(10), (B)(11) and with respect to trusts, A.R.S. § 36-2934.01.
- D.** Eligibility effective date.
1. Eligibility is effective on the first day of the month that all eligibility requirements are met; ~~including the period described under R9-22-303.~~
 2. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
 3. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.
- E.** Notice. The Administration shall send a person a notice of the decision regarding the person's application. The notice shall include a statement of the action and an explanation of the person's hearing rights as specified in 9 A.A.C. 34 and:
1. Approval. If the applicant meets all the eligibility requirements and conditions of eligibility of this Article, the Administration or its designee shall approve the application and provide the applicant with an approval notice. The approval notice shall contain:
 - a. The name of each approved applicant,

- b. The effective date of eligibility for each approved applicant,
 - c. The amount of share of cost, and
 - d. The applicant's right to appeal the decision.
2. Denial. If an applicant fails to meet the eligibility requirements or conditions of eligibility of this Article, the Administration or its designee shall deny the application and provide the applicant with a denial notice. The denial notice shall contain:
- a. The name of each ineligible applicant,
 - b. The specific reason why the applicant is ineligible,
 - c. The income and resource calculations for the applicant compared to the income or resource standards for eligibility when the reason for the denial is due to the applicant's income or resources exceeding the applicable standard,
 - d. The legal citations supporting the reason for the ineligibility,
 - e. The location where the applicant can review the legal citations, and
 - f. The applicant's right to appeal the decision and request a hearing.
- F.** Confidentiality. The Administration shall maintain the confidentiality of a person's record under A.A.C. R9-22-512.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

– MEDICARE COST SHARING PROGRAM

PREAMBLE

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

R9-29-210

Rulemaking Action:

Amend

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

Authorizing statute: A.R.S. § 36-2972

Implementing statutes: A.R.S. §§ 36-2972, 36-2973, 36-2974.

3. The effective date of the rule:

AHCCCS 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. 355, February 16, 2018

Notice of Proposed Rulemaking 24 A.A.R. 351, February 16, 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:

The Administration is in the process of requesting a waiver from CMS from implementing the federal prior quarter coverage eligibility requirement specified in 42 CFR 435.915. Therefore, AHCCCS is requesting authorization to initiate the process of repealing and amending rules regarding prior quarter coverage so that the

repeal can be implemented expeditiously upon federal approval. CMS has recently approved similar prior quarter coverage waiver requests submitted by several other State Medicaid Agencies. Failure to amend and repeal AHCCCS prior quarter coverage to conform to an approved waiver will impair the Agency's ability to further the objectives of the Medicaid Act and will also result in continued expenditures by AHCCCS for the substantial administrative and operational costs associated with implementation of the prior quarter coverage eligibility process for the low percentage of AHCCCS members who qualify for prior quarter coverage eligibility.

More specifically, 42 CFR 435.915 requires the Administration to provide Prior Quarter (PQ) eligibility for persons who qualify for Title XIX eligibility in any one of the three previous months prior to application. While A.R.S. § 36-2903(A) provides that the system's reimbursement responsibility is prospective from the date of the eligibility determination, AHCCCS has implemented prior quarter coverage to ensure federal financial participation for Arizona's Medicaid Program. Although AHCCCS had previously obtained federal approval waiving compliance from prior quarter coverage eligibility, as of January 1, 2014, AHCCCS was required by CMS to implement prior quarter eligibility. However, the Administration is seeking a new waiver from CMS so that the Administration is not required to provide Title XIX eligibility for any of the three previous months prior to the month of application.

Repealing quarter coverage promotes the objectives of title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. Incentivizing members to retain health care coverage will increase continuity of care by reducing gaps in coverage for Medicaid beneficiaries who subsequently lose coverage or who sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, a waiver from prior quarter coverage will encourage beneficiaries to apply for Medicaid expeditiously when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services if the need arises. Also, a waiver from prior quarter coverage and the corresponding repeal of these rules promote alignment between Medicaid and commercial coverage to facilitate smoother beneficiary transition. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter coverage eligibility will allow the Agency to utilize resources more effectively and efficiently.

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

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

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

The rulemaking will not diminish a previous grant of authority of a political subdivision.

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

In fiscal year 2017, AHCCCS reimbursed providers for member expenses that met the qualification of prior quarter coverage to the cost of \$21, 347,700. A large portion of those funds are received from the federal government as federal financial participation. If the rulemaking changes are made, the savings would be beneficial to the state as well as other political subdivisions that contribute to these funds.

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

There were no changes between the proposed and final rulemaking.

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

| Comment From and Date rec'd. | Comment | Agency Response |
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| <p>Ellen Sue Katz 03/15/18 On behalf of Arizona Center for Disability Law, Arizona Center for Law in the Public Interest, and the William E. Morris Institute for Justice</p> | <p>Dear Office of Administrative Legal Services:</p> <p>The Arizona Center for Disability Law ("ACDL"), Arizona Center for Law in the Public Interest ("Center") and William E. Morris Institute for Justice ("Institute") submit these comments to the Arizona Health Care Cost Containment System ("AHCCCS") rulemaking to eliminate prior quarter coverage as required by 42 C.F.R. § 435.915 from the state Medicaid program, the Arizona Long Term Care System ("ALTCS") and the Medicare Cost Sharing Program. The ACDL is the protection and advocacy program in Arizona and works on issues concerning access to health care for persons with disabilities. The, Center is a public interest law firm that has a major focus on access to health care issues. The Institute is a non-profit program that advocates on behalf of low income Arizonans. As part of our work, we focus on public benefit programs, such as Medicaid.</p> <p>The ACDL, Center and Institute strongly supported Arizona's decision to restore Medicaid services to the Proposition 204 adults and to expand Medicaid to all persons with incomes up to 138% of the federal poverty level, with income disregard of 5%. Arizona's restoration and expansion have been highly successful. Approximately 1.9 million persons are on AHCCCS as of January 2018.</p> <p>www.azahcccs.gov/Resources/Downloads/PopulationStatistics/2018/Jan/AHCCCS_Populations_by_Category.pdf. Of this number, 313,000 are the Proposition 204 population (0-100% of federal poverty level) and 80,300 are the adult expansion (100-133% of the federal poverty level).</p> <p>AHCCCS' rulemaking proposes to eliminate prior quarter coverage</p> | <p>AHCCCS thanks Ms. Katz for her comments and her ongoing involvement with AHCCCS' member populations. AHCCCS has requested a waiver to make changes to its Title XIX program. The purpose of the waiver from prior quarter coverage, and the corresponding repeal of the prior quarter coverage rules, are to further the objectives of the Medicaid Act. Although, the approval of the prior quarter coverage waiver will result in decreased cost to the State, the request was not submitted exclusively as a cost-saving measure.</p> <p>The waiver amendment is intended to promote</p> |

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| <p>required by 42 U.S.C. § 1396a(a)(34) and 42 C.F.R. § 435.915. Prior quarter coverage provides applicants for medical coverage with eligibility starting the date of application and going back up to three, months as long as the person was eligible for coverage. The agency's justification for the proposed rulemaking is that it has requested a waiver of this requirement from the federal government pursuant to 42 U.S.C. § 1315(a), and on the assumption that if the waiver is granted, AHCCCS wants to implement the change without any delay.</p> <p>AHCCCS' sole reason for the rulemaking is to save money. In fiscal year 2017, AHCCCS states it reimbursed medical providers \$21,347,700 for prior quarter coverage. Of this amount only 9% (\$1,983,800) came from the state funds because of the high reimbursement rate provided by the federal government.</p> <p>AHCCCS proposes to repeal Prior Quarter Eligibility from the state Medicaid program in R9-22-303 and R9-22-191 O (Freedom to Work) and amend by deletion the requirement or a reference to the requirement from R9-22-202 (F)(4), R9-22-703(H), R22-1202(D)(I) and R9-22-1501(F). For the ALTCS program, AHCCCS proposes to amend R9-28-401.01(D)(I). Finally, for the Medicare Cost Sharing Program, AHCCCS proposes to amend R9-29-210(C)</p> <p>For the reasons below, the ACDL, Center and the Institute request that the proposed rulemaking not be approved.</p> <p>I. Prior Quarter Coverage is an Important Part of the Medicaid, ALTCS and Medicare Cost Sharing Programs</p> <p>When the Medicaid retroactive coverage guarantee was established in 1972, the Senate Finance Committee noted that the provision would "protect[] persons who are eligible for [M]edicaid but do not apply for assistance until after they have received care, either because they did not know about the [M]edicaid eligibility requirements or because the sudden nature of their illness prevented their applying." Senate Report No. 92-1230 at 209 (Discussing Section 255 of H.R. 1) (Sept. 26, 1972). This statement is just as true now as it was 45 years ago. A person in need of health care cannot be expected to make instantaneous applications for Medicaid coverage. She may be hospitalized after an accident or unforeseen medical emergency. She may also be unfamiliar with Medicaid, or unsure about when her declining financial resources might fall within the Medicaid eligibility threshold. The three-month retroactivity window is a rational and humane response to these concerns. Retroactive eligibility is only available to persons who meet Medicaid eligibility standards for the month[s] in question. The same arguments apply to the ALTCS and Medicare Cost Sharing programs.</p> <p>Because all the affected persons are low-income and Medicaid eligible, elimination of the prior quarter coverage will simply shift the cost of care to medical facilities who with reduced funding for uncompensated care, may not be able to obtain reimbursement. With the expansion of Medicaid coverage to more persons, the Affordable Care Act ("ACA") intended to reduce the number of</p> | <p>the objectives of Title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. The Administration believes this will improve continuity of care by reducing gaps in coverage when beneficiaries previously would transition often on and off Medicaid or sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, this waiver will encourage beneficiaries to apply for Medicaid when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services when the need arises. This waiver amendment will improve the alignment between Medicaid and commercial coverage to facilitate smoother beneficiary transition. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter coverage eligibility will allow the Agency to utilize resources more effectively and efficiently.</p> <p>The federal funds Ms. Katz is concerned will no longer be available to the Administration</p> |
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| <p>persons who were uninsured. Correspondingly, the ACA also reduced the Disproportionate Share Hospital Program ("DSH") that provided additional funds to hospitals for uncompensated care under Medicaid and Medicare. <i>See</i> "Q and A: Disproportionate Share Hospital Payments and the Medicaid Expansion." https://www.healthlaw.org/issues/medicaid/qadisporpotionate-share-hospital-payinents-and-the-medicaid-expansion. This proposed rulemaking conflicts with that intent to provide coverage directly on behalf of the uninsured and, instead, will result in more medical facilities providing uncompensated care with no available federal funds to cover their costs.</p> <p>Finally, this proposal is very short-sighted. While in one year, the state may save \$1,983,800, it will forgo approximately 20 million dollars in federal payments that could provide medical care for persons all over the state. To spend one dollar and get nine dollars back is a great return on the use of state funds in general and in this case the funds go to provide much needed medical care for our most vulnerable Arizonans. As these numbers show, prior quarter coverage is truly a win-win situation.</p> <p>II. AHCCCS' Request for a Waiver under 42 U.S.C. § 1315 Must Promote the Objectives of the Medicaid Act and Test Experimental Goals</p> <p>AHCCCS predicates its proposed rulemaking on the waiver request it submitted to the federal government that it be allowed to not provide prior quarter coverage. A waiver request must meet very specific criteria. The Social Security Act grants the Secretary of the United States Department of Health and Human Services limited authority to waive the requirements of the Medicaid Act. The Social Security Act allows the Secretary grant a "[w]aiver of State plan requirements" in 42 U.S.C. § 1396a in the case of an "experimental, pilot, or demonstration project." 42 U.S.C. § 1315(a) ("section 1315"). The Secretary may only approve a project which is "likely to assist in promoting the objectives" of the Title XIX and may only "waive compliance with any of the requirements [of the act] ... to the extent and for the period necessary" for the state to carry out the project. <i>Id.</i> AHCCCS' waiver amendment requests would impede rather than promote the objectives of the Medicaid program by creating unnecessary barriers to enrollment and access to care.</p> <p>Legislative history confirms that Congress meant for section 1315 projects to test experimental ideas. According to Congress, section 1315 was intended to allow only for "experimental projects designed to test out new ideas and ways of dealing with the problems of public welfare recipients" that are "to be selectively approved," "designed to improve the techniques of administering assistance and related rehabilitative services," and "usually cannot be statewide in operation." S. Rep. No. 87-1589, at 19-20, <i>as reprinted in</i> 1962 U.S.C.C.A.N. 1943, 1961-62, 1962 WL 4692 (1962). <i>See also</i> H. R. Rep. No. 3982, pt. 2 at 307-08 (1981) ("States can apply to HHS for a waiver of existing law in order to test a unique approach to the delivery and financing of services to Medicaid beneficiaries.").</p> <p>In addition, the Secretary is bound by the Ninth Circuit's precedent</p> | <p>following this repeal, were funds exclusively available for the prior quarter coverage requirement.</p> |
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| | <p>for any waiver requests under 42 U.S.C. § 1315. The Ninth Circuit described section 1315's application to "experimental; pilot or demonstration" projects as follows: “The statute was not enacted to enable states to save money or to evade federal requirements but to 'test out new ideas and ways of dealing with the problems of public welfare recipients'. [Citation omitted] . . . A simple benefits cut, which might save money, but has no research or experimental goal, would not satisfy this requirement.” <i>Beno v. Shalala</i>, 30 F.3d 1057, 1069 (9th Cir. 1994).</p> <p>AHCCCS' waiver request must meet these requirements. As explained below, AHCCCS' waiver request fails to establish any demonstration value and instead is a cost saving proposal only.</p> <p>III. AHCCCS’ Waiver Request Serves No Experimental Purpose, Creates Barriers to Health Care and Will Impede, Not Further, the Objectives of the Medicaid Act</p> <p>The only reason for the proposed rulemaking is AHCCCS' pending waiver request. The waiver request does not serve any valid experimental purpose and, moreover, represents bad policy for low-income Arizonans and working Arizonans with disabilities who need coverage. Such a limit on access to Medicaid only creates a barrier to access to care and does not promote the objectives of the Medicaid Act. Moreover, AHCCCS proposes to limit prior quarter coverage solely to save money. AHCCCS concedes this is solely a request to save money. As explained above, a proposal to save money, is not a valid reason for a Section 1315 waiver. <i>See Beno</i>, 30 F.3d at 1069.</p> <p>The waiver request has no evidentiary or experimental basis and will impede not further access to care and the objectives of the Medicaid Act. Therefore, the proposed rulemaking based on the flawed waiver request should not be approved.</p> <p>Conclusion</p> <p>For all the above reasons, the proposed rulemaking should not be approved.</p> <p>Thank you for the opportunity to comment on the proposed rulemaking. If you have any questions concerning this letter, please contact Ellen Katz at (602) 252-3432 or at eskatz@qwestoffice.net or Rose Daly-Rooney at 520-327-9547, ext. 323.</p> | |
| <p>Jennifer A. Carusetta 03/16/18 Executive Director, Health System Alliance of Arizona</p> | <p>The purpose of this letter is to provide comment on the Notice of Proposed Rule-Making: Prior Quarter Coverage.</p> <p>As stated in previous correspondence on the proposed Waiver Amendment, prior quarter coverage has proven to be a critical source of reimbursement for hospital systems, who are required to provide care to patients in emergencies, regardless of whether they have healthcare coverage or not. Despite the decreasing rate of uninsured in our communities, we still see uninsured in our emergency departments. Prior quarter coverage, which provides reimbursement for medical bills incurred during months of eligibility in the quarter prior to AHCCCS enrollment, provides a critical</p> | <p>AHCCCS thanks Ms. Carusetta for her comments. The waiver amendment is intended to promote the objectives of Title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. The Administration</p> |

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| | <p>opportunity for hospitals to obtain reimbursement for what would otherwise be uncompensated care.</p> <p>As noted previously, behavior between the Medicaid and commercially insured populations does tend to be aligned in most instances. However, one critical difference is that we do tend to see more “churn” in coverage in the Medicaid population, who are more frequently engaged in part-time and seasonal employment, than in the commercially insured population. For this reason, coverage for individuals in the Medicaid population will be more inconsistent than it is for those in the commercial market. Prior quarter coverage provides an important “stopgap” in coverage for those Medicaid enrollees who may move in and out of employment throughout the year. The availability of prior quarter coverage assures that eligible expenses incurred during a period of employment when a person may not have access to healthcare coverage will be covered and will not become an incurred medical debt or uncompensated cost to our healthcare delivery system.</p> <p>Finally, when commenting on the Proposed Waiver Amendment, we made the request that fiscal analysis be conducted on the impact of eliminating prior quarter coverage on our hospital systems in Arizona. While we understand that an analysis was conducted on the impact of this repeal on the entire healthcare industry, this analysis was not specific to hospital systems, who as the safety net providers charged with providing emergency care for the uninsured regardless of coverage, will bear the majority of this impact. We find it concerning that this rule is being promulgated absent a full understanding of what economic impact this policy change will have on this critical network of care.</p> <p>I sincerely appreciate your consideration and am happy to answer any questions or provide additional information.</p> | <p>believes this will improve continuity of care by reducing gaps in coverage when beneficiaries previously would transition often on and off Medicaid or sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, this waiver will encourage beneficiaries to apply for Medicaid when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services when the need arises. Those beneficiaries who obtain coverage, either through Medicaid or commercial insurance, will then have existing resources available to pay for the medical services they receive, whether emergent or non-emergent.</p> |
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12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters have been prescribed.

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

The rule does 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:

The rules were updated to align with CMS's requirement that AHCCCS implement prior quarter coverage eligibility rules found at 42 CFR 435.915. This regulation requires the Administration to provide Prior Quarter (PQ) eligibility. However, the Administration is submitting a new waiver amendment whereby AHCCCS would be exempted from the prior quarter coverage eligibility requirement similar to the waivers recently approved by CMS for other States and similar to the waiver previously approved for Arizona. This rulemaking will proceed only if the waiver amendment is approved by CMS.

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:

No material is 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:

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

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES
CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
- MEDICARE COST SHARING PROGRAM
ARTICLE 2. ELIGIBILITY

Section

R9-29-210. Effective Date of Eligibility

ARTICLE 2. ELIGIBILITY

R9-29-210. Effective Date of Eligibility

- A. QMB. The effective date of eligibility is the first day of the month following the month in which AHCCCS makes the eligibility decision.
- B. SLMB. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the prior quarter period.
- C. QI-1. Eligibility is effective on the first day of the month that all eligibility requirements are met, ~~including the prior quarter period and~~ no earlier than the first day of the current calendar year. QI-1 members are entitled to receive cost sharing assistance through the end of the calendar year in which they qualified for the program.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

- ARIZONA LONG-TERM CARE SYSTEM

CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

- MEDICARE COST SHARING PROGRAM

Introduction:

The Arizona Health Care Cost Containment System (AHCCCS) is promulgating this rulemaking due to the Administration requesting a waiver of the requirement to provide three months of retroactive coverage to new AHCCCS members. AHCCCS is seeking the flexibility to limit retroactive coverage to the first day of the month of application, consistent with Arizona's policy prior to passage of the Affordable Care Act. Accordingly, AHCCCS is requesting that the Centers for Medicare and Medicaid Services (CMS) waive Section 1902(a)(34) of the Social Security Act (the Act) and 42 CFR 435.915 to the extent necessary to enable the State not to provide medical coverage for any of the three month prior to the month in which the member's Medicaid application was filed.

The waiver of Prior Quarter Coverage and the corresponding repeal of the rules promote the objectives of the Medicaid program by (1) creating efficiencies that ensure Medicaid's sustainability for members over the long term; (2) encouraging members to obtain and maintain health coverage, even when healthy; and (3) encouraging members to apply for Medicaid expeditiously when they believe they meet the criteria for eligibility. Repealing quarter coverage promotes the objectives of title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. Incentivizing members to retain health care coverage will increase continuity of care by reducing gaps in coverage for Medicaid beneficiaries who subsequently lose coverage or who sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, a waiver from prior quarter coverage will encourage beneficiaries to apply for Medicaid expeditiously when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services if the need arises. Also, a waiver from prior quarter coverage and the corresponding repeal of these rules promote alignment between Medicaid and commercial coverage to facilitate smoother beneficiary transition. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter coverage eligibility will allow the Agency to utilize resources more effectively and efficiently. Arizona will increase efforts to educate and encourage Arizona residents to apply for AHCCCS coverage.

Subject to CMS approval of the prior quarter eligibility waiver, the rulemaking will be necessary to comply with the waiver and to relieve AHCCCS from the financial inefficiencies associated with the administrative and operational

costs of implementing prior quarter coverage. In addition, the rulemaking will decrease State expenditures and improve the fiscal health of the State by not extending Title XIX eligibility earlier than the first day of the month in which the individual applies for Title XIX eligibility. Failure to amend and repeal these rules to conform to an approved waiver will result in continued expenditures by AHCCCS for the substantial administrative and operational costs associated with implementation of the prior quarter coverage eligibility process for the low percentage of AHCCCS members who qualify for prior quarter coverage eligibility. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter coverage eligibility will allow the Agency to utilize resources more effectively and efficiently.

Purpose of Rule:

Under current regulation, if a new AHCCCS member would have qualified for AHCCCS coverage during any portion of three months immediately preceding the month in which the member applied for AHCCCS coverage, AHCCCS is required to reimburse providers for any AHCCCS-covered service received by the member during that period. As explained above, AHCCCS is seeking the flexibility to limit retroactive coverage to the month of application, consistent with Arizona's policy prior to passage of the Affordable Care Act. Under the proposed policy, individuals will continue to receive retroactive coverage effective as of the first day of the month in which the Medicaid application was filed.

1. Identification of rulemaking.

The Administration is in the process of requesting a waiver from the federal prior quarter coverage eligibility requirement, specified in 42 CFR 435.915. Therefore, AHCCCS is requesting authorization to initiate the process of repealing and amending rules regarding prior quarter coverage so that the repeal can be implemented expeditiously upon federal approval.

More specifically, 42 CFR 435.915 requires the Administration to provide Prior Quarter (PQ) eligibility. Prior quarter eligibility is when a person who applies for AHCCCS may also qualify for Title XIX eligibility in any one of the three previous months prior to application. While A.R.S. § 36-2903(A) provides that the system's reimbursement responsibility is prospective from the date of the eligibility determination, AHCCCS has implemented prior quarter coverage to ensure federal financial participation for Arizona's Medicaid Program. Although AHCCCS had previously obtained federal approval waiving compliance from prior quarter coverage eligibility, as of January 1, 2014, AHCCCS was required by CMS to implement prior quarter eligibility. However, the Administration is seeking a new waiver from CMS so that the Administration is not required to provide Title XIX eligibility for any of the three previous months prior to the month of application.

Arizona is proposing to limit retroactive coverage to the month of application for all Title XIX AHCCCS members. Since its implementation in 2014, the Prior Quarter Coverage policy has resulted in a cost of \$69,955,595 (total

funds). This Proposal to Waive Prior Quarter Coverage would result in an estimated savings of \$39,431,100 (total funds) in State Fiscal Year (SFY) 2019.

| Prior Quarter Coverage Historical Expenditures | |
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| State Fiscal Year | Total Funds |
| 2014 | \$19,809 |
| 2015 | \$15,743,139 |
| 2016 | \$21,708,207 |
| 2017 | \$21,347,704 |
| 2018 (partial year actual expenditures of 7/1 to 11/30/17) | \$11,136,736 |
| Total | \$69,955,595 |

The Administration’s proposed rulemaking would repeal rules R9-22-202(F)(4), 303, 703(H), and 1910 because these rules refer exclusively to prior quarter eligibility. The proposed rulemaking would also amend rules R9-22-502(A), 1202(D)(1), 1407(B), 1501(F), R9-28-401.01, and R9-29-210 because these rules refer in part to prior quarter eligibility and coverage and those portions of the rule will be removed or amended back to the text of the rule prior to January 1, 2014.

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

The changes to these rules will cease coverage of eligible medical expenses, up to the allowable limit, in the months up to the prior quarter, and will instead cover eligible medical expenses incurred only in the month of eligibility.

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

The expenses incurred by the Administration related to determining eligibility for prior quarter coverage and determining what medical expenses can be covered are greater than the benefit to members.

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

The Administration does not anticipate a change in frequency in conduct with the rulemaking.

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

The Administration and State General Fund will benefit from this rulemaking due to the costs saved, as outlined above. An unknown, but low, number of members will bear the costs of this rulemaking if they would have previously been considered eligible for prior quarter coverage and will now only have eligible medical expenses

covered, up to the allowable limit, in the month they are found eligible, instead of any of the three months prior to the month of application.

3. Cost-benefit analysis.

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

i. Cost:

The Administration anticipates no increase in cost to the implementing agency.

ii. Benefit:

The Administration anticipates a benefit to the implementing agency as a cost saving due to a decrease in employee hours previously required to calculate the prior quarter coverage costs of newly eligible members. It is not possible to calculate the specific number of hours that will be saved until the rule has been implemented since it is not possible to calculate how many members would be eligible for this coverage in advance.

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 that public and private employment will not be impacted by the changes.

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

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

The Administration anticipates there may be a marginal fiscal impact on small businesses inasmuch as they are providers of services to members who would previously have been eligible for prior quarter coverage. However, since the number of members who may qualify for prior quarter coverage and the medical expenses which would be covered Title XIX expenses cannot be quantified, the fiscal impact is anticipated to be limited.

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

The Administration anticipates no impact on the administrative expenses of these small businesses because the proposed rule does not require a change in claim submission coding or procedure.

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 rule does not impose compliance or reporting requirements on small businesses beyond those already necessary to comply with federal law and state statute.

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

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

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

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

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

This rule does not establish performance standards for small businesses beyond those requirements that are necessary to comply with federal law and state statute.

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

Exempting small businesses is not applicable to this rule.

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

The effect of the rule on private persons cannot be quantified because the number of individuals who qualify for prior quarter coverage fluctuates, as do the extent of healthcare services which qualify for coverage. However, any change is not anticipated to be a great amount based on the averaged, aggregated state general fund savings calculated.

6. Statement of the probable effect on state revenues.

It is anticipated that the rule will have a result in an estimated savings of \$39,431,100 (total funds) in State Fiscal Year (SFY) 2019.

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.

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 consider any specific data to base the rule upon.

Arizona Health Care Cost Containment System - Administration

“Sterilization” means a medically necessary procedure, not for the purpose of family planning, to render an eligible person or member barren in order to:

Prevent the progression of disease, disability, or adverse health conditions; or

Prolong life and promote physical health.

“Substance abuse” means the chronic, habitual, or compulsive use of any chemical matter that, when introduced into the body, is capable of altering human behavior or mental functioning and, with extended use, may cause psychological dependence and impaired mental, social or educational functioning. Nicotine addiction is not considered substance abuse for adults who are 21 years of age or older

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-201 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B) effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3217, effective October 1, 2005 (Supp. 05-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-202. General Requirements

- A. For the purposes of this Article, the following definitions apply:
1. “Authorization” means written, verbal, or electronic authorization by:
 - a. The Administration for services rendered to a fee-for-service member, or
 - b. The contractor for services rendered to a prepaid capitated member.
 2. Use of the phrase “attending physician” applies only to the fee-for-service population.
- B. In addition to other requirements and limitations specified in this Chapter, the following general requirements apply:
1. Only medically necessary, cost effective, and federally-reimbursable and state-reimbursable services are covered services.
 2. Covered services for the federal emergency services program (FESP) are under R9-22-217.
 3. The Administration or a contractor may waive the covered services referral requirements of this Article.
 4. Except as authorized by the Administration or a contractor, a primary care provider, attending physician, practi-

tioner, or a dentist shall provide or direct the member’s covered services. Delegation of the provision of care to a practitioner does not diminish the role or responsibility of the primary care provider.

5. A contractor shall offer a female member direct access to preventive and routine services from gynecology providers within the contractor’s network without a referral from a primary care provider.
 6. A member may receive physical and behavioral health services as specified in Articles 2 and 12.
 7. The Administration or a contractor shall provide services under the Section 1115 Waiver as defined in A.R.S. § 36-2901.
 8. An AHCCCS registered provider shall provide covered services within the provider’s scope of practice.
 9. In addition to the specific exclusions and limitations otherwise specified under this Article, the following are not covered:
 - a. A service that is determined by the AHCCCS Chief Medical Officer to be experimental or provided primarily for the purpose of research;
 - b. Services or items furnished gratuitously, and
 - c. Personal care items except as specified under R9-22-212.
 10. Medical or behavioral health services are not covered services if provided to:
 - a. An inmate of a public institution; or
 - b. A person who is in residence at an institution for the treatment of tuberculosis.
- C. The Administration or a contractor may deny payment of non-emergency services if prior authorization is not obtained as specified in this Article and Article 7 of this Chapter. The Administration or a contractor shall not provide prior authorization for services unless the provider submits documentation of the medical necessity of the treatment along with the prior authorization request.
- D. Services under A.R.S. § 36-2908 provided during the prior period coverage do not require prior authorization.
- E. Prior authorization is not required for services necessary to evaluate and stabilize an emergency medical condition. The Administration or a contractor shall not reimburse services that require prior authorization unless the provider documents the diagnosis and treatment.
- F. A service is not a covered service if provided outside the GSA unless one of the following applies:
1. A member is referred by a primary care provider for medical specialty care outside the GSA. If a member is referred outside the GSA to receive an authorized medically necessary service, the contractor shall also provide all other medically necessary covered services for the member;
 2. There is a net savings in service delivery costs as a result of going outside the GSA that does not require undue travel time or hardship for a member or the member’s family;
 3. The contractor authorizes placement in a nursing facility located out of the GSA; or
 4. Services are provided during prior period coverage or during the prior quarter coverage.
- G. If a member is traveling or temporarily residing outside of the GSA, covered services are restricted to emergency care services, unless otherwise authorized by the contractor.
- H. A contractor shall provide at a minimum, directly or through subcontracts, the covered services specified in this Chapter and in contract.

Arizona Health Care Cost Containment System - Administration

- I.** The Administration shall determine the circumstances under which a FFS member may receive services, other than emergency services, from service providers outside the member's county of residence or outside the state. Criteria considered by the Administration in making this determination shall include availability and accessibility of appropriate care and cost effectiveness.
- J.** The restrictions, limitations, and exclusions in this Article do not apply to a contractor electing to provide noncovered services.
1. The Administration shall not consider the costs of providing a noncovered service to a member in the development or negotiation of a capitation rate.
 2. A contractor shall pay for noncovered services from administrative revenue or other contractor funds that are unrelated to the provision of services under this Chapter.
 3. If a member requests a service that is not covered or is not authorized by a contractor, or the Administration, an AHCCCS-registered service provider may provide the service according to R9-22-702.
- K.** Subject to CMS approval, the restrictions, limitations, and exclusions specified in the following subsections do not apply to American Indians receiving services through IHS or a tribal health program operating under P.L. 93-638 when those services are eligible for 100 percent federal financial participation:
1. R9-22-205(A)(8),
 2. R9-22-206,
 3. R9-22-207,
 4. R9-22-212(C),
 5. R9-22-212(D),
 6. R9-22-212(E)(8),
 7. R9-22-215(C)(5), (C)(6), and
 8. R9-22-215(C)(4).

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-202 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2).

Amended effective April 13, 1990 (Supp. 90-2).

Amended effective December 13, 1993 (Supp. 93-4).

Amended effective July 1, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1994, Ch. 322, § 21; filed with the Office of the Secretary of State June 22, 1995 (Supp. 95-3). Amended effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Section repealed effective September 22, 1997 (Supp. 97-3). New Section made by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 1225, effective July 7, 2015 (Supp. 15-3).

R9-22-203. Experimental Services

- A.** Experimental services are not covered. A service is not experimental if:
1. It is generally and widely accepted as a standard of care in the practice of medicine in the United States and is a safe and effective treatment for the condition for which it is intended or used.
 2. The service does not meet the standard in subsection (A)(1), but the service has been demonstrated to be safe and effective for the condition for which it is intended or used based on the weight of the evidence in peer-reviewed articles in medical journals published in the United States.
 3. The service does not meet the standard in subsection (A)(2) because the condition for which the service is intended or used is rare, but the service has been demonstrated to be safe and effective for the condition for which it is intended or used based on the weight of opinions from specialists who provide the service or related services.
- B.** The following factors shall be considered when evaluating the weight of peer-reviewed articles or the opinions of specialists:
1. The mortality rate and survival rate of the service as compared to the rates for alternative non-experimental services.
 2. The types, severity, and frequency of complications associated with the services as compared with the complications associated with alternative non-experimental services.
 3. The frequency with which the service has been performed in the past.
 4. Whether there is sufficient historical information regarding the service to provide reliable data regarding risks and benefits.
 5. The reputation and experience of the authors and/or specialists and their record in related areas.
 6. The extent to which medical science in the area develops rapidly and the probability that more definite data will be available in the foreseeable future.
 7. Whether the peer reviewed article describes a random controlled trial or an anecdotal clinical case study.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-203 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2).

Amended effective April 13, 1990 (Supp. 90-2).

Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed effective September 22, 1997 (Supp. 97-3). New Section made by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Section amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014 (Supp. 14-3).

R9-22-204. Inpatient General Hospital Services

- A.** The following limitations apply to inpatient general hospital services that are provided by FFS providers.

Historical Note

Section R9-22-218 renumbered from R9-22-206 effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Section repealed effective September 22, 1997 (Supp. 97-3).

ARTICLE 3. GENERAL ELIGIBILITY REQUIREMENTS**R9-22-301. Reserved****Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-301 renumbered together with former Section R9-22-102 as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). New Section R9-22-301 adopted effective November 20, 1984 (Supp. 84-6).

Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (8), subsection (E), paragraph (3), and subsection (J), paragraph (5) effective October 1, 1986 (Supp. 86-5). Amended subsections (C) and (E) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B) and (C) effective October 1, 1987; amended subsection (D) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-302. Reserved**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-302 repealed, new Section R9-22-302 adopted effective November 20, 1984 (Supp. 84-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-303. Prior Quarter Eligibility

- A.** Prior Quarter eligibility shall be effective no earlier than January 1, 2014. An applicant may be eligible during any of the three months prior to application if the applicant:
1. Received one or more covered services described in 9 A.A.C. 22, Article 2 and Article 12, and 9 A.A.C. 28, Article 2 during the month; and
 2. Would have qualified for Medicaid at the time services were received if the person had applied regardless of whether the person is alive when the application is made.
- B.** The Prior Quarter requirements do not apply to:
1. Qualified Medicare Beneficiaries
 2. KidsCare

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-303 repealed, new Section R9-22-303 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective

February 26, 1988 (Supp. 88-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section made by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-304. Verification of Eligibility Information

- A.** Except as provided in subsection (E), if information provided by or on behalf of an applicant or member on an application, renewal form or otherwise does not conflict with information obtained by the agency through an electronic data match, the Administration or its designee shall determine or renew eligibility based on such information.
- B.** The Administration or its designee shall not require an applicant, member, or representative to provide additional verification unless the verification cannot be obtained electronically or the verification obtained electronically conflicts with information provided by or on behalf of the applicant or member.
- C.** If information provided by or on behalf of an applicant or member does conflict with information obtained through an electronic data match, the applicant or member shall provide the Administration or its designee with information or documentation necessary to verify eligibility, including evidence originating from an agency, organization, or an individual with actual knowledge of the information.
- D.** Income information obtained through an electronic data match shall be considered reasonably compatible with income information provided by or on behalf of an individual if both meet or both exceed the applicable income limit.
- E.** The Administration or its designee shall not accept the applicant's or member's statement by itself as verification of:
1. SSN;
 2. Qualified alien status, except as described under 42 USC 1320b-7(d)(4)(A); or
 3. Citizenship, except as described under 42 USC 1396a(ee)(1).
- F.** The Administration or its designee shall give an applicant or member at least 10 days from the date of a written or electronic request for information to provide required verification. The Administration or its designee may deny the application or discontinue eligibility if an applicant or a member does not provide the required information timely.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-304 repealed, new Section R9-22-304 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-304 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

R9-22-305. Eligibility Requirements

As a condition of eligibility, the Administration or its designee must require applicants, and members to do the following:

1. Take all necessary steps to obtain any annuities, pensions, retirement, disability benefits to which they are entitled, unless they can show good cause for not doing so.
2. Furnish a SSN under 42 CFR 435.910 and 435.920, or in the absence of an SSN, provide proof of a submitted application of SSN. The Administration or its designee will assist in obtaining or verifying the applicant's SSN under 42 CFR 435.910 if an applicant cannot recall the applicant's SSN or has not been issued a SSN. An applicant is not required to furnish an SSN if the applicant is not able to legally obtain a SSN. The Administration or its designee shall determine eligibility notwithstanding the applicant's lack of a SSN, if the applicant is cooperat-

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2. When services are rendered for the purpose of treating an emergency medical condition as defined in R9-22-217 and a delay in providing treatment to obtain a signature would have a significant adverse affect on the member's health.
- F.** Except as provided for in this Section, registered providers shall not bill a member when the provider could have received reimbursement from the Administration or a contractor but for the provider's failure to file a claim in accordance with the requirements of AHCCCS statutes, rules, the provider agreement, or contract, such as, but not limited to, requirements to request and obtain prior authorization, timely filing, and clean claim requirements.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-702 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text identical to the emergency (Supp. 83-3). Former Section R9-22-702 repealed, new Section R9-22-702 adopted effective October 1, 1983 (Supp. 83-5). Amended by adding subsection (B) effective October 1, 1985 (Supp. 85-5). Amended by adding subsection (C) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3217, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3).

R9-22-703. Payments by the Administration

- A.** General requirements. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of October 1, 2012, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B.** Timely submission of claims.
1. Under A.R.S. § 36-2904, the Administration shall deem a paper or electronic claim to be submitted on the date that it is received by the Administration. The Administration shall do one or more of the following for each claim it receives:
 - a. Place a date stamp on the face of the claim,
 - b. Assign a system-generated claim reference number, or
 - c. Assign a system-generated date-specific number.
 2. Unless a shorter time period is specified in contract, the Administration shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
 - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
 - b. Six months from the date of eligibility posting.
 3. Unless a shorter time period is specified in contract, the Administration shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
 - a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
 - b. Twelve months from the date of eligibility posting.
- 4.** Unless a shorter time period is specified in contract, the Administration shall not pay a claim submitted by an IHS or tribal facility for a covered service unless the claim is initially submitted within 12 months from the date of service, date of discharge, or eligibility posting, whichever is later.
- C.** Claims processing.
1. The Administration shall notify the AHCCCS-registered provider with a remittance advice when a claim is processed for payment.
 2. The Administration shall reimburse a hospital for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and in the manner and at the rate described in A.R.S. § 36-2903.01:
 - a. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
 - b. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
 - c. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a fee of one percent per month for each month or portion of a month following the 60th day of receipt of the bill until date of payment.
 3. A claim is paid on the date indicated on the disbursement check.
 4. A claim is denied as of the date of the remittance advice.
 5. The Administration shall process a hospital claim under this Article.
- D.** Prior authorization.
1. An AHCCCS-registered provider shall:
 - a. Obtain prior authorization from the Administration for non-emergency hospital admissions, covered services as specified in Articles 2 and 12 of this Chapter, and for administrative days as described in R9-22-712.75,
 - b. Notify the Administration of hospital admissions under Article 2 of this Chapter, and
 - c. Make records available for review by the Administration upon request.
 2. The Administration may deny a claim if the provider fails to comply with subsection (D)(1).
 3. If the Administration issues prior authorization for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the Administration shall adjust the claim payment.
- E.** Review of claims and coverage for hospital supplies.
1. The Administration may conduct prepayment and post-payment review of any claims, including but not limited to hospital claims.
 2. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
 - a. Patient care kit,
 - b. Toothbrush,
 - c. Toothpaste,

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- d. Petroleum jelly,
 - e. Deodorant,
 - f. Septi soap,
 - g. Razor or disposable razor,
 - h. Shaving cream,
 - i. Slippers,
 - j. Mouthwash,
 - k. Shampoo,
 - l. Powder,
 - m. Lotion,
 - n. Comb, and
 - o. Patient gown.
3. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
- a. Arm board,
 - b. Diaper,
 - c. Underpad,
 - d. Special mattress and special bed,
 - e. Gloves,
 - f. Wrist restraint,
 - g. Limb holder,
 - h. Disposable item used instead of a durable item,
 - i. Universal precaution,
 - j. Stat charge, and
 - k. Portable charge.
4. The Administration shall determine in a hospital claims review whether services rendered were:
- a. Covered services as defined in Article 2;
 - b. Medically necessary;
 - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
 - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2903.01.
5. If the Administration adjudicates a claim, a person may file a claim dispute challenging the adjudication under 9 A.A.C. 34.
- F. Overpayment for AHCCCS services.**
- 1. An AHCCCS-registered provider shall notify the Administration when the provider discovers the Administration made an overpayment.
 - 2. The Administration shall recoup an overpayment from a future claim cycle if an AHCCCS-registered provider fails to return the overpaid amount to the Administration.
 - 3. The Administration shall document any recoupment of an overpayment on a remittance advice.
 - 4. An AHCCCS-registered provider may file a claim dispute under 9 A.A.C. 34 if the AHCCCS-registered provider disagrees with a recoupment action.
- G.** For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.
- H. Prior quarter reimbursement. A provider shall:**
- 1. Bill the Administration for services provided during a prior quarter eligibility period upon verification of eligibility or upon notification from a member of AHCCCS eligibility.
 - 2. Reimburse a member when payment has been received from the Administration for covered services during a prior quarter eligibility period. All funds paid by the member shall be reimbursed.
 - 3. Accept payment received by the Administration as payment in full.
- I.** Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.
- J.** Payment for out-of-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an out-of-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).
- K.** Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. The Administration shall reimburse an in-state or out-of-state provider of inpatient hospital services rendered with a discharge date on or after October 1, 2014, the DRG rate established by the Administration.
- L.** The Administration may enter into contracts for the provisions of transplant services.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R-22-703 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-703 repealed, new Section R9-22-703 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (1) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective September 16, 1987 (Supp. 87-3). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3309, November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-704. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-704 adopted as an emergency now adopted and amended as a permanent rule effective August 30 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended subsection A., Paragraph 2, effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

R9-22-705. Payments by Contractors

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to eligible and enrolled members of the federally-recognized tribal nation.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-1202. ADHS, Contractor, Administration and CRS Responsibilities

- A.** ADHS responsibilities. ADHS is responsible for payment of behavioral health services provided to members, except as specified under subsection (D). ADHS' responsibility for payment of behavioral health services includes claims for inpatient hospital services, which may include physical health services, when the principal diagnosis on the hospital claim is a behavioral health diagnosis. Behavioral health diagnoses are identified as "mental disorders" in the latest International Classification of Diseases (ICD) code set as required by AHC-CCS claims and encounters.
- B.** ADHS/DBHS may contract with a TRBHA for the provision of behavioral health services for American Indian members. American Indian members may receive covered behavioral health services:
1. From an IHS or tribally operated 638 facility,
 2. From a TRBHA, or
 3. From a RBHA.
- C.** Contractor responsibilities. A contractor shall:
1. Refer a member to a RBHA under the contract terms;
 2. Provide EPSDT developmental and behavioral health screening as specified in R9-22-213;
 3. Coordinate a member's transition of care and medical records; and
 4. Be responsible for providing covered inpatient hospital services, which may include behavioral health inpatient hospital services, when the principal diagnosis on the hospital claim is not a behavioral health diagnosis.
- D.** Administration and CRS responsibilities.
1. The Administration shall be responsible for payment of behavioral health services provided to an ALTCS FFS or an FES member and for behavioral health services provided by IHS and tribally operated 638 facilities. The Administration is also responsible for payment of behavioral health services provided to these members during prior quarter coverage.
 2. CRS shall be responsible for payment of behavioral health services provided to members enrolled with CRS.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under

an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S.

Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed;

new Section adopted by final rulemaking at 6 A.A.R.

179, effective December 13, 1999 (Supp. 99-4).

Amended by exempt rulemaking at 7 A.A.R. 4593, effective

October 1, 2001 (Supp. 01-3). Amended to correct

typographical errors, filed in the Office of the Secretary

of State October 30, 2001 (Supp. 01-4). Amended by

final rulemaking at 13 A.A.R. 836, effective May 5, 2007

(Supp. 07-1). Amended by final rulemaking at 20 A.A.R.

3098, effective January 4, 2015 (Supp. 14-4). Amended

by final rulemaking at 21 A.A.R. 1225, effective July 7,

2015 (Supp. 15-3).

R9-22-1203. Eligibility for Covered Services

Title XIX members. A member determined eligible under A.R.S. § 36-2901(6)(a) or (g) except for the failure to meet U.S. citizenship or qualified alien status requirements, shall receive medically necessary covered services under Article 12 and Article 2.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November

1, 1992; received in the Office of the Secretary of

State November 25, 1992 (Supp. 92-4). Amended under

an exemption from A.R.S. Title 41, Ch. 6, pursuant to

Laws 1992, Ch. 301, § 61, effective September 30, 1993

(Supp. 93-3). Amended under an exemption from A.R.S.

Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11,

effective October 1, 1995; filed with the Secretary of

State September 29, 1995 (Supp. 95-4). Section repealed,

new Section adopted by final rulemaking at 6 A.A.R.

179, effective December 13, 1999 (Supp. 99-4).

Amended by exempt rulemaking at 7 A.A.R. 4593, effective

October 1, 2001 (Supp. 01-3). Amended by final

rulemaking at 13 A.A.R. 836, effective May 5, 2007

(Supp. 07-1). Amended by final rulemaking at 20 A.A.R.

3098, effective January 4, 2015 (Supp. 14-4).

R9-22-1204. General Service Requirements

- A.** Services. Behavioral health services include mental health, substance abuse, and physical services. Medically necessary services shall be covered and service requirements met as described under Article 2 and Article 5.
- B.** Notification to Administration for American Indians enrolled with a tribal contractor. A provider shall notify the Administration no later than 72 hours after an American Indian member enrolled with a tribal contractor presents to a behavioral health hospital for inpatient emergency behavioral health services.
- C.** Restrictions and limitations. Room and board is not a covered service unless provided in a behavioral health inpatient facility under R9-22-1205.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November

1, 1992; received in the Office of the Secretary of

State November 25, 1992 (Supp. 92-4). Amended under

an exemption from A.R.S. Title 41, Ch. 6, pursuant to

Laws 1992, Ch. 301, § 61, effective September 30, 1993

(Supp. 93-3). Amended under an exemption from A.R.S.

Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11,

effective October 1, 1995; filed with the Secretary of

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applicant or member timely files an appeal that alleges a misapplication of the facts to the law.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1442. Cessation of MED Coverage

The Department shall not approve any individual or family who has applied on or after May 1, 2011 as eligible for MED coverage. With respect to any applications that are pending as of May 1, 2011, the Department shall not approve any individual or family as eligible for MED coverage who has not met all eligibility requirements prior to May 1, 2011.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 1028, effective May 1, 2011 (Supp. 11-2).

R9-22-1443. Closing New Eligibility for Persons Not Covered under the State Plan

- A.** Definition. For purposes of this Section, "AHCCCS Care" refers to the eligibility category that includes individuals encompassed within the expanded definition of "eligible person" under A.R.S. § 36-2901.01 and R9-22-1428(4), but who do not meet eligibility criteria for an optional or mandatory Title XIX coverage group described in the Arizona State Plan for Medicaid.
- B.** General Rule. Except as provided by this Section, neither the Department nor the Administration shall approve an individual for AHCCCS Care with an effective date of eligibility on or after July 8, 2011.
- C.** Exception for pending applications. With respect to any applications that are pending as of July 8, 2011, the Department and the Administration shall approve any individual as eligible for AHCCCS Care who has met all eligibility requirements for AHCCCS Care during or after the month of application but prior to July 8, 2011, and has continuously met all eligibility requirements for AHCCCS Care since that date.
- D.** Exception for children. The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
1. Was determined eligible under the Arizona State Plan for Medicaid based on being under the age of 19;
 2. Would otherwise be discontinued due to reaching the age of 19 on or after July 8, 2011, under subsection (B) of this Section; and
 3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 19.
- E.** Exception for KidsCare. The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
1. Was determined eligible under 9 A.A.C. 31 based on being under the age of 19;
 2. Would otherwise be discontinued due to reaching the age of 19 on or after July 8, 2011, under subsection (B) of this Section; and
 3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 19.
- F.** Exception for Young Adult Transitional Insurance (YATI). The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
1. Was determined eligible for YATI under R9-22-1432;
 2. Would otherwise be discontinued due to reaching the age of 21 on or after July 8, 2011 under subsection (A) of this Section; and
 3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 21.

- G.** Exception for certain SSI-MAO. The Department and the Administration shall approve as eligible for AHCCCS Care, on or after July 8, 2011, an individual who:
1. Was determined eligible for AHCCCS Care; and
 2. Whose eligibility category is changed on or after June 28, 2011, from AHCCCS Care to eligibility based on R9-22-1501(A)(1) (SSI Medical Assistance Only) because the individual, at the time of the change in eligibility category, is age 65 or over, under the age of 65 with Medicare coverage, or who has been determined by ADHS to have a Serious Mental Illness; but who
 3. Subsequent to the change in eligibility category, is determined not to meet eligibility requirements under Article 15; but only if
 4. The individual meets all eligibility requirements for AHCCCS Care on and after the date the individual is determined not to meet eligibility requirements under Article 15.
- H.** Exception for redeterminations. This Section does not prohibit the redetermination of an individual as eligible for AHCCCS Care on or after July 8, 2011, if the individual was determined eligible for AHCCCS Care prior to July 8, 2011 and has remained continuously eligible for AHCCCS Care since July 8, 2011 or the date on which the individual was determined eligible for AHCCCS Care under subsections (C), (D), and (E) of this Section.
- I.** Discontinuance for other reasons. Nothing in this Section prohibits or restricts the Department or the Administration from discontinuing AHCCCS Care for an individual who does not meet any other eligibility criteria set forth elsewhere in this Chapter including but not limited to discontinuance based on the individual's failure to verify eligibility information upon an application or redetermination.
- J.** Review of anticipated expenditures. At least monthly, the Director shall review the most recent estimate of the anticipated expenditures for the remainder of the state fiscal year as compared to funds remaining in the appropriations made to the agency for the state fiscal year as well as any other known or reasonably anticipated sources of other funding. Based on that review the Director may, subject to approval by the Center for Medicare and Medicaid Services, re-open the AHCCCS Care program to new enrollment otherwise prohibited by this Section.
- K.** At least 30 days prior to the effective date of any changes to eligibility for the AHCCCS Care program as described in this Section, public notice shall be provided via publication on the AHCCCS web site unless shorter notice is necessary to maintain a program that is reasonably anticipated to remain within available funding.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 1345, effective July 8, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 2624, effective July 8, 2011 (Supp. 11-4).

ARTICLE 15. AHCCCS MEDICAL COVERAGE FOR PEOPLE WHO ARE AGED, BLIND, OR DISABLED**R9-22-1501. General Information**

- A.** General. The Administration shall determine eligibility for AHCCCS medical coverage for the following applicants or members using the eligibility criteria and requirements in this Article:
1. A person who is aged, blind, or disabled and does not receive SSI cash; and
 2. A person terminated from the SSI cash program under R9-22-1505.

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- B. Definitions.** In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:
- “Aged” means a person who is 65 years of age or older as specified in 42 U.S.C. 1382c(a)(1)(A).
- “Blind” means a person who has been determined blind by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(2).
- “Disabled” means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E).
- C. Confidentiality.** The Administration shall maintain the confidentiality of an applicant’s or member’s records and limit the release of safeguarded information under R9-22-512.
- D. Application process.**
1. A person may apply for AHCCCS medical coverage by submitting a signed application to any Administration office or outstation location under R9-22-1406.
 2. The provisions in R9-22-1406(B), (C), and (E) apply to this Section.
 3. The application date is the date a signed application is received at any Administration office or outstation location approved by the Director.
 4. An applicant who files an application may withdraw the application, either orally or in writing. If an applicant withdraws an application, the Administration shall send the applicant a denial notice under subsection (G).
 5. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 90 days for an applicant applying on the basis of disability and 45 days for all other applicants.
 6. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
 7. The Administration shall complete an eligibility determination on an application filed on behalf of a deceased applicant, if the application is filed in the month of the applicant’s death.
- E. Redetermination of eligibility for a person terminated from the SSI cash program.**
1. Continuation of AHCCCS medical coverage. The Administration shall continue AHCCCS medical coverage for a person terminated from the SSI cash program until a redetermination of eligibility under subsection (E)(2) is completed.
 2. Coverage group screening. The Administration shall screen a person for eligibility under any coverage group under A.R.S. §§ 36-2901(6)(a)(i), (ii), (iii), (iv), and (v) and 36-2934.
 - a. If a person files an application for Arizona Long-Term Care System (ALTCs) coverage, the Administration shall determine eligibility under 9 A.A.C. 28, Article 4.
 - b. If an applicant or member is aged, blind, or disabled, but not in need of long-term care services, the Administration shall determine eligibility under this Article.
 - c. For all other persons, the Administration shall refer the applicant’s case to the Department for an eligibility decision under Article 14.
 3. Eligibility decision.
 - a. If a person is eligible under this Article or 9 A.A.C. 28, Article 4, the Administration shall send a notice as under subsection (G) informing the applicant that AHCCCS medical coverage is approved.
 - b. If a person is ineligible, the Administration shall send a notice as under subsection (G) to deny AHCCCS medical coverage.
- F. Eligibility effective date.** Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
- G. Notice for approval or denial.** The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the intended action, and:
1. If approved, the notice shall contain the effective date of eligibility.
 2. If approved under FESP, the notice shall also contain:
 - a. The emergency services certification end date,
 - b. A statement detailing the reason for the denial of full services,
 - c. The legal authority supporting the decision,
 - d. Where the legal authority supporting the decision can be found,
 - e. An explanation of the right to request a hearing, and
 - f. The date by which a request for hearing shall be received by the Administration.
 3. If denied, the notice shall contain:
 - a. The effective date of the denial;
 - b. The reason for the denial, including specific financial calculations and the financial eligibility standard, if applicable;
 - c. Legal authority supporting the decision;
 - d. Where the legal authority supporting the decision can be found;
 - e. An explanation of the right to request a hearing; and
 - f. The date by which a request for hearing shall be received by the Administration.
- H. Reporting and verifying changes.**
1. An applicant or a member shall report to the Administration the following changes for the applicant or member, the applicant’s or member’s spouse, and the applicant or member’s dependent children:
 - a. Change of address;
 - b. Change in the household’s members;
 - c. Change in income;
 - d. Death;
 - e. Change in marital status;
 - f. Change in school attendance;
 - g. Change in Arizona state residency; and
 - h. Any other change that may affect the member’s or applicant’s eligibility.
 2. A member shall report to the Administration the following changes:
 - a. Admission to a penal institution,
 - b. Change in U.S. citizenship or immigrant status,
 - c. Receipt of a Social Security number, and
 - d. Change in first- or third-party liability that may contribute to the payment of all or a portion of the person’s medical costs.
 3. A person other than a member or an applicant who reports a change to the Administration either orally or in writing shall include the:
 - a. Name of the affected applicant or member;
 - b. Description of the change;
 - c. Date the change occurred;
 - d. Name of the person reporting the change; and
 - e. Social Security or case number of the applicant or member, if known.

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4. An applicant or a member shall provide verification of changes if requested by the Administration.
 5. An applicant or a member shall report anticipated changes in eligibility to the Administration as soon as the person knows that the change will occur.
 6. An applicant or a member shall report an unanticipated change to the Administration within 10 days following the date the change occurred.
- I.** Processing of changes and redeterminations. If a member receives AHCCCS medical coverage under subsection (A), the Administration shall redetermine the member's eligibility at least once every 12 months or more frequently when changes occur that may affect eligibility.
- J.** Actions that may result from a redetermination or change. In processing a redetermination or change, the Administration shall determine whether there should be:
1. No change in eligibility,
 2. Discontinuance of eligibility if a condition of eligibility is no longer met, or
 3. A change in the program under which a person receives AHCCCS medical coverage.
- K.** Notice of discontinuance.
1. Contents of notice. The Administration shall issue a notice when it takes action to discontinue a member's eligibility. The notice shall contain the following information:
 - a. A statement of the action that is being taken;
 - b. The effective date of the action;
 - c. The reason for the discontinuance, including specific financial calculations and the financial eligibility standard if applicable;
 - d. The legal authority that supports the action proposed by the Administration;
 - e. Where the legal authority supporting the decision can be found;
 - f. An explanation of the right to request a hearing; and
 - g. The date by which a hearing request shall be received by the Administration and the right to continue medical coverage pending appeal.
 2. Advance notice of changes in eligibility. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (K)(3), the Administration shall issue an advance notice when an adverse action is taken to suspend, reduce or discontinue eligibility.
 3. Exceptions from advance notice. The Administration shall issue a notice to a member to discontinue eligibility no later than the effective date of the action if:
 - a. The member provides to the Administration a clearly written statement, signed by that member, that:
 - i. Services are no longer wanted; or
 - ii. Gives information that requires a discontinuance or reduction of services and indicates that the member understands that this is the result of supplying the information;
 - b. The member provides information to the Administration that requires a discontinuance of eligibility and a member signs a written statement waiving advance notice;
 - c. The member cannot be located and mail sent to the member's last known address has been returned as undeliverable under 42 CFR 431.213(d) subject to reinstatement of discontinued eligibility;
 - d. The member has been admitted to a public institution where a member is ineligible for coverage;
 - e. The member has been approved for Medicaid in another state; or
 - f. The Administration receives information confirming the death of the member.
- L.** Request for hearing. An applicant or member may request a hearing under Chapter 34 for any of the following adverse actions:
1. Complete or partial denial of eligibility,
 2. Discontinuance or reduction of AHCCCS medical coverage, or
 3. Delay in the eligibility determination beyond the timeframes listed in R9-22-1501(D).
- M.** Assignment of rights. A person determined eligible assigns rights to all types of medical benefits to which the person is entitled under operation of law under A.R.S. § 36-2903.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 23, effective December 9, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-1502. Repealed**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

R9-22-1503. Financial Eligibility Criteria

- A.** General income eligibility. Except as provided under subsection (B) of this rule, the Administration or its designee shall count the identified income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K.
- B.** Exceptions.
1. In-kind support and maintenance under 42 U.S.C. 1382a(a)(2)(A) is excluded.
 2. For a person living with a spouse, the Administration or its designee calculates net income for an eligible couple under 20 CFR 416.1160 as of April 1, 2013, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments, even if the spouse is not eligible for or applying for SSI or coverage under this Article.
 3. In determining the net income of a married couple living with a child or the net income of a person who is not living with a spouse but living with a child, a child allocation is allowed as a deduction from the combined net

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3. A change in premium amount, or
4. A change in the coverage group under which a person receives AHCCCS medical coverage.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

R9-22-1907. Notice of Adverse Action Requirements

- A. The requirements under R9-22-1501(K)(1) apply.
- B. Advance notice of a change in eligibility or premium amount. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (C), advance notice shall be issued whenever an adverse action is taken to discontinue eligibility, or increase the premium amount.
- C. Exceptions from advance notice. A notice shall be issued to the member to discontinue eligibility no later than the effective date of action if:
 1. A member provides a clearly written statement, signed by that member, that services are no longer wanted.
 2. A member provides information that requires termination of eligibility or reduction of services, indicates that the member understands that this must be the result of supplying that information, and the member signs a written statement waiving advance notice;
 3. A member cannot be located and mail sent to the member's last known address has been returned as undeliverable subject to reinstatement of discontinued services under 42 CFR 431.231(d);
 4. A member has been admitted to a public institution where a person is ineligible for coverage;
 5. A member has been approved for Medicaid in another state; or
 6. The Administration receives information confirming the death of a member.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1908. Request for Hearing

An applicant or member may request a hearing under 9 A.A.C. 34.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1909. Conditions of Eligibility

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

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

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

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1). Section repealed; new Section made by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1910. Prior Quarter Eligibility

A person may be made eligible during a prior quarter period when applying for the Freedom to Work program, as described under Article 3.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1). New Section made by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-1911. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1912. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1913. Premium Requirements

- A. As a condition of eligibility, an applicant or member shall:
 1. Pay the premium required under subsection (B).
 2. Not have any unpaid premiums for more than one month's premium amount.
- B. The Administration shall process premiums under 9 A.A.C. 31, Article 14 with the following exceptions:
 1. A member who has countable income:
 - a. Under \$500, the monthly premium payment shall be \$0.
 - b. Over \$500 but not greater than \$750, the monthly premium payment shall be \$10.
 2. The premium for a member shall be increased by \$5 for each \$250 increase in countable income above \$750.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1914. Repealed**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

R9-22-1915. Institutionalized Person

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

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“CSRD” means Community Spouse Resource Deduction, the amount of a married couple's resources that is excluded in the eligibility determination to prevent impoverishment of the community spouse as determined under R9-28-410.

“Fair consideration” means income, real or personal property, services, or support and maintenance equal to or exceeding the fair market value of the income or resources that were transferred.

“First continuous period of institutionalization” means the first period beginning on or after September 30, 1989 that the applicant was institutionalized for 30 consecutive days or more. To be considered institutionalized, the applicant must:

- Have resided in a medical institution;
- Have received paid formal Home and Community Based Services (HCBS);
- Have received a combination of medical institutionalization and HCBS, or
- Intend to receive HCBS and either:

- Requests a Resource Assessment and is determined in need if institutional services by a Resource Assessment Medical Evaluation; or
- Applies for ALTCS and is determined medically eligible by the Pre-Admission Screening (PAS).

“Institutionalized” means residing in a medical institution or receiving or expecting to receive HCBS that prevent the person from being placed in a medical institution as determined by the PAS.

“Medically eligible” means meeting the ALTCS medical eligibility criteria under Article 3 of this Chapter.

“MMMNA” means Minimum Monthly Maintenance Needs Allowance.

“Redetermination” means a periodic review of all eligibility factors for a recipient.

“Representative” means a person other than a spouse or a parent of a dependent child, who applies for ALTCS on behalf of another person.

“Share of costs” means the amount an ALTCS recipient is required to pay toward the cost of long term care services.

“Spouse” means a person legally married under Arizona law, a person eligible for Social Security benefits as the spouse of another person, or a person living with another person of the opposite sex and the couple represents themselves in the community as husband and wife.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5138, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-401.01. General

A. Application for ALTCS coverage.

1. The Administration shall provide a person the opportunity to apply for ALTCS as described under Chapter 22, Article 3, unless specified otherwise in this Section.

2. To apply for ALTCS, a person shall submit an application to an ALTCS eligibility office.
 - a. The application shall contain the applicant's name and address.
 - b. Before the application is approved, a person listed in A.A.C. R9-22-302(2) shall sign the application.
 - c. A witness shall also sign the application if an applicant signs the application with a mark.
 - d. The date of application is the date the application is received by the Administration or its designee as described in R9-22-302.
3. Except as provided in R9-22-306, the Administration shall determine eligibility within 45 days from the date of application.
4. An applicant or representative who files an ALTCS application may withdraw the application for ALTCS coverage either orally or in writing to the ALTCS eligibility office where the application was filed. The Administration shall provide the applicant with a denial notice under subsection (E).
5. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
6. If a person dies before an application is filed, the Administration shall complete an eligibility determination on an application filed on behalf of the deceased applicant, if the application is filed in the month of the person's death.

B. Conditions of ALTCS eligibility. Except for persons identified in subsection (C), the Administration shall approve a person for ALTCS if all conditions of eligibility are met. The conditions of eligibility are:

1. Citizenship and alien status under Chapter 22, Article 3;
2. SSN under Chapter 22, Article 3;
3. Living arrangements under R9-28-406;
4. Resources under R9-28-407;
5. Income under R9-28-408;
6. Transfers under R9-28-409;
7. A legally authorized person shall assign rights to the Administration for medical support and for payment of medical care from any first- and third-parties as described under R9-22-311;
8. A person shall take all necessary steps to obtain annuity, pension, retirement, and disability benefits for which a person may be entitled;
9. State residency under R9-22-305;
10. Medical eligibility as specified in Chapter 28, Article 3; and
11. Providing information and verification as specified under Chapter 22, Article 3.

C. Persons eligible for Title IV-E or Title XVI are only required to meet the conditions under subsection (B)(6), (B)(10), (B)(11) and with respect to trusts, A.R.S. § 36-2934.01.

D. Eligibility effective date.

1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
2. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
3. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.

E. Notice. The Administration shall send a person a notice of the decision regarding the person's application. The notice shall include a statement of the action and an explanation of the person's hearing rights as specified in 9 A.A.C. 34 and:

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1. Approval. If the applicant meets all the eligibility requirements and conditions of eligibility of this Article, the Administration or its designee shall approve the application and provide the applicant with an approval notice. The approval notice shall contain:
 - a. The name of each approved applicant,
 - b. The effective date of eligibility for each approved applicant,
 - c. The amount of share of cost, and
 - d. The applicant's right to appeal the decision.
 2. Denial. If an applicant fails to meet the eligibility requirements or conditions of eligibility of this Article, the Administration or its designee shall deny the application and provide the applicant with a denial notice. The denial notice shall contain:
 - a. The name of each ineligible applicant,
 - b. The specific reason why the applicant is ineligible,
 - c. The income and resource calculations for the applicant compared to the income or resource standards for eligibility when the reason for the denial is due to the applicant's income or resources exceeding the applicable standard,
 - d. The legal citations supporting the reason for the ineligibility,
 - e. The location where the applicant can review the legal citations, and
 - f. The applicant's right to appeal the decision and request a hearing.
- F. Confidentiality.** The Administration shall maintain the confidentiality of a person's record under A.A.C. R9-22-512.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 19 A.A.R. 3320, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-402. Repealed**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective November 4, 1998 (Supp. 98-4). New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-403. Repealed**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended effective July 13, 1992 (Supp. 92-3). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-404. Repealed**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended effective July 13, 1992 (Supp.

92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-405. Repealed**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-406. ALTCS Living Arrangements

- A.** Long-term care living arrangements. A person may be eligible for ALTCS services, under Article 2, while living in one of the following settings:
1. Institutional settings:
 - a. A Nursing Facility (NF) defined in 42 U.S.C. 1396r(a),
 - b. An Institution for Mental Diseases (IMD) for a person who is either under age 21 or age 65 or older,
 - c. An Intermediate Care Facility for the Mentally Retarded (ICF-MR) for a person with developmental disabilities,
 - d. A hospice (free-standing, hospital, or nursing facility subcontracted beds) defined in A.R.S. § 36-401; or
 2. Home and community-based services (HCBS) settings:
 - a. A person's home defined in R9-28-101(B), or
 - b. Alternative HCBS settings defined in R9-28-101(B).
- B.** ALTCS acute care living arrangements.
1. A person applying for and otherwise entitled to receive ALTCS coverage shall receive only ALTCS acute care coverage if residing in one of the following living arrangements, settings, or locations:
 - a. A noncertified medical facility, or
 - b. A medical facility that is registered with AHCCCS but does not have a contract with an ALTCS program contractor, or
 - c. At home or in an alternative HCBS setting when the person refuses HCBS services, or
 - d. A licensed or certified HCBS facility that is not registered with AHCCCS.
 2. Eligibility income limits.
 - a. For a person residing in a setting described in subsection (1)(a) or (1)(b), the gross income limit is 300 percent of the Federal Benefit Rate (FBR).
 - b. For a person residing in a setting described in subsection (1)(c) or (1)(d), the net income limit is 100 percent of the FBR.
- C.** Inmate of a public institution. An inmate of a public institution is not eligible for the ALTCS program if federal financial participation (FFP) is not available as described under R9-22-310.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-407. Resource Criteria for Eligibility

Arizona Health Care Cost Containment System – Medicare Cost Sharing Program

R9-29-215 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-207. Resources

Resources such as, cash, financial accounts, real property, vehicles, trusts, and life insurance are not considered in determining a person's QMB, SLMB or QI-1 eligibility.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-207 renumbered to R9-29-203; new Section R9-29-207 made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-208. Eligibility Determination

- A. AHCCCS shall make an eligibility determination within 45 days of the date of application, except when:
1. The agency cannot reach a decision because the applicant delays or fails to take a required action, or
 2. When there is an administrative or other emergency beyond the agency's control.
- B. AHCCCS shall not use the time to determine eligibility as a waiting period before determining eligibility; or as a reason for denying eligibility when a determination has not been made within the time standards.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-208 repealed; new Section R9-29-208 renumbered from R9-29-219 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-209. Notice of Eligibility Determination

- A. Notice. AHCCCS shall send an applicant written notice of the eligibility decision. The notice shall include a statement of the action and an explanation of the person's hearing rights specified in Article 5.
- B. Approval. If AHCCCS determines that the applicant is eligible, the notice shall contain the effective date of eligibility.
- C. Denial. If AHCCCS determines that the applicant is not eligible, the notice shall contain:
1. The effective date of the decision;
 2. A statement detailing the reason for the decision, including specific financial calculations and the financial eligibility standard if applicable; and
 3. The legal authority supporting the decision.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-209 repealed; new Section R9-29-209 renumbered from R9-29-220 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-210. Effective Date of Eligibility

- A. QMB. The effective date of eligibility is the first day of the month following the month in which AHCCCS makes the eligibility decision.
- B. SLMB. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the prior quarter period.
- C. QI-1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the prior quarter period and no earlier than the first day of the current calendar year. QI-1 members are entitled to receive cost sharing assistance through the end of the calendar year in which they qualified for the program.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-210 repealed; new Section R9-29-210 renumbered from R9-29-221 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 3323, November 30, 2014 (Supp. 13-4).

R9-29-211. Discontinuance

- A. Discontinuance. AHCCCS shall discontinue a person's eligibility if any of the conditions of eligibility under this Article are not met.
- B. Notice. AHCCCS shall follow the discontinuance notice requirements under A.A.C. R9-22-1415, except where it states "Department" replace the term with "Administration."

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-211 repealed; new Section R9-29-211 renumbered from R9-29-222 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-212. Renewals

- A. QMB and SLMB. AHCCCS shall renew a person's eligibility for QMB or SLMB at least one time every 12 months.
- B. QI-1. A person receiving QI-1 benefits shall reapply every 12 months.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-212 repealed; new Section R9-29-212 made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-213. Reporting Changes

A person eligible under this Article shall report to an ALTCS or Social Security Insurance Medical Assistance Only (SSI-MAO) office the following changes for the person, the person's spouse, or the person's dependent children:

1. A change of address;
2. An admission to, or discharge from, a public institution, as specified in A.A.C. R9-22-1402;
3. A change in household composition;
4. A change in income;
5. A determination of eligibility for other benefits;
6. A death;
7. A change in marital status;
8. A change in Arizona state residency;
9. A change in citizenship or alien status;
10. Receipt of a SSN;
11. A change in Medicare receipt or eligibility; and
12. For QMB recipients, a change in first- or third-party liability that may be responsible for payment of all or a portion of the person's medical costs.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-213 renumbered to R9-29-205; new Section R9-29-213 renumbered from R9-29-224 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-214. Repealed**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months after the date that eligibility is posted or within

sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums

for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

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

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for

maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must

pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to

legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.
2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

36-2903. Arizona health care cost containment system; administrator; powers and duties of director and administrator; exemption from attorney general representation; definition

- A. The Arizona health care cost containment system is established consisting of contracts with contractors for the provision of hospitalization and medical care coverage to members. Except as specifically required by federal law and by section 36-2909, the system is only responsible for providing care on or after the date that the person has been determined eligible for the system, and is only responsible for reimbursing the cost of care rendered on or after the date that the person was determined eligible for the system.
- B. An agreement may be entered into with an independent contractor, subject to title 41, chapter 23, to serve as the statewide administrator of the system. The administrator has full operational responsibility, subject to supervision by the director, for the system, which may include any or all of the following:
1. Development of county-by-county implementation and operation plans for the system that include reasonable access to hospitalization and medical care services for members.
 2. Contract administration and oversight of contractors, including certification instead of licensure for title XVIII and title XIX purposes.
 3. Provision of technical assistance services to contractors and potential contractors.
 4. Development of a complete system of accounts and controls for the system including provisions designed to ensure that covered health and medical services provided through the system are not used unnecessarily or unreasonably including but not limited to inpatient behavioral health services provided in a hospital. Periodically the administrator shall compare the scope, utilization rates, utilization control methods and unit prices of major health and medical services provided in this state in comparison with other states' health care services to identify any unnecessary or unreasonable utilization within the system. The administrator shall periodically assess the cost effectiveness and health implications of alternate approaches to the provision of covered health and medical services through the system in order to reduce unnecessary or unreasonable utilization.
 5. Establishment of peer review and utilization review functions for all contractors.
 6. Assistance in the formation of medical care consortiums to provide covered health and medical services under the system for a county.
 7. Development and management of a contractor payment system.
 8. Establishment and management of a comprehensive system for assuring the quality of care delivered by the system.
 9. Establishment and management of a system to prevent fraud by members, subcontracted providers of care, contractors and noncontracting providers.
 10. Coordination of benefits provided under this article to any member. The administrator may require that contractors and noncontracting providers are responsible for the coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage.
 11. Development of a health education and information program.
 12. Development and management of an enrollment system.
 13. Establishment and maintenance of a claims resolution procedure to ensure that ninety per cent of the clean claims shall be paid within thirty days of receipt and ninety-nine per cent of the remaining clean claims shall be paid within ninety days of receipt. For the purposes of this paragraph, "clean claims" has the same meaning prescribed in section 36-2904, subsection G.

14. Establishment of standards for the coordination of medical care and patient transfers pursuant to section 36-2909, subsection B.

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

16. Establishment of an employee recognition fund.

17. Establishment of an eligibility process to determine whether a medicare low income subsidy is available to persons who want to apply for a subsidy as authorized by title XVIII.

C. If an agreement is not entered into with an independent contractor to serve as statewide administrator of the system pursuant to subsection B of this section, the director shall ensure that the operational responsibilities set forth in subsection B of this section are fulfilled by the administration and other contractors as necessary.

D. If the director determines that the administrator will fulfill some but not all of the responsibilities set forth in subsection B of this section, the director shall ensure that the remaining responsibilities are fulfilled by the administration and other contractors as necessary.

E. The administrator or any direct or indirect subsidiary of the administrator is not eligible to serve as a contractor.

F. Except for reinsurance obtained by contractors, the administrator shall coordinate benefits provided under this article to any eligible person who is covered by workers' compensation, disability insurance, a hospital and medical service corporation, a health care services organization, an accountable health plan or any other health or medical or disability insurance plan including coverage made available to persons defined as eligible by section 36-2901, paragraph 6, subdivisions (b), (c), (d) and (e), or who receives payments for accident-related injuries, so that any costs for hospitalization and medical care paid by the system are recovered from any other available third party payors. The administrator may require that contractors and noncontracting providers are responsible for the coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage. The system shall act as payor of last resort for persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2974 or section 36-2981, paragraph 6 unless specifically prohibited by federal law. By operation of law, eligible persons assign to the system and a county rights to all types of medical benefits to which the person is entitled, including first party medical benefits under automobile insurance policies based on the order of priorities established pursuant to section 36-2915. The state has a right to subrogation against any other person or firm to enforce the assignment of medical benefits. The provisions of this subsection are controlling over the provisions of any insurance policy that provides benefits to an eligible person if the policy is inconsistent with the provisions of this subsection.

G. Notwithstanding subsection E of this section, the administrator may subcontract distinct administrative functions to one or more persons who may be contractors within the system.

H. The director shall require as a condition of a contract with any contractor that all records relating to contract compliance are available for inspection by the administrator and the director subject to subsection I of this section and that such records be maintained by the contractor for five years. The director shall also require that these records be made available by a contractor on request of the secretary of the United States department of health and human services, or its successor agency.

I. Subject to existing law relating to privilege and protection, the director shall prescribe by rule the types of information that are confidential and circumstances under which such information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other provision of law, such rules shall be designed to provide for the exchange of necessary information among the counties, the administration and the department of economic security for the purposes of eligibility determination under this article. Notwithstanding any law to the

contrary, a member's medical record shall be released without the member's consent in situations or suspected cases of fraud or abuse relating to the system to an officer of the state's certified Arizona health care cost containment system fraud control unit who has submitted a written request for the medical record.

J. The director shall prescribe rules that specify methods for:

1. The transition of members between system contractors and noncontracting providers.
2. The transfer of members and persons who have been determined eligible from hospitals that do not have contracts to care for such persons.

K. The director shall adopt rules that set forth procedures and standards for use by the system in requesting county long-term care for members or persons determined eligible.

L. To the extent that services are furnished pursuant to this article, and unless otherwise required pursuant to this chapter, a contractor is not subject to title 20.

M. As a condition of the contract with any contractor, the director shall require contract terms as necessary in the judgment of the director to ensure adequate performance and compliance with all applicable federal laws by the contractor of the provisions of each contract executed pursuant to this chapter. Contract provisions required by the director shall include at a minimum the maintenance of deposits, performance bonds, financial reserves or other financial security. The director may waive requirements for the posting of bonds or security for contractors that have posted other security, equal to or greater than that required by the system, with a state agency for the performance of health service contracts if funds would be available from such security for the system on default by the contractor. The director may also adopt rules for the withholding or forfeiture of payments to be made to a contractor by the system for the failure of the contractor to comply with a provision of the contractor's contract with the system or with the adopted rules. The director may also require contract terms allowing the administration to operate a contractor directly under circumstances specified in the contract. The administration shall operate the contractor only as long as it is necessary to assure delivery of uninterrupted care to members enrolled with the contractor and accomplish the orderly transition of those members to other system contractors, or until the contractor reorganizes or otherwise corrects the contract performance failure. The administration shall not operate a contractor unless, before that action, the administration delivers notice to the contractor and provides an opportunity for a hearing in accordance with procedures established by the director. Notwithstanding the provisions of a contract, if the administration finds that the public health, safety or welfare requires emergency action, it may operate as the contractor on notice to the contractor and pending an administrative hearing, which it shall promptly institute.

N. The administration for the sole purpose of matters concerning and directly related to the Arizona health care cost containment system and the Arizona long-term care system is exempt from section 41-192.

O. Notwithstanding subsection F of this section, if the administration determines that according to federal guidelines it is more cost-effective for a person defined as eligible under section 36-2901, paragraph 6, subdivision (a) to be enrolled in a group health insurance plan in which the person is entitled to be enrolled, the administration may pay all of that person's premiums, deductibles, coinsurance and other cost sharing obligations for services covered under section 36-2907. The person shall apply for enrollment in the group health insurance plan as a condition of eligibility under section 36-2901, paragraph 6, subdivision (a).

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

Q. Notwithstanding section 36-470, a contractor or program contractor may receive laboratory tests from a laboratory or hospital-based laboratory for a system member enrolled with the contractor or program contractor subject to all of the following requirements:

1. The contractor or program contractor shall provide a written request to the laboratory in a format mutually agreed to by the laboratory and the requesting health plan or program contractor. The request shall include the member's name, the member's plan identification number, the specific test results that are being requested and the time periods and the quality improvement activity that prompted the request.
 2. The laboratory data may be provided in written or electronic format based on the agreement between the laboratory and the contractor or program contractor. If there is no contract between the laboratory and the contractor or program contractor, the laboratory shall provide the requested data in a format agreed to by the noncontracted laboratory.
 3. The laboratory test results provided to the member's contractor or program contractor shall only be used for quality improvement activities authorized by the administration and health care outcome studies required by the administration. The contractors and program contractors shall maintain strict confidentiality about the test results and identity of the member as specified in contractual arrangements with the administration and pursuant to state and federal law.
 4. The administration, after collaboration with the department of health services regarding quality improvement activities, may prohibit the contractors and program contractors from receiving certain test results if the administration determines that a serious potential exists that the results may be used for purposes other than those intended for the quality improvement activities. The department of health services shall consult with the clinical laboratory licensure advisory committee established by section 36-465 before providing recommendations to the administration on certain test results and quality improvement activities.
 5. The administration shall provide contracted laboratories and the department of health services with an annual report listing the quality improvement activities that will require laboratory data. The report shall be updated and distributed to the contracting laboratories and the department of health services when laboratory data is needed for new quality improvement activities.
 6. A laboratory that complies with a request from the contractor or program contractor for laboratory results pursuant to this section is not subject to civil liability for providing the data to the contractor or program contractor. The administration, the contractor or a program contractor that uses data for reasons other than quality improvement activities is subject to civil liability for this improper use.
- R. For the purposes of this section, "quality improvement activities" means those requirements, including health care outcome studies specified in federal law or required by the centers for medicare and medicaid services or the administration, to improve health care outcomes.

36-2904. Prepaid capitation coverage; requirements; long-term care; dispute resolution; award of contracts; notification; report

A. The administration may expend public funds appropriated for the purposes of this article and shall execute prepaid capitated health services contracts, pursuant to section 36-2906, with group disability insurers, hospital and medical service corporations, health care services organizations and any other appropriate public or private persons, including county-owned and operated facilities, for health and medical services to be provided under contract with contractors. The administration may assign liability for eligible persons and members through contractual agreements with contractors. If there is an insufficient number of qualified bids for prepaid capitated health services contracts for the provision of hospitalization and medical care within a county, the director may:

1. Execute discount advance payment contracts, pursuant to section 36-2906 and subject to section 36-2903.01, for hospital services.
2. Execute capped fee-for-service contracts for health and medical services, other than hospital services. Any capped fee-for-service contract shall provide for reimbursement at a level of not to exceed a capped fee-for-service schedule adopted by the administration.

B. During any period in which services are needed and no contract exists, the director may do either of the following:

1. Pay noncontracting providers for health and medical services, other than hospital services, on a capped fee-for-service basis for members and persons who are determined eligible. However, the state shall not pay any amount for services that exceeds a maximum amount set forth in a capped fee-for-service schedule adopted by the administration.
2. Pay a hospital subject to the reimbursement level limitation prescribed in section 36-2903.01.

If health and medical services are provided in the absence of a contract, the director shall continue to attempt to procure by the bid process as provided in section 36-2906 contracts for such services as specified in this subsection.

C. Payments to contractors shall be made monthly or quarterly and may be subject to contract provisions requiring the retention of a specified percentage of the payment by the director, a reserve fund or other contract provisions by which adjustments to the payments are made based on utilization efficiency, including incentives for maintaining quality care and minimizing unnecessary inpatient services. Reserve funds withheld from contractors shall be distributed to contractors who meet performance standards established by the director. Any reserve fund established pursuant to this subsection shall be established as a separate account within the Arizona health care cost containment system fund.

D. Except as prescribed in subsection E of this section, a member defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (a) may select, to the extent practicable as determined by the administration, from among the available contractors of hospitalization and medical care and may select a primary care physician or primary care practitioner from among the primary care physicians and primary care practitioners participating in the contract in which the member is enrolled. The administration shall provide reimbursement only to entities that have a provider agreement with the administration and that have agreed to the contractual requirements of that agreement. Except as provided in sections 36-2908 and 36-2909, the system shall only provide reimbursement for any health or medical services or costs of related services provided by or under referral from the primary care physician or primary care practitioner participating in the contract in which the member is enrolled. The director shall establish requirements as to the minimum time period that a member is assigned to specific contractors in the system.

E. For a member defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (a), item (v) the director shall enroll the member with an available contractor located in the geographic area of the member's residence. The member may select a primary care physician or primary care practitioner from among the primary care physicians or primary care practitioners participating in the contract in which the member is enrolled. The system shall only provide reimbursement for health or medical services or costs of related services provided by or under referral from a primary care physician or primary care practitioner participating in the contract in which the member is enrolled. The director shall establish requirements as to the minimum time period that a member is assigned to specific contractors in the

system.

F. If a person who has been determined eligible but who has not yet enrolled in the system receives emergency services, the director shall provide by rule for the enrollment of the person on a priority basis. If a person requires system covered services on or after the date the person is determined eligible for the system but before the date of enrollment, the person is entitled to receive these services in accordance with rules adopted by the director, and the administration shall pay for the services pursuant to section 36-2903.01 or, as specified in contract, with the contractor pursuant to the subcontracted rate or this section.

G. The administration shall not pay claims for system covered services that are initially submitted more than six months after the date of the service for which payment is claimed or after the date that eligibility is posted, whichever date is later, or that are submitted as clean claims more than twelve months after the date of service for which payment is claimed or after the date that eligibility is posted, whichever date is later, except for claims submitted for reinsurance pursuant to section 36-2906, subsection C, paragraph 6. The administration shall not pay claims for system covered services that are submitted by contractors for reinsurance after the time period specified in the contract. The director may adopt rules or require contractual provisions that prescribe requirements and time limits for submittal of and payment for those claims. Notwithstanding any other provision of this article, if a claim that gives rise to a contractor's claim for reinsurance or deferred liability is the subject of an administrative grievance or appeal proceeding or other legal action, the contractor shall have at least sixty days after an ultimate decision is rendered to submit a claim for reinsurance or deferred liability. Contractors that contract with the administration pursuant to subsection A of this section shall not pay claims for system covered services that are initially submitted more than six months after the date of the service for which payment is claimed or after the date that eligibility is posted, whichever date is later, or that are submitted as clean claims more than twelve months after the date of the service for which payment is claimed or after the date that eligibility is posted, whichever date is later. For the purposes of this subsection:

1. "Clean claims" means claims that may be processed without obtaining additional information from the subcontracted provider of care, from a noncontracting provider or from a third party but does not include claims under investigation for fraud or abuse or claims under review for medical necessity.
2. "Date of service" for a hospital inpatient means the date of discharge of the patient.
3. "Submitted" means the date the claim is received by the administration or the prepaid capitated provider, whichever is applicable, as established by the date stamp on the face of the document or other record of receipt.

H. In any county having a population of five hundred thousand or fewer persons, a hospital that executes a subcontract other than a capitation contract with a contractor for the provision of hospital and medical services pursuant to this article shall offer a subcontract to any other contractor providing services to that portion of the county and to any other person that plans to become a contractor in that portion of the county. If such a hospital executes a subcontract other than a capitation contract with a contractor for the provision of hospital and medical services pursuant to this article, the hospital shall adopt uniform criteria to govern the reimbursement levels paid by all contractors with whom the hospital executes such a subcontract. Reimbursement levels offered by hospitals to contractors pursuant to this subsection may vary among contractors only as a result of the number of bed days purchased by the contractors, the amount of financial deposit required by the hospital, if any, or the schedule of performance discounts offered by the hospital to the contractor for timely payment of claims.

I. This subsection applies to inpatient hospital admissions and to outpatient hospital services on and after March 1, 1993. The director may negotiate at any time with a hospital on behalf of a contractor for services provided pursuant to this article. If a contractor negotiates with a hospital for services provided pursuant to this article, the following procedures apply:

1. The director shall require any contractor to reimburse hospitals for services provided under this article based on reimbursement levels that do not in the aggregate exceed those established pursuant to section 36-2903.01 and under terms on which the contractor and the hospital agree. However, a hospital and a contractor may agree on a different payment methodology than the methodology prescribed by the director pursuant to section 36-2903.01. The director by rule shall prescribe:

- (a) The time limits for any negotiation between the contractor and the hospital.
- (b) The ability of the director to review and approve or disapprove the reimbursement levels and terms agreed on by the contractor and the hospital.
- (c) That if a contractor and a hospital do not agree on reimbursement levels and terms as required by this subsection, the reimbursement levels established pursuant to section 36-2903.01 apply.
- (d) That, except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of subdivision (f) on initial receipt of the legible, error-free claim form by the contractor if the claim includes the following error-free documentation in legible form:
 - (i) An admission face sheet.
 - (ii) An itemized statement.
 - (iii) An admission history and physical.
 - (iv) A discharge summary or an interim summary if the claim is split.
 - (v) An emergency record, if admission was through the emergency room.
 - (vi) Operative reports, if applicable.
 - (vii) A labor and delivery room report, if applicable.
- (e) That payment received by a hospital from a contractor is considered payment by the contractor of the contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.
- (f) That a contractor shall pay for services rendered on and after October 1, 1997 under any reimbursement level according to paragraph 1 of this subsection subject to the following:
 - (i) If the hospital's bill is paid within thirty days of the date the bill was received, the contractor shall pay ninety-nine per cent of the rate.
 - (ii) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the contractor shall pay one hundred per cent of the rate.
 - (iii) If the hospital's bill is paid any time after sixty days of the date the bill was received, the contractor shall pay one hundred per cent of the rate plus a fee of one per cent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

2. In any county having a population of five hundred thousand or fewer persons, a hospital that executes a subcontract other than a capitation contract with a provider for the provision of hospital and medical services pursuant to this article shall offer a subcontract to any other provider providing services to that portion of the county and to any other person that plans to become a provider in that portion of the county. If a hospital executes a subcontract other than a capitation contract with a provider for the provision of hospital and medical services pursuant to this article, the hospital shall adopt uniform criteria to govern the reimbursement levels paid by all providers with whom the hospital executes a subcontract.

J. If there is an insufficient number of, or an inadequate member capacity in, contracts awarded to contractors, the director, in order to deliver covered services to members enrolled or expected to be enrolled in the system within a county, may negotiate and award, without bid, a contract with a health care services organization holding a certificate of authority pursuant to title 20, chapter 4, article 9. The director shall require a health care services organization

contracting under this subsection to comply with section 36-2906.01. The term of the contract shall not extend beyond the next bid and contract award process as provided in section 36-2906 and shall be no greater than capitation rates paid to contractors in the same county or counties pursuant to section 36-2906. Contracts awarded pursuant to this subsection are exempt from the requirements of title 41, chapter 23.

K. A contractor may require that a subcontracting or noncontracting provider shall be paid for covered services, other than hospital services, according to the capped fee-for-service schedule adopted by the director pursuant to subsection A, paragraph 2 of this section or subsection B, paragraph 1 of this section or at lower rates as may be negotiated by the contractor.

L. The director shall require any contractor to have a plan to notify members of reproductive age either directly or through the parent or legal guardian, whichever is most appropriate, of the specific covered family planning services available to them and a plan to deliver those services to members who request them. The director shall ensure that these plans include provisions for written notification, other than the member handbook, and verbal notification during a member's visit with the member's primary care physician or primary care practitioner.

M. The director shall adopt a plan to notify members of reproductive age who receive care from a contractor who elects not to provide family planning services of the specific covered family planning services available to them and to provide for the delivery of those services to members who request them. Notification may be directly to the member, or through the parent or legal guardian, whichever is most appropriate. The director shall ensure that the plan includes provisions for written notification, other than the member handbook, and verbal notification during a member's visit with the member's primary care physician or primary care practitioner.

N. The director shall prepare a report that represents a statistically valid sample and that indicates the number of children age two by contractor who received the immunizations recommended by the national centers for disease control and prevention while enrolled as members. The report shall indicate each type of immunization and the number and percentage of enrolled children in the sample age two who received each type of immunization. The report shall be done by contract year and shall be delivered to the governor, the president of the senate and the speaker of the house of representatives no later than April 1, 2004 and every second year thereafter.

O. If the administration implements an electronic claims submission system it may adopt procedures pursuant to subsection I, paragraph 1 of this section requiring documentation different than prescribed under subsection I, paragraph 1, subdivision (d) of this section.

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

- A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.
- B. The administration has full operational responsibility for the system, which shall include the following:
1. Contracting with and certification of program contractors in compliance with all applicable federal laws.
 2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.
 3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.
 4. Providing technical assistance to the program contractors.
 5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.
 6. Conducting quality control on eligibility determinations and preadmission screenings.
 7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.
 8. Establishing an enrollment system.
 9. Establishing a member case management tracking system.
 10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.
 11. Coordinating benefits as provided in section 36-2946.
 12. Establishing standards for the coordination of services.
 13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.
 14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.
 15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.
 16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.
 17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

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

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

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

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

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

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

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

I. The director shall:

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

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

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

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

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

the appropriate program contractor.

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

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.
2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.
3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

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

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

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

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

1. A balance sheet detailing the institution's assets, liabilities and net worth.
2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

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

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

36-2933. Eligibility determination; application; enrollment

A. A person who is seeking services pursuant to this article shall submit an application for eligibility for the system to the administration which shall review the completed application to determine if the person meets the residency and if applicable, the alienage requirements adopted pursuant to section 36-2932, subsection K and the eligibility criteria prescribed in section 36-2934.

B. The administration shall conduct a preadmission screening pursuant to section 36-2936 to determine if the applicant is eligible for services.

C. A person who is a resident of this state and, if not a citizen of the United States, who meets the alienage requirements of federal law and who meets the eligibility criteria prescribed in section 36-2934 and who is determined eligible for services pursuant to section 36-2936 shall be enrolled in the system, unless such person is enrolled in the Arizona health care cost containment system pursuant to article 1 of this chapter and only needs convalescent care as defined by the director by rule.

D. On enrollment in the system, the administration shall conduct post-eligibility treatment of income and resources of the member as prescribed in section 36-2932, subsection L.

E. The director may enter into an interagency agreement with the department under which the department may:

1. Determine whether all persons with developmental disabilities as defined in section 36-551 who apply to the system meet the eligibility criteria prescribed in subsection A of this section.
2. Conduct preadmission screening pursuant to subsection B of this section on persons with developmental disabilities as defined in section 36-551 to determine if the applicant is eligible for services.
3. Conduct post-eligibility treatment of income and resources pursuant to subsection D of this section for a member who has a developmental disability as defined in section 36-551.

36-2934. Eligibility criteria; qualifications for coverage; liquidation of assets

A. A person meets the eligibility criteria of this article and the section 1115 waiver if the person satisfies one of the following:

1. Is eligible pursuant to section 36-2901, paragraph 6, subdivision (a), item (i) or (ii) on the date of application for medical assistance under this article and meets the resource requirements prescribed by federal law.
2. Would be eligible for supplemental security income for the aged, blind or persons with disabilities or temporary assistance for needy families but is not receiving cash payment.
3. Would be eligible for supplemental security income for the aged, blind or persons with disabilities or under section 1931(b) of the social security act except for the person's institutional status.
4. Is in a medical institution for a period of not less than thirty consecutive days and except for the person's income the person would be eligible for supplemental security income for the aged, blind or disabled or temporary assistance for needy families and the person's gross income before deductions does not exceed three hundred per cent of the supplemental security income benefit rate established by section 1611(b)(1) of the social security act.
5. Would be eligible for medical assistance under the state plan if the person was institutionalized and a determination has been made that except for the provision of home and community based services the person would require the level of care provided in a hospital, skilled nursing facility or intermediate care facility.

B. In addition to meeting the requirements of subsection A of this section, a person may not have, within the time specified in federal law before filing an application for eligibility pursuant to section 36-2933, transferred or assigned for less than fair consideration assets as defined by federal law for the purpose of meeting the eligibility criteria pursuant to this section. If a transfer or assignment occurred, the administration may deny eligibility for a period in accordance with federal law. Transfers that are permitted under federal law shall not serve to disqualify a person from eligibility for services pursuant to this article. This subsection also applies to persons who are eligible pursuant to section 36-2901, paragraph 6, subdivision (a) and who receive medical assistance under article 1 of this chapter.

C. In addition to meeting the requirements of subsection A, paragraph 3 of this section, the director may require that a person's net income shall not exceed a state income standard established by the director, which is less than three hundred per cent of the supplemental security income benefit rate established by section 1611 of the social security act.

D. Notwithstanding any other provision of this section, a person shall not receive services under this article who is not eligible pursuant to title XIX of the social security act or the section 1115 waiver.

E. The administration shall periodically review the eligibility pursuant to this section of each member in accordance with federal law.

F. The administration shall determine a person's eligibility pursuant to this section within the time periods required or allowed by federal law.

G. An applicant shall provide the administration with a statement in accordance with federal law containing at least the following information:

1. The amount of personal and real property in which the applicant has an interest.
2. All income that the applicant received during the period immediately before application.
3. Any assets as defined by federal law assigned or transferred by the applicant within the time prescribed by federal law immediately before filing the application for eligibility pursuant to section 36-2933.
4. Any further information the director by rule requires to determine eligibility.

H. A designated representative, as defined pursuant to rules adopted by the director, or a public employee who prepares and signs, or assists in preparing, an application for benefits under this article on behalf of an applicant is not civilly liable for good faith acts and omissions.

36-2972. Rights, authority and responsibilities of the director and the administration

- A. Subject to continued federal financial participation as provided in sections 36-2919 and 36-2958, the director shall plan for and take all steps necessary to implement the qualified medicare beneficiary program under title XIX of the social security act, as amended.
- B. The administration and the director have full operational responsibility for this article. Except as provided in this article or required by federal law or the section 1115 waiver, the provisions of articles 1 and 2 of this chapter are fully applicable to this article and the director and administration have all the rights, powers, duties and responsibilities accorded to the system under articles 1 and 2 of this chapter. Services shall be delivered in accordance with federal law and the section 1115 waiver for articles 1 and 2 of this chapter.
- C. The administration shall coordinate benefits provided under this article to members so that costs for services payable by the system are costs avoided or recovered from a third party payor. The director may require that program contractors, contractors and noncontracting providers are responsible for the coordination of benefits for services provided pursuant to this article. Benefit coordination requirements for noncontracting providers are limited to coordination of benefits with standard health insurance and disability or medicare supplemental health insurance policies and similar programs for health coverage. The director shall require members to assign to the system rights to all types of medical benefits to which the member is entitled.
- D. Notwithstanding section 36-2911, the program contractors or contractors shall pay all premiums, deductibles and coinsurance amounts for the member to obtain coverage or secure services as required by the administration. For members not enrolled with a contractor or program contractor the administration may pay the premiums, deductibles and coinsurance amounts.

36-2973. Qualified medicare beneficiary only; eligibility determination; application; enrollment

A. The administration shall determine the eligibility of all applicants who may be eligible as qualified medicare beneficiaries only. The administration shall ensure that the calculation of income eligibility requirements is in accordance with federal law and the section 1115 waiver. On determination of qualified medicare beneficiary only eligibility, the administration shall enroll the member in the system.

B. The administration may enroll the member who has been determined eligible as a qualified medicare beneficiary only in a fee-for-service arrangement. The director may enter into a contract with a medicare risk contractor that, in accordance with section 1876 of the social security act, has a contract with the health care financing administration and may pay premiums for enrollment of that member.

36-2974. Dual eligibles; qualifications for coverage; enrollment

- A. For purposes of this section all contractors and program contractors are required to provide services to members.
- B. For a member who is dually eligible the director may implement a policy permitting a choice of contractors or program contractors to the extent the director deems feasible consistent with the section 1115 waiver and federal law. If the director does not implement a choice of contractor policy, the director may enroll the member, at the time eligibility is determined, with an available contractor or program contractor located in the geographic area of the member's residence.
- C. The department shall assist the administration in the screening of all persons who are applying to become eligible pursuant to section 36-2901, paragraph 6, subdivision (a) and who are entitled to services under title XVIII but not title XVI of the social security act to determine if the person meets the eligibility criteria of this section. If a person is determined to be eligible pursuant to section 36-2901, paragraph 6, subdivision (a) and this article, the administration shall make the person dually eligible. On determination of dual eligibility the administration shall enroll the person pursuant to this article and notify the person of the dual eligibility.
- D. The administration shall screen all persons who are entitled to services under title XVIII of the social security act and who are applying to become eligible pursuant to section 36-2901, paragraph 6, subdivision (a), as prescribed by title XVI of the social security act or section 36-2931, paragraph 5, to determine if the person meets the eligibility criteria of this section. If a person is determined to be eligible pursuant to section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and this article, the administration shall make the person dually eligible. On determination of dual eligibility by the administration, the administration shall enroll the person pursuant to this article and notify the person of the dual eligibility.
- E. Calculation of income and resource eligibility requirements by the department and the administration pursuant to this section shall be in accordance with title XIX of the social security act, as amended.
- F. Program contractors and contractors shall pay medicare deductibles, coinsurance and copayment amounts for services provided to dual eligibles pursuant to this article and as required by the administration for services that are provided by or under referral from a primary care physician or primary care practitioner.

E-2

BOARD OF TECHNICAL REGISTRATION (R-18-0601)

Title 4, Chapter 30, Article 1, General Provisions; Article 2, Registration Provisions; Article 3, Regulatory Provisions

- Amend:** R4-30-101; R4-30-102; R4-30-106; R4-30-107; R4-30-120; R4-30-121;
R4-30-123; R4-30-126; R4-30-201; R4-30-202; R4-30-203; R4-30-204;
R4-30-208; R4-30-209; R4-30-210; R4-30-214; R4-30-222; R4-30-242;
R4-30-247; R4-30-254; R4-30-282; R4-30-284; R4-30-301; R4-30-301.01;
R4-30-303; R4-30-304; Appendix A
- Repeal:** R4-30-103; R4-30-202.01; R4-30-252; R4-30-262; R4-30-264; R4-30-270;
R4-30-271; R4-30-272; R4-30-305; Appendix B

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: June 5, 2018

AGENDA ITEM: E-2

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

FROM: Council Staff

DATE: May 22, 2018

SUBJECT: BOARD OF TECHNICAL REGISTRATION (R-18-0601)
Title 4, Chapter 30, Article 1, General Provisions; Article 2, Registration Provisions; Article 3, Regulatory Provisions

Amend: R4-30-101; R4-30-102; R4-30-106; R4-30-107; R4-30-120; R4-30-121; R4-30-123; R4-30-126; R4-30-201; R4-30-202; R4-30-203; R4-30-204; R4-30-208; R4-30-209; R4-30-210; R4-30-214; R4-30-222; R4-30-242; R4-30-247; R4-30-254; R4-30-282; R4-30-284; R4-30-301; R4-30-301.01; R4-30-303; R4-30-304; Appendix A

Repeal: R4-30-103; R4-30-202.01; R4-30-252; R4-30-262; R4-30-264; R4-30-270; R4-30-271; R4-30-272; R4-30-305; Appendix B

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Board of Technical Registration (Board), seeks to amend 27 rules and repeal 10 rules in A.A.C. Title 4, Chapter 30. The Board received an exception from the moratorium on April 7, 2017.

The Board indicates that it is engaging in this rulemaking to:

- Clarify modern industry standards and requirements,
- Reflect statutory changes made to the Board's Practice Act in 2016 and 2017,
- Establish rules pertaining to alarm firms, controlling persons, and alarm agents, and
- Update the Board's fees to reflect current agency costs for providing services.

Proposed Action

- Section 101 - *Definitions*: Definitions are modified to reflect changes to other rules.
- Section 102 - *Home Inspection Definitions*: This section is rewritten to delete existing terms, and adds definitions for the terms "parallel inspection," "parallel inspector," "peer review," "peer reviewer," and "report checklist supplement."

- Section 103 - *Drug Laboratory Site Remediation Definitions*: The rule is repealed.
- Section 106 - *Fees*: The Board is amending and increasing the charges for certain services it provides.
- Section 107 - *Registration and Certification Expiration Dates*: Provisions related to alarm certifications are added.
- Section 120 - *Complaint Review Process*: Clarifying changes are made.
- Section 121 - *Investigation of Violations*: A sentence, requiring a respondent to have access to a copy of the complaint and any assessment or Enforcement Advisory Committee (EAC) reports drafted during the investigation, is added.
- Section 123 - *Informal Compliance Procedures*: Clarifying changes are made.
- Section 126 - *Service of Board Decisions; Rehearing of Board Decisions*: Clarifying changes are made.
- Section 201 - *Registration as an Architect, Assayer, Engineer, Geologist, Landscape Architect, or Land Surveyor*: Clarifying changes are made, including the deletion of references to assayers, as they are no longer under the Board's jurisdiction.
- Section 202 - *In-training Designation*: Clarifying changes are made.
- Section 202.01 - *Remediation Specialist Certification*: The rule is repealed.
- Section 203 - *Waiver of Examination*: Clarifying changes are made. In addition, the Board is repealing subsection (A)(1), under which an applicant can qualify for an examination waiver if they submit "verifiable documentation to the Board that the education, experience, and examination requirements under which the applicant was registered in the original state or jurisdiction were substantially identical to those existing in Arizona at the time of the applicant's original registration, certification, or licensure."
- Section 204 - *Examinations*: Clarifying changes are made. In addition, subsection (A)(14) is added to provide additional requirements for applicants who do not possess education required for direct access to the Architect Registration Examination.
- Section 208 - *Education and Work Experience*: Clarifying changes are made.
- Section 209 - *Time-frames for Professional Registration, Certification, or In-training Designation*: Clarifying changes are made.
- Section 210 - *Time-frames for Approval to Sit for, or for Waiver of, the Professional, Certification, or In-training Examination*: In addition to clarifying changes, the overall licensing time-frame is reduced from 180 days to 120 days.
- Section 214 - *Architect Registration*: Clarifying changes are made.
- Section 222 - *Engineer-In-Training Designation*: Clarifying changes are made.
- Section 242 - *Geologist-In-Training Designation*: Clarifying changes are made.
- Section 247 - *Home Inspector Certification*: Clarifying changes are made. The existing subsection (F) is deleted to remove an exemption from additional education or testing requirements related to pools and spas for home inspector registrants who were Board-certified prior to February 28, 2012. A new subsection (F) is added to require a home inspector who has not practiced as a home inspector in another state in the previous five years to take and pass the National Home Inspector Examination.
- Section 252 - *Landscape Architect-in-training Designation*: The rule is repealed.
- Section 254 - *Landscape Architect Registration*: Subsections (A) and (B), related to the qualifications for landscape architect registration, are added.
- Section 262 - *Assayer-in-training Designation*: The rule is repealed.

- Section 264 - *Assayer Registration*: The rule is repealed.
- Section 270 - *Drug Laboratory Site Remediation Firm Registration*: The rule is repealed.
- Section 271 - *Onsite Supervisor Certification and Renewal*: The rule is repealed.
- Section 272 - *Onsite Worker Certification and Renewal*: The rule is repealed.
- Section 282 - *Land Surveyor-in-training Designation*: Clarifying changes are made.
- Section 284 - *Land Surveyor Registration*: Clarifying changes are made.
- Section 301 - *Rules of Professional Conduct*: Clarifying changes are made, including to subsection (5), which is amended to allow the Board to take action against a registrant's license or certificate for any violation of the law that is reasonably related to a registrant's area of practice, rather than just violations involving dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, bribery, or breach of fiduciary duty.
- Section 301.01 - *Home Inspector Rules of Professional Conduct*: Subsection (B) is amended to clarify restrictions on certified home inspectors paying or receiving a commission or compensation as a referral or finder's fee.
- Section 303 - *Securing Seals*: Clarifying changes are made.
- Section 304 - *Use of Seals*: Clarifying changes are made.
- Section 305 - *Drug Laboratory Site Remediation Best Standards and Practices*: The rule is repealed.
- Appendix A - *Sample Seals*: Clarifying changes are made.
- Appendix B - *Sample Expiration Date Notification*: The rule is repealed.

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 rule, including A.R.S. § 32-106, under which the Board must adopt rules for the "performance of duties imposed on it by law" and may adopt rules "establishing rules of professional conduct for registrants."

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

In Section 106, titled "Fees," the Board is amending and increasing the charges for certain services it provides:

- The charge for a computer generated list of registrants, currently \$15.00, is being changed to:
 - For a non-commercial purpose, \$0.25 per name, with a maximum fee of \$300.00.
 - For a commercial purpose, \$0.25 per name, with a minimum fee of \$250.00.
- The photocopy charge, currently \$0.20 per page, is being changed to \$1.00 for up to three pages, followed by a \$0.25 charge for each additional page.
- The recording medium copy charge is being increased from \$10.00 to \$15.00 per recording.
- The local examination review charge is being changed from a \$25.00 flat rate to \$30.00 per hour.
- The Board is adding a charge of \$25.00 for the verification of registration or certification.
- The Board is adding a laminated pocket card charge of \$10.00 per card.

The aforementioned charges are not considered fees under the Administrative Procedures Act, as A.R.S. § 41-1001(9) defines the term “fee” as “a charge prescribed by an agency for an inspection or for obtaining a license.”

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

In this rulemaking, the Board is updating its rules in order to align with the current professional standards of the occupations that the Board regulates: alarm installers, architects, engineers, geologists, home inspectors, landscape architects, and surveyors.

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 concludes that this rulemaking will only impose minimal burdens on registrants. These registrants will benefit from clearer and more concise rules. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Board, those who register with the Board, businesses that request lists from the board for commercial purposes, and the general fund.

- The Board will benefit from this rulemaking because it clarifies the rules. The Board will also benefit from modernizing their fee schedule because it has not been updated since 1983. Regardless, the increase in fees will be a minimal increase relative to the total budget of the Board.
- The Board’s registrants will benefit from this rulemaking due to increased clarity. These stakeholders will also benefit because the Board will pay for credit card transaction fees.
- The Board’s registrants will incur costs in the form of higher fees. These fee increases are anticipated to be modest and only increase the Board’s revenue by \$36,000 annually. In FY 2017, the Board’s funds totaled \$2.5 million, and the Board had a staff of 25 FTEs. Relative to the Board’s current fee structure, the new fee structure will be a minimal increase.
- Some businesses request lists of registrants from the Board for various commercial purposes such as: recruiting association members, marketing education courses, and recruiting talent. The Board indicates that the new fees charged for commercial use lists will be more aligned with their value on the commercial market per ARS § 39-121.03. While these businesses will be required to pay more for these lists, the Board indicates that the fee increase will support the process of creating digital access to this data. Future lists generated electronically by the requestor will not have fees charged by the Board.
- The general fund will benefit from a minimal increase in deposits from the Board. The Board uses 90 percent of its revenues to fund Board activities, and it deposits the other 10 percent into the general fund. The Board estimates that the increases in fees will result in an additional \$3,600 annually deposited into the general fund.

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

Yes. The Board states that it did not receive any public comments on the proposed rules.

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

No. Only non-substantive clarifying changes have been 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 directly correspond to the rules.

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

Yes. The Board has indicated to Council staff that it issues seven different types of licenses and is in compliance with A.R.S. § 41-1037.

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?

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

11. Conclusion

If approved, this rulemaking will become effective 60 days after filing with the Secretary of State. As the rulemaking generally meets the requirements of A.R.S. §§ 41-1052 and 41-1055, Council staff recommends approval of the rulemaking.



State of Arizona
BOARD OF TECHNICAL REGISTRATION

1110 W. Washington Suite 240 Phoenix, Arizona 85007 (602)364-4930 FAX: (602)364-4931 <https://btr.az.gov/>

April 30, 2018

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Notice of Final Rulemaking: 4 A.A.C. 30, Professions and Occupations - Board of Technical Registration

Dear Ms. Colyer:

Enclosed is the Notice of Final Rulemaking identified above which I am submitting, as the Executive Director of the Arizona Board of Technical Registration, for approval by the Governor's Regulatory Review Council (Council) under A.R.S. § 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 January 21, 2018. Submission of the rule is within the 120 days allowed for final rulemaking.

2. Procedures followed:

As required by the Administrative Procedure Act, a Notice of Rulemaking Docket Opening was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on June 2, 2017. A Notice of Proposed Rulemaking was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on December 22, 2017. The Board offered to hold an oral proceeding if requested, but no request was made; therefore, the Board did not hold an oral proceeding. The Board received

written comments from its Home Inspector Rules and Standards Committee as authorized by A.R.S. § 32-111.

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 does not relate to a five-year-review report.

4. Whether the rule contains a new fee and, if it does, citation of the statute expressly authorizing the new fee:

The rule establishes a fee for two services that are not required from the Board but are requested by the public, those being verification of license and pocket cards. The authorizing statutes are A.R.S. § 32-106(A)(9) and 32-124.

5. Whether the rule contains a fee increase:

The rule package does include minor fee increases for services listed in A.R.S. § 32-124.

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

The Board is not requesting an immediate effective date.

7. A list of all items enclosed:

- a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;

- b. 2018 Economic, Small Business, and Consumer Impact Statement, and

- c. A copy of the general and specific statutes authorizing the rule.

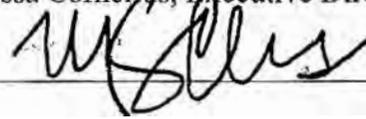
- d. A copy of the Board's e-mail to the Governor's Office requesting an exception from the rulemaking moratorium and a copy of the Governor's Office e-mail to the Board granting an exception from the rulemaking moratorium.

The Board requests that the rules be heard at the Council meeting on May 30, 2018.

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

I certify that the Board, as the preparer of the economic, small business, and consumer impact statement, has notified the Joint Legislative Budget Committee that no new full-time employees are necessary to implement and enforce the rules.

Melissa Cornelius, Executive Director

A handwritten signature in black ink, appearing to read "Melissa Cornelius", is written over a horizontal line. The signature is cursive and somewhat stylized.

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

PREAMBLE

| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R4-30-101 | Amend |
| R4-30-102 | Amend |
| R4-30-103 | Repeal |
| R4-30-106 | Amend |
| R4-30-107 | Amend |
| R4-30-120 | Amend |
| R4-30-121 | Amend |
| R4-30-123 | Amend |
| R4-30-126 | Amend |
| R4-30-201 | Amend |
| R4-30-202 | Amend |
| R4-30-202.01 | Repeal |
| R4-30-203 | Amend |
| R4-30-204 | Amend |
| R4-30-208 | Amend |
| R4-30-209 | Amend |
| R4-30-210 | Amend |
| R4-30-214 | Amend |
| R4-30-222 | Amend |
| R4-30-242 | Amend |
| R4-30-247 | Amend |
| R4-30-252 | Repeal |
| R4-30-254 | Amend |

| | |
|----------------------|--------|
| R4-30-262 | Repeal |
| R4-30-264 | Repeal |
| R4-30-270 | Repeal |
| R4-30-271 | Repeal |
| R4-30-272 | Repeal |
| R4-30-282 | Amend |
| R4-30-284 | Amend |
| R4-30-301 | Amend |
| R4-30-301.01 | Amend |
| R4-30-303 | Amend |
| R4-30-304 | Amend |
| R4-30-305 | Repeal |
| R4-30-306 appendix A | Amend |
| R4-30-306 appendix B | Repeal |

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. § 32-106,

Implementing statute: A.R.S. § 32-106.02, A.R.S. § 32-111, A.R.S. § 32-121, A.R.S. § 32-122, A.R.S. § 32-122.01, A.R.S. § 32-122.02, A.R.S. § 32-122.05, A.R.S. § 32-122.06, A.R.S. § 32-124, A.R.S. § 32-125, A.R.S. § 32-126, A.R.S. § 32-127, A.R.S. § 32-128, A.R.S. § 32-129, A.R.S. § 32-144.

3. The effective date of the rules:

4. Previous notices that appeared in the *Register* concerning this final rule.

Notice of Rulemaking Docket Opening: (volume 23 Issue 22) A.A.R. (page 1488)

Notice of Proposed Rulemaking: (volume 23 Issue 51) A.A.R. (pages 3463-3496)

5. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Patrice Pritzl, Deputy Director
Address: Arizona State Board of Technical Registration
1110 W. Washington Street, Suite 240
Phoenix, AZ 85007
Telephone: (602) 364-4930
Facsimile: (602) 364-4931
E-mail: Patrice.Pritzl@azbtr.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 Agency proposes to amend rules as they relate to the professions and occupations under its jurisdiction to clarify modern industry standards and requirements in the licensing and enforcement areas, reflect statutory changes the Legislature made to the Board's Practice Act in 2016 and 2017, establish rules pertaining to the regulation of alarm firms, controlling persons and alarm agents and update the Board's fees to reflect current agency costs for providing services.

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:

None

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

Not applicable.

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

The proposed amendments intend to amend Board rules to conform to recent statutory changes, implement statutory requirements, update terminology, eliminate archaic language and provide more clarity to registrants and the public. These minor changes have minimal to no economic impact on the regulated population, public, the Board or other agencies.

The amendment to R4-30-106: Fees may have a minor to moderate economic impact on public records requests, examination review requests, return check fees, verification of registration, replacement certificates and pocket cards. The proposed amendment to R4-30-247 will clarify the qualifying status for a minimal number of out-of-state home inspection courses. The impact is not expected to be substantive. The amendment to R4-30-301 allows the Board to consider all criminal convictions of a serious nature when determining unprofessional conduct. The amendment may result in additional discipline of registrants but is necessary to adequately protect the health, safety and welfare of the public.

10. Changes made to the rules between proposed and final rules including all supplemental notices:

R4-30-102(1), final sentence now reads, "The applicant shall not perform any fee-paid Home Inspections during this Parallel Inspection period."

Changed from, "The applicant shall not perform any fee-paid Home Inspections during this Peer Review period."

11. Summarize the principal comments received from the public and your agency's response to them:

Home Inspector Rules and Standards Committee commented that the final sentence of proposed rule R4-30-102(1) needed to be amended.

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

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

None

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

No corresponding federal laws apply. The rules are being promulgated under state law.

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

None.

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. Specify whether the rule was previously made as an emergency rule:

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 30. BOARD OF TECHNICAL REGISTRATION
ARTICLE 1. GENERAL PROVISIONS

R4-30-101. Definitions

The following definitions apply in this Chapter unless the context otherwise requires:

1. “Act” means the Technical Registration Act, A.R.S. Title 32, Chapter 1.
2. “Active engagement” means actually practicing or providing architectural, ~~assaying,~~ engineering, geological, landscape architectural, or land surveying services.

3. “Bona fide employee” means:
 - a. Any person employed by a town, city, county, state, or federal agency working under the direction or supervision of a registrant;
 - b. Any person employed by a business entity and working under the direct supervision of a registrant who is also employed by the same business entity;
or
 - c. Any person working under the direct supervision of a registrant who:
 - i. Receives direct wages from the registrant;
 - ii. Receives contract compensation from the registrant; or
 - iii. Receives direct wages from the project prime professional who has a contract with another registrant and whose work product is the responsibility of the latter registrant.
4. “Branch” means a specialty area within the category of engineering.
5. “Category” means the professions of architecture, ~~assaying~~, geology, engineering, landscape architecture, and land surveying.
6. “De minimis violations” means violations of Board statutes or rules that do not present a threat to public welfare, health, or safety.
7. “Design team” means a group of individuals that includes one or more professional registrants collaborating with any other individuals on a specific project to develop professional documents.
8. “Detached single family dwelling” as used in the Act means a single family dwelling unit such as a house, which is structurally and physically separate from all other family dwelling units. This does not mean any single family dwelling unit which is part of a multiple dwelling unit building such as a duplex, townhouse, apartment building, condominium, or cooperative. The term “detached single family dwelling” also includes all subsidiary buildings, structures and improvements such as garage, storage areas, swimming pool, and landscaping.
9. “Direct supervision” means a registrant’s critical examination and evaluation of a bona fide employee’s work product, during and after the preparation, for purposes

of compliance with applicable laws, codes, ordinances, and regulations pertaining to professional practice.

10. "Experience" is classified as follows:

- a. "Subprofessional experience" means task work done under direct supervision and not falling within the definition of professional experience, including but not limited to time spent as a rodman, chainman, recorder, instrument technician, survey aide, technician, clerk of the works, or similar work.
- b. "Professional experience" means a diversity of work calling for substantial technical knowledge, skill, and responsibility as well as a lesser degree of supervision necessary to ensure that good judgment is applied to protect the public during the course and scope of projects.
- c. "Responsible charge experience" means work in the field or in the office, where the ~~applicant~~ applicant/registrant had responsibility for the direction of the work and its successful accomplishment and where the ~~applicant~~ applicant/registrant had to make professional decisions without relying on advice or instructions from or first referring the decisions for approval to a superior.
- d. "Design experience" means professional experience, including work defined under "responsible charge experience," where the ~~applicant~~ applicant/registrant must fulfill the requirements of local circumstances and conditions and yet not violate any of the requirements of the profession and ensure that the executed plan meets the purpose for which it was designed.

11. "Federal agency" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.

12. "Good moral character and repute" means that the registration or certification applicant/registrant:

- a. Has not been convicted of a ~~class 1~~ felony or equivalent offense in another jurisdiction as under defined in A.R.S. § 13-601(A).
- b. Has not been convicted of a ~~felony or~~ misdemeanor or equivalent offense in another jurisdiction if the offense has a reasonable relationship to the

functions of the employment or category for which the registration, certification, or designation is sought;

- c. Has not, within five years of application for registration or certification, committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the candidate's proposed area of practice;
 - d. Is not currently incarcerated in a penal institution;
 - e. Has not engaged in fraud or misrepresentation in connection with the application for registration, certification, or related examination;
 - f. Has not had a registration or certification revoked or suspended for cause by this state or by any other jurisdiction, or surrendered a professional license in lieu of disciplinary action;
 - g. Has not practiced without the required technical registration or certification in this state or in another jurisdiction within the two years immediately preceding the filing of the application for registration or certification; and
 - h. Has not, within five years of application for registration or certification, committed an act that would constitute unprofessional conduct, as set forth in R4-30-301 or R4-30-301.01.
13. "Gross negligence" means a substantial deviation in professional practice from the standard of professional care exercised by members of the applicant's/registrant's profession, or a substantial deviation from any technical standards issued by a nationally recognized professional organization comprised of members of the applicant's/registrant's profession, or a substantial deviation from requirements contained in state, municipal, and county laws, ordinances, and regulations pertaining to the registrant's professional practice.
14. "Incompetence" means to lack the professional qualifications, experience, or education to undertake a professional engagement or assignment.
15. "Insufficient evidence to support disciplinary action" means:
- a. The Board determines there was no evidence to warrant disciplinary action, but believes that continuation of the actions leading to the investigation may

- result in future Board action against the registrant; or
- b. The Board determines that there were de minimis violations of Board statutes or rules, but no disciplinary action should be taken against the certification or registration and that a letter of concern would be as effective a resolution as a letter of reprimand in deterring future violations of a like nature.
16. “Other misconduct” means the applicant/registant:
- a. ~~Has been convicted of a class 1 felony;~~
 - b. ~~Has been convicted of a felony or misdemeanor, if the offense has a reasonable relationship to the functions of the registration;~~
 - c. ~~Is presently incarcerated in a penal institution;~~
 - d. ~~Has had a professional license or registration suspended or revoked for cause by this state or by any other jurisdiction or has surrendered a professional license in lieu of disciplinary action;~~
 - e. Has knowingly acted in violation or knowingly failed to act in compliance with any provisions of the Act, or rules of the Board or any state, municipal, or county law, code, ordinance, or regulation pertaining to the practice of the applicant’s/registant’s profession; or
 - f. b. Has refused to respond fully to a Board inquiry relating to an applicant’s/registant’s qualifying experience, or provided the Board with false information relating to an applicant’s/registant’s qualifying experience.
17. “Practicing” means offering or performing professional services regulated by the Act within the state of Arizona.
18. “Prepared” means to exercise direct supervision over the preparation of professional documents.
19. “Professional documents” mean the professional work product of a registrant that requires professional judgment, design, analysis, or conclusions, including original plans, drawings, maps, plats, reports, written opinions, specifications, and calculations.
20. “Project Prime Professional” means the registrant is responsible for the coordination, continuity, and compatibility of each collaborating registrant’s work

- (when retained by the project prime professional).
21. “Public works” project means a work or undertaking that is financed, in whole or in part, by a federal agency or by a state public body, as defined in this Article.
 22. “Registrant” means a person or firm who has been granted registration or certification to practice any profession regulated pursuant to the Act.
 23. “Retired from active practice” means that the registrant no longer performs professional services.
 24. “State public body” means the state or a county, city, town, municipal corporation, authority, or any other subdivision, agency, or instrumentality of such an entity, corporate or otherwise.
 25. “Structure” as used in the Act means any constructed or designed improvement or improvements to real property including all onsite improvements, fixed equipment, and landscaping, pursuant to an engagement or project.

R4-30-102. Home Inspection Definitions

The following definitions apply to home inspection requirements in this Chapter:

1. ~~“Automatic safety controls” means devices designated and installed to protect systems and components from high or low pressures and temperatures, electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions.~~ “Parallel Inspection” means a home inspection completed by an applicant during the application process that is supervised by a certified home inspector acting as the Parallel Inspector, in the presence of no more than three other applicants. The applicant shall produce a written report for each Parallel Inspection, which the supervising certified home inspector, serving as the Parallel Inspector, shall review, analyze, correct, and return to the applicant within 10 calendar days after receiving the written report. The Parallel Inspector shall notate and instruct the applicant so that each report meets the Standards of Professional Practice for Arizona Home Inspectors. The applicant shall not perform any fee-paid Home Inspections during this Parallel Inspection period.
2. ~~“Central air conditioning” means a system that uses ducts to distribute cooled or~~

- ~~dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.~~ “Parallel Inspector” means an Arizona Certified Home Inspector who performs parallel inspections for a home inspector applicant so that the applicant can obtain a certification to conduct home inspections. A Parallel Inspector shall be in good standing with the Board and shall not have received any disciplinary action from the Board within the preceding three (3) years. The Parallel Inspector shall have been continuously certified by the Board as a Home Inspector for at least five (5) years and shall have conducted at least two hundred and fifty (250) fee-paid home inspections in the State of Arizona. The Applicant shall provide a signed Affidavit from the Parallel Inspector affirming that the Parallel Inspector has met this criteria to the Board with the application for certification.
3. ~~“Component” means a readily accessible and observable aspect of a system, such as a floor or wall, but not individual pieces such as boards or nails where many similar pieces make up the system.~~ “Peer Review” means a home inspection performed alongside a supervising Peer Reviewer in order to comply with the terms of Board ordered discipline. The Arizona Certified Home Inspector subject to Board ordered discipline shall, at the conclusion of each Peer Review, submit a written Home Inspection Report to the Peer Reviewer for analysis and review. The Peer Reviewer shall notate and instruct the Arizona Certified Home Inspector subject to Board ordered discipline in order for the report to meet the Standards of Professional Practice for Arizona Home Inspectors. The Arizona Certified Home Inspector subject to Board ordered discipline shall not perform any fee-paid Home Inspections during this Peer Review period.
4. ~~“Cross connection” means any physical connection or arrangement between potable water and any source of contamination.~~ “Peer Reviewer” means an Arizona Certified Home Inspector performing peer review inspections for a home inspector subject to Board ordered discipline so that inspector can fulfill the terms of the ordered discipline. A Peer Reviewer shall be in good standing with the

Board and shall not have received any disciplinary action from the Board within the preceding three (3) years. The Peer Reviewer shall have been continuously certified by the Board as a home inspector for at least five (5) years and shall have conducted at least two hundred and fifty (250) fee-paid home inspections in the State of Arizona. The Arizona Certified Home Inspector subject to Board ordered discipline shall provide the Board with a signed Affidavit from the Peer Reviewer affirming that the Peer Reviewer has met these criterion at the conclusion of each peer review inspection.

5. ~~“Dangerous or adverse situations” means situations that pose a threat of injury to the inspector, and those situations that require the use of special protective clothing or safety equipment. “Report Checklist Supplement” a tool designed to assist home inspector applicants, parallel inspectors, peer reviewers, application reviewers, enforcement advisory evaluators and certified home inspectors when reviewing or filling out an application for home inspector certification and a home inspection report. The “Report Checklist Supplement” is not a substitute for the current version of the “Standards of Professional Practice.”~~
6. ~~“Dismantle” means to take apart or remove any component, device, or piece of equipment that is bolted, screwed, or fastened by other means and that would not be taken apart or removed by a homeowner in the course of normal household maintenance.~~
7. ~~“Major defect” means a system or component that is dangerous or not functioning.~~
8. ~~“Observe” means the act of making a visual examination of a system or component and reporting on its condition.~~
9. ~~“On-site water supply quality” means water quality based on the bacterial, chemical, mineral, and solids content of the water.~~
10. ~~“Parallel inspection” means a home inspection by an applicant supervised by a certified home inspector, in the presence of no more than three other applicants, that includes a written report prepared by the applicant, reviewed and corrected by the supervising certified home inspector, and returned to the applicant within~~

- 10 days after the supervising certified home inspector receives the written report.
11. ~~“Primary windows and doors” means windows and exterior doors that are designed to remain in their respective openings year round.~~
 12. ~~“Readily openable access panel” means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices so the panel can be lifted off, swung open, or otherwise removed by one person; and has edges and fasteners that are not painted in place; is within normal reach or accessible from a four foot stepladder, and is not blocked by stored items, furniture, or building components.~~
 13. ~~“Recreational facilities” means spas, saunas, steam baths, swimming pools, tennis courts, play ground equipment, and other exercise, entertainment, or athletic facilities.~~
 14. ~~“Representative number” means for multiple identical components such as windows and electrical outlets, the inspection of one component per room. For multiple identical exterior components, the inspection of one component on each side of the building.~~
 15. ~~“Safety glazing” means tempered glass, laminated glass, or rigid plastic.~~
 16. ~~“Shut down” means a piece of equipment whose switch or circuit breaker is in the “off” position, or its fuse is missing or blown, or a system cannot be operated by the device or control that a home owner should normally use to operate it.~~
 17. ~~“Solid fuel heating device” means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.~~
 18. ~~“Structural component” means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads). For purposes of this definition, a dead load is the fixed weight of a structure or piece of equipment, such as a roof structure on bearing walls; and a live load is a moving variable weight added to the dead load or intrinsic weight of a structure.~~
 19. ~~“System” means a combination of interacting or interdependent components,~~

~~assembled to carry out one or more functions.~~

- ~~20. “Technically exhaustive” means an inspection involving measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.~~

R4-30-103. Drug Laboratory Site Remediation Definitions Repealed

In addition to the definitions provided in A.R.S. §§ 12-990, 32-101, and R4-30-101, the following definitions shall apply only to drug laboratory site remediation requirements in this Chapter:

- ~~1. “ADHS” means the Arizona Department of Health Services.~~
- ~~2. “AHERA” means the Asbestos Hazard Emergency Response Act of 1986 training provisions contained in 40 CFR 763.92, effective November 15, 2000, 65 FR 69216, the provisions of which are incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at the office of the Board of Technical Registration and from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 6397-9000, and on the federal digital system at www.gpo.gov/fdsys.~~
- ~~3. “AWQS” means the Arizona Aquifer Water Quality Standards contained in A.A.C. R18-11-406.~~
- ~~4. “Background concentration” means the level of naturally occurring contaminant in soil.~~
- ~~5. “Certificate” or “certificates” means registrations or certifications issued to onsite workers or onsite supervisors by the Board.~~
- ~~6. “Certified Industrial Hygienist” means a person certified in the comprehensive practice of industrial hygiene by the American Board of Industrial Hygiene.~~
- ~~7. “Certified Safety Professional” means a person certified in safety practices and procedures by the Board of Certified Safety Professionals.~~
- ~~8. “Chain of custody protocol” means a procedure used to document each person~~

- that has had custody or control of an environmental sample from its source to the analytical laboratory, and the time of possession of each person.
9. ~~“Characterize” means to determine the quality or properties of a material by sampling and testing to determine the concentration of contaminants, or specific properties of the material such as flammability or corrosiveness.~~
 10. ~~“Combustible” means vapor concentration from a liquid that has a flash point greater than 100° F.~~
 11. ~~“Confirmation sampling of remedial projects” means collecting material samples after a remedial effort to confirm that the remedial effort reduced contaminant concentrations or material properties to a level at or below the remedial standard.~~
 12. ~~“Contamination” or “contaminated” means the state of being impacted or polluted by hazardous or petroleum substances or chemicals.~~
 13. ~~“Corrosive” means a material such as acetic acid, acetic anhydride, acetyl chloride, ammonia (anhydrous), ammonium hydroxide, benzyl chloride, dimethylsulfate, formaldehyde, formic acid, hydrogen chloride/hydrochloric acid, hydrobromic acid, hydroiodic acid, hydroxylamine, methylamine, methylene chloride (dichloromethane, methylene dichloride), methyl methacrylate, nitroethane, oxalylchloride, perchloric acid, phenylmagnesium bromide, phosphine, phosphorus oxychloride, phosphorus pentoxide, sodium amide (sodamide), sodium metal, sodium hydroxide, sulfur trioxide, sulfuric acid, tetrahydrofuran, or thionyl chloride that increases or decreases the pH of a material and may cause degradation of the material.~~
 14. ~~“Delineated” means to determine the extent of a contaminant by sampling, testing, and showing the size and shape of the contaminant plume on a drawing.~~
 15. ~~“EPA” means the United States Environmental Protection Agency.~~
 16. ~~“EPA Method 8015B” means the EPA approved method for determining the concentration of various non-halogenated volatile organic compounds and semi-volatile organic compounds by gas chromatography/flame ionization detector. The EPA first published the second revision to the report, SW-846, citing this Method in Ch. 4.3.1, in the South West Region, in December 1996. It is~~

- incorporated by reference. The material incorporated by reference does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and at the office of the Board of Technical Registration.
17. “EPA Method 6010B” means the EPA approved method for determining the concentration of various heavy metals by inductively coupled plasma. The EPA first published the report, SW-846, citing this Method in Ch. 3.3, in the South West Region, in December 1996. It is incorporated by reference. The material incorporated by reference does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and at the office of the Board of Technical Registration.
18. “EPA Method 8260B” means the EPA approved method for determining the concentration of various volatile organic compounds by GC/MS. The EPA first published the report, SW-846, citing this Method in Ch. 4.3.2, in the South West Region, in December 1996. It is incorporated by reference. The material incorporated by reference does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105 or on the EPA website at http://epa.gov/wastes/hazard/testmethods/sw846/online/8_series.htm, and at the office of the Board of Technical Registration.
19. “Exposed” means open to the atmosphere and not covered by a non-porous material.
20. “Final Report” means the report required in R4-30-305(D).
21. “FID” means flame ionization detector.
22. “Flammable” means vapor concentration from a liquid that has a flash point less than 100° F.
23. “GC/MS” means gas chromatograph/mass spectrometer.
24. “Hazardous chemical decontamination projects” means work or services related to the remediation, removal, or clean-up of hazardous chemicals, hazardous

- substances, petroleum substances, or other hazardous materials.
25. ~~“Hazardous substance” means red phosphorous, iodine crystals, tincture of iodine, methamphetamine, ephedrine, pseudoephedrine, volatile organic compounds, corrosives, LSD, ecstasy, lead, mercury, and any other chemical used at a clandestine drug laboratory site to manufacture methamphetamine, LSD, or ecstasy.~~
26. ~~“Hazardous waste” means toxic materials to be discarded as defined in 40 CFR 261.3, and 66 FR 60153, effective December 3, 2001, and published by the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 and available electronically through the federal digital system at www.gpo.gov/fdsys/. The text of this regulation is incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available in the office of the Board of Technical Registration.~~
27. ~~“HAZWOPER” or Hazardous Waste Operations and Emergency Response training means Hazardous Waste Operations Training as defined in 29 CFR 1910.120(e), and 67 FR 67964, effective November 7, 2002, and published by the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000, and available electronically through the federal digital system at www.gpo.gov/fdsys/. The text of this regulation is incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of these standards are available at the office of the Board of Technical Registration.~~
28. ~~“HEPA” means high efficiency particulate air.~~
29. ~~“Highly suggestive of contamination” means visible or olfactory indication of contamination, or locations that are within 10 feet of areas where hazardous substances were stored or used to manufacture methamphetamine, LSD, or ecstasy and could likely be contaminated with hazardous substances, unless separated by a full height, non-porous wall with no openings.~~
30. ~~“Impacted groundwater” means water present beneath ground surface that contains hazardous or petroleum substances at concentrations above background~~

concentrations.

31. ~~“Impacted soil” means soil that contains hazardous or petroleum substances at concentrations above background concentrations.~~
32. ~~“Inaccessible” means unable to be reached without removal of a construction material or component.~~
33. ~~“LEL/O₂” means lower explosive limit/oxygen.~~
34. ~~“Laboratory detection limit” means the lowest concentration of a hazardous or petroleum substance that can be reliably quantified or measured by an analytical laboratory under ideal operating conditions for a particular test method on a sample.~~
35. ~~“Negative pressure enclosure” means an air-tight enclosure using a local exhaust and HEPA filtration system to maintain a lower air pressure in the work area than in any adjacent area and to generate a constant flow of air from the adjacent areas into the work area.~~
36. ~~“Non-porous” means resistant to penetration of hazardous substances or non-permeable substance or materials, such as concrete floors, wood floors, ceramic tile floors, vinyl tile floors, sheet vinyl floors, painted drywall or sheet rock walls or ceilings, doors, appliances, bathtubs, toilets, mirrors, windows, counter tops, sinks, sealed wood, metal, glass, plastic, and pipes.~~
37. ~~“Personal protective equipment” means various types of clothing such as suits, gloves, hats, and boots, or apparatus such as face masks or respirators designed to prevent inhalation, skin contact, or ingestion of hazardous chemicals.~~
38. ~~“Personnel decontamination procedures” means procedures used to clean or remove potential contamination from personal protective equipment.~~
39. ~~“PID” means photo ionization detector.~~
40. ~~“Porous” means easily penetrated or permeated by hazardous substances or permeable substances or materials such as carpets, draperies, bedding, mattresses, fabric covered furniture, pillows, drop ceiling or other fiberboard ceiling panels, cork paneling, blankets, towels, clothing, and cardboard.~~
41. ~~“Properly disposed of” means to discard at a licensed facility in accordance with~~

- all applicable laws and not reused or sold, or metal recycled by giving or selling to a licensed recycling facility for scrap metal.
42. ~~“Remedial standard” or “remediation standard” means the level or concentration to be achieved by the drug laboratory site remediation firm as defined in R4-30-305(C)(2) and (C)(4).~~
43. ~~“Remediated” or “remediation” means treatment of the residually contaminated portion of the real property by a drug laboratory site remediation firm to reduce contaminant concentrations to a level below the remedial standards.~~
44. ~~“Residual contamination” means contamination resulting from spills or releases of hazardous or petroleum substances.~~
45. ~~“Return air housing” means the main portion of an air ventilation system where air from the livable space returns to the air handling unit for heating or cooling.~~
46. ~~“Reusable” means not disposable or equipment that can be used more than one time for sampling after cleaning.~~
47. ~~“Sample location” means the actual place where an environmental sample was obtained.~~
48. ~~“Shoring plan” means a written description or drawing that shows the structural supports required to safely occupy the building during remediation.~~
49. ~~“Seepage pit” means a hole in the ground used to dispose of septic fluids.~~
50. ~~“Services” means the activities performed by the drug laboratory site remediation firm in the course of remediating residual contamination from the manufacturing of methamphetamine, ecstasy, or LSD, or from the storage of chemicals used in manufacturing methamphetamine, ecstasy, or LSD.~~
51. ~~“SRL” means the Arizona residential soil remediation levels contained in, 18 A.A.C. 7, Article 2, Appendices A and B.~~
52. ~~“Temporary filter media” means a device used to filter or clean air.~~
53. ~~“Toxic” means hazardous substances that can cause local or systemic detrimental effects to people.~~
54. ~~“VOA” means volatile organic analyte.~~
55. ~~“VOCs” means volatile organic compounds or chemicals that can evaporate at~~

~~ambient temperatures such as acetone, acetonitrile, aniline, benzene, benzaldehyde, benzyl chloride, carbon tetrachloride, chloroform, cyclohexanone, dioxane, ethanol, ethyl acetate, ethyl ether, Freon 11, hexane, isopropanol, methanol, methyl alcohol, methylene chloride, naphtha, nitroethane, petroleum ether, petroleum distillates, pyridine, toluene, o-toluidine, and any other volatile organic chemical used at the clandestine drug laboratory site to manufacture methamphetamine, LSD, or ecstasy.~~

~~56. "Waste" means refuse, garbage, or other discarded material.~~

R4-30-106. Fees

A. The Board shall charge the following fees:

- ~~1.~~ 1. A roster computer generated list of registrants for a non-commercial purpose is \$15.00-\$0.25 per name, with a maximum fee of \$300.00.
- ~~2.~~ 2. A code or rule booklet is \$5.00. A computer generated list of registrants for a commercial purpose is \$0.25 per name, with a minimum fee of \$250.00.
- ~~3.~~ 3. The computer printout fee per name is \$0.10 non-commercial use). The maximum charge is \$150.00 per run.
- ~~4.~~ 3. The photocopy fee is \$0.20 per page (non-commercial use). \$1.00 for up to three pages followed by a \$0.25 fee for each additional page.
- ~~5.~~ 4. The replacement certificate fee for registrants and certificate holders is \$10.00 per certificate.
- ~~6.~~ 5. The recording medium copy fee is \$10.00 \$15.00 per recording.
- ~~7.~~ 6. The local examination review fee is \$25.00 \$30.00 per hour.
- ~~8.~~ 7. The returned check fee is \$25.00 per check.
- ~~8.~~ The verification of registration or certification fee is \$25.00 per verification.
- ~~9.~~ The laminated pocket card fee is \$10.00 per card.

B. A person paying fees shall remit them in United States dollars in the form of cash, check, ~~or money order, or credit card.~~ If a check is returned for insufficient funds, repayment, including payment of the returned check charge, shall be made in the form of cash, money order, or certified check.

C. Upon written request, the Board shall waive renewal fees for registrants whose

registration is in inactive status.

- D. Application fee refunds are not allowed after the application has been assigned an application number and processing commences.

R4-30-107. Registration and Certification Expiration Dates

- A. Registrants with triennial registration have expiration dates based on the date of initial registration. The following table indicates triennial registration renewal periods:

| Initial Registration Granted Date | Initial Triennial Renewal Expiration Date |
|--------------------------------------|--|
| Jan. 1 through Mar. 31 | Three years from Mar. 31 |
| Apr. 1 through Jun. 30 | Three years from Jun. 30 |
| Jul. 1 through Sept. 30 | Three years from Sept. 30 |
| Oct. 1 through Dec. 31 | Three years from Dec. 31 |

- B. Subsequent triennial renewal dates will be three years from the initial triennial renewal expiration date.
- C. All annual registrations and certifications expire one year from the date of issuance.
- D. Alarm business certifications expire three years from the date the certification is granted and subsequently every three years thereafter.
- E. Alarm controlling persons and alarm agent certifications expire three years from the date the certification was granted and subsequently every three years thereafter.

R4-30-120. Complaint Review Process

- A. The Board shall select a pool of volunteers who have submitted resumes and letters of interest to serve on enforcement advisory committees (“EACs”). The Executive Director shall select registrants and public members from the pool of volunteers to serve on the committees as needed. When practicable, Each committee shall be comprised of one public member and a minimum of four registrants, at least one of whom is registered in the same category or branch as the respondent. The committee

members shall provide technical assistance to Board staff in the evaluation and investigation of complaints. A quorum of three committee members is required for each committee meeting.

- B. During the preliminary informal investigation of a complaint, registrants named as respondents may appear before an enforcement advisory committee (“EAC”) ~~for an informal conference~~ relating to the complaint. Respondents may elect to appear with or without counsel. The committee shall attempt to assess the complaint and discuss the complaint with the respondent and others, if deemed necessary, and prepare a recommendation for disposition of the complaint.
- C. Respondents are not required to participate in the ~~informal conference~~ enforcement advisory committee meeting and no inference shall be drawn from a respondent’s decision not to attend.
- D. If a respondent chooses not to attend the ~~informal conference~~ enforcement advisory committee meeting, the committee may meet and review information presented by staff and others and prepare a recommendation for disposition of the complaint.
- E. The Board shall advise the respondent of the committee recommendation ~~and offer the respondent the opportunity to attend an informal compliance conference as outlined in R4-30-123 as part of the informal investigation.~~
- F. After the informal investigation has been completed, if the committee recommendation supports a determination that the complaint is unfounded, the recommendation shall be forwarded to the Board for review and final disposition.
- G. In all cases where the advisory committee finds probable cause to believe that disciplinary action is warranted, the staff will attempt to ~~obtain~~ resolve the complaint informally by obtaining a signed consent agreement from the respondent. The Board shall review the committee recommendation, staff recommendation, consent agreement, and, in the event a signed consent agreement cannot be obtained, any counterproposal from the respondent.

R4-30-121. Investigation of Violations

If any information concerning a possible violation of the Act or any of these rules is received or obtained by the Board or Board staff, an investigation shall be conducted

prior to the initiation of formal proceedings. Investigative reports, professional assessments, enforcement advisory committee recommendations, and other documents and materials relating to an investigation shall remain confidential until the matter is closed, until the issuance of a hearing notice under A.R.S. § 32-128, or until the matter is settled by consent order; however, the Board shall inform the respondent that an investigation is being conducted and explain the general nature of the investigation. The respondent shall have access to a copy of the complaint and any assessment or EAC reports drafted during the investigation. The public may obtain information that an investigation is being conducted and an explanation of the general nature of the investigation. The Board may refer investigative information to other public agencies as appropriate under the circumstances.

R4-30-123. Informal Compliance Procedures

- A.** Upon notification of the recommendation of an enforcement advisory committee, a registrant may ~~attend a compliance conference~~ meet with Board staff. The registrant may appear with or without counsel. ~~The Board staff shall mail the notice of the compliance conference to the registrant at least 15 days before the date of the conference.~~ The purpose of the ~~compliance conference~~ meeting is to discuss informal settlement of the investigative matter. Upon completion of the ~~interview meeting~~, a Board enforcement officer shall make recommendations to the Board.
- B.** At any time either before or after formal disciplinary proceedings have been instituted against a registrant, the registrant may submit to the Board an offer of settlement whereby, in lieu of formal disciplinary action ~~by the Board~~, the registrant agrees to accept certain sanctions such as suspension, civil penalties, enrolling in relevant professional education courses, limiting the scope of practice, submitting work product to professional peer review, or other disciplinary sanctions. If the Board determines that the proposed settlement will adequately protect the public welfare, the Board shall accept the offer and enter a decision consented to by the registrant, incorporating the proposed settlement.

R4-30-126. Service of Board Decisions; Rehearing of Board Decisions

- A.** Except as provided in subsection (G), any party to an appealable agency action or contested case before the Board who is aggrieved by a decision rendered in the matter may file with the Board, not later than 30 calendar days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the motion. A decision shall be deemed to have been served on the date when personally delivered or mailed by certified mail to the party's last known address of record with the agency. The filing of a motion for rehearing is a condition precedent to the right of appeal provided in A.R.S. § 32-128(J).
- B.** A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 calendar days after service of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument. The filing of a motion for rehearing or review suspends the operation of the Board's order and allows the registrant to practice in his or her profession pending denial or granting of the motion, and pending the decision of the Board on the rehearing or review if the motion is granted.
- C.** A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the agency, members of the Board or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 2. Misconduct of the Board or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
 7. The decision is unjustified based upon the evidence or is contrary to law.

- D. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- E. Not later than 30 days after a decision is rendered, the Board may on its own motion order a rehearing or review of its decision for any reason listed in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting a rehearing shall specify the grounds for the rehearing.
- F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within ten days after service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G. If the Board makes specific findings that the immediate effectiveness of a decision is necessary for preservation of the public welfare, health or safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

ARTICLE 2. REGISTRATION PROVISIONS

R4-30-201. Registration as an Architect, ~~Assayer~~, Engineer, Geologist, Landscape Architect, or Land Surveyor

- A. An applicant for registration as an architect, ~~assayer~~, engineer, geologist, landscape

architect, or land surveyor shall submit ~~an original and one copy~~ of a completed application package for professional registration that contains the following:

1. Evidence of successful completion of the current national professional examination or waiver of the examination pursuant to A.R.S. § 32-126 and R4-30-203 in the category, and branch if applicable, for which registration is sought. Applicants shall arrange to have their examination results sent directly to the Board from the applicable testing agency holding the examination results;
2. Name, residence address, mailing address if different from residence, and telephone number, of the applicant;
3. Date of birth and social security number of the applicant;
4. Citizenship or legal residence of the applicant;
5. Category, and branch of engineering if applicable, for which the applicant is seeking registration;
6. A detailed explanatory statement and documentation, regarding:
 - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction;
 - b. Refusal of any professional or occupational registration, certification, or license to the applicant by any state or jurisdiction;
 - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant;
 - d. Any alias or other name used by the applicant; and
 - e. Any conviction of the applicant for a felony or misdemeanor, other than a minor traffic violation.
7. State or jurisdiction in which the applicant holds any other professional or occupational registration, certification, or license, type of registration, certification or license number, year granted, how registration, certification, or license was granted (by examination, education, experience, or reciprocity), ~~and the number of examination hours taken by the applicant;~~

8. State or jurisdiction in which the applicant has pending an application for any type of professional or occupational license, registration, or certification, type of license, registration or certification being sought, and the status of the application;
9. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution the applicant attended;
10. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended, unless previously provided to the Board pursuant to R4-30-204;
11. Name, current address, and telephone number of the applicant's current and former employers (the names of companies within the last ten year period) in the category for which registration is sought; dates of employment; applicant's title; description of the work performed; and number of hours worked per week, unless previously provided to the Board pursuant to R4-30-204;
12. Names and addresses of immediate supervisors in past and present employment in the category for which registration is sought. An applicant who has been working in the category for which registration is sought for 10 or more years shall provide the names and address of all immediate supervisors during the most recent 10-year period. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three professional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought, unless previously provided to the Board pursuant to R4-30-204;
13. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
14. Certificate of Experience Report ~~and Reference Forms~~ from the applicant's present and past immediate supervisors, ~~unless previously provided to the Board pursuant to R4-30-204~~. The applicant shall also provide Certificate of Experience Record ~~and Reference Forms~~ from additional professional references as required

by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board, but the Board must receive them directly from the reference;

15. Evidence of successful completion, or waiver by the Board, of the applicable ~~in-training~~ fundamentals examination, ~~unless previously provided to the Board pursuant to R4-30-204.~~ An applicant for registration who has successfully completed ~~an in-training~~ a fundamentals examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. ~~An applicant seeking professional registration as an architect or landscape architect may take the in-training examination at the same time as the professional examination.~~ An applicant seeking professional registration as an ~~assayer,~~ engineer, geologist or land surveyor shall pass the applicable ~~in-training~~ fundamentals examination before admission to the professional examination. An applicant seeking professional registration as a geologist may take the fundamentals examination on the same day;

16. Certification that the information provided to the Board is accurate, true and complete; and

17. The applicable fee.

B. If an applicant does not have the required education and experience for registration, the Board may, upon request of the applicant, hold the application for a period of time that does not exceed one year from the date the application is filed with the Board. All time-frames adopted pursuant to Title 41, Chapter 6, Article 7.1 are suspended during the above-referenced time.

C. An applicant holding a certificate of qualification issued by one of the national ~~registration bodies~~ examination councils recognized in R4-30-203(B) shall arrange to have the record forwarded to the Board by the national registration body. If the forms provided by the national ~~registration body~~ examination council contain all the

information described in A.R.S. § 32-122.01 and subsection (A), the Board may accept the forms in lieu of requiring the applicant to furnish the information directly to the Board.

- D.** The Board staff shall review all applications and, if necessary, refer completed applications to an ~~advisory committee~~ evaluator deemed qualified by the board and chosen from the pool of enforcement advisory committee members for evaluation. If the application for registration is complete and in the proper form and the Board staff or ~~committee~~ the evaluator is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be registered in the field for which the application was filed, the Board staff or ~~committee~~ evaluator shall recommend that the Board certify the applicant as eligible for registration. If for any reason the Board staff or ~~committee~~ or the evaluator is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for registration, the Board staff shall make a further investigation of the applicant. The Board staff and ~~committee~~ evaluator shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for registration.
- E.** The Board may accept documentation that an applicant has passed a written national examination in the area for which registration is sought from a national council of which the Board is a member ~~or a professional association approved by the Board.~~
- F.** The Board shall not accept an application for registration renewal unless the applicant has responded to the questions on the application relating to good moral character and other misconduct and signed the application for renewal. The Board shall return an incomplete application to the applicant which may result in assessment of a delinquent renewal fee.
- G.** An applicant may withdraw an application for registration by written request to the Board. Any fee paid by the applicant is non-refundable. If an applicant withdraws an application, the Board shall close the file. An applicant whose file has been closed and who later wishes to apply for professional registration shall submit a new

application package to the Board pursuant to R4-30-201 and R4-30-202.

R4-30-202. In-training Designation

- A. An applicant for in-training designation shall submit an original ~~and one copy of a~~ completed in-training application package that contains the following:
1. Evidence of successful completion, or waiver by the Board, of the current ~~in-training~~ fundamentals examination in the category and branch, if applicable, for which in-training designation is sought;
 2. The information set forth in subsections (B)(1) through (9); and
 3. The applicable fee.
- B. An ~~in-training~~ examination applicant who wants to sit for an ~~in-training~~ a fundamentals examination shall submit an original ~~and one copy of a~~ completed exam authorization application ~~for in-training designation~~ to the Board, and provide the following:
1. Name, residence address, mailing address if different from residence, and telephone number of the applicant;
 2. Date of birth and social security number of the applicant;
 3. Citizenship or legal residence;
 4. Category, and branch of engineering if applicable, for which the applicant is seeking an in-training designation;
 5. Information regarding any conviction for a felony or misdemeanor, other than a minor traffic violation, and any alias or other name used by the applicant;
 6. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution that the applicant attended;
 7. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended;
 8. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
 9. Certification that the information provided to the Board is accurate, true, and

complete.

- C. If otherwise qualified, the Board shall permit an applicant for in-training designation to take the ~~in-training~~ fundamentals examination in the final year of a baccalaureate, masters, or other degree program accepted by the Board and accredited in the category for which the application is made. The applicant shall have the application form endorsed by the applicant's college dean or faculty advisor, or, if already a graduate, may arrange to have a final transcript, indicating the degree awarded, sent directly from the registrar to the Board, in lieu of the endorsement.
- D. The Board shall permit an applicant for in-training designation without an accredited college degree to take the ~~in-training~~ fundamentals examination after submitting to the Board evidence of four years, ~~or if an architect in-training applicant, five years of~~ satisfactory experience or education or both. The applicant shall provide the name, current address, and telephone number of all current and former employers; names of all supervisors and their titles; dates of employment; applicant's title, and a description of the work performed. The applicant shall provide Certificate of Experience Record and Reference Forms to immediate supervisors at present and past employers. The applicant shall ensure the completed reference forms are submitted to the Board. The applicant shall meet all other requirements of this Section.

R4-30-202.01. Remediation Specialist Certification Repealed

- ~~A. An applicant for certification as a remediation specialist shall submit an original and one copy of a completed application package that contains the following:~~
 - ~~1. Name, residence address, mailing address if different from residence, and residence telephone number of the applicant;~~
 - ~~2. Date of birth and social security number of the applicant;~~
 - ~~3. A detailed explanatory statement regarding:~~
 - ~~a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction;~~
 - ~~b. Refusal of any professional or occupational registration, certification, or~~

- license by any state or jurisdiction;
- ~~c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant;~~
 - ~~d. Any alias or other name used by the applicant; and~~
 - ~~e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.~~
- ~~4. State or jurisdiction in which any professional or occupational registration, certification, or license is held; type of professional or occupational registration, certification, or license; registration, certification, or license number, year granted, how registration, certification, or license was granted (that is, by examination, education, experience or reciprocity), and the number of examination hours taken by the applicant;~~
 - ~~5. Name of the state or jurisdiction, type of professional or occupational registration, certification, or license the applicant is seeking, and the current status of any application for professional or occupational registration, certification, or license pending in any state or jurisdiction;~~
 - ~~6. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university or educational institution the applicant attended;~~
 - ~~7. Relevant certified transcripts sent directly to the Board from the registrar of educational institutions the applicant attended;~~
 - ~~8. Name, current address, and telephone number of the applicant's current and former employers in the area of remediation; dates of employment; applicant's title; description of the work performed, and the number of hours worked per week;~~
 - ~~9. Names and addresses of immediate supervisors in past and present employment in the area of remediation. Applicants who have been working in remediation for 10 or more years shall provide the names and addresses of all immediate supervisors during the most recent ten year period. If an applicant cannot supply the names~~

- and addresses of all immediate supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information;
10. A release authorizing the Board to investigate the applicant's education, experience, moral character and repute;
 11. Certificate of Experience Record and Reference forms from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record and Reference forms to additional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references and ensure that completed reference forms are provided to the Board;
 12. Certification that the information provided to the Board is accurate, true, and complete;
 13. A completed fingerprint card; and
 14. The applicable fees.
- ~~B. The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee for evaluation. If the application is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be certified as a remediation specialist, the Board staff or committee shall recommend that the Board certify the applicant as eligible to take the examination. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true or that the applicant is eligible in all other respects for registration, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for examination or certification.~~

R4-30-203. Waiver of Examination

A. The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who holds a valid professional or occupational registration, certification, or license in the category for which registration, certification, or licensure is sought, and is in good standing in another state or ~~jurisdiction~~ U.S. territory provided:

~~1. The applicant submits verifiable documentation to the Board that the education, experience, and examination requirements under which the applicant was registered in the original state or jurisdiction were substantially identical to those existing in Arizona at the time of the applicant's original registration, certification, or licensure; or~~

2 The applicant submits verifiable documentation to the Board that the applicant has been actively engaged as a professional or occupational registrant, certificant, or licensee in another state ~~or jurisdiction~~ or U.S. territory for at least 10 years in the category for which registration, certification, or licensure is sought. For purposes of this subsection, “actively engaged as a professional registrant” means that the applicant holds a valid professional or occupational registration, certification, or license in good standing, and has been practicing or offering professional services for at least 10 of the last 15 years.

B. The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who submits verifiable documentation to the Board that the applicant holds one of the following professional records, issued by a national ~~registration body~~ examination council, and is registered in good standing in another state or ~~jurisdiction~~ U.S. territory and has been actively engaged in the practice of the profession for which the applicant seeks registration. The Board recognizes the following national ~~registration body~~ examination council records:

1. National Council of Architectural Registration Boards’ (“NCARB”) Certificate Record, with design and seismic (lateral forces) qualifications;
2. National Council of Examiners for Engineers and Surveyors Council (“NCEES”) Record; or

3. Council of Landscape Architectural Registration Boards Council ("CLARB")
Record and Certification.
- C. When reviewing an engineering applicant's experience and examination information, the Board shall take into account the specific branch of engineering in which the applicant is seeking proficiency recognition.
- D. The Board shall waive the ~~in-training~~ fundamentals examination if an applicant has successfully completed ~~an in-training~~ a fundamentals examination in another state or jurisdiction in the category for which registration is sought, which is equivalent to those examinations ~~administered~~ required in Arizona. The applicant shall ensure that proof of successful completion is forwarded directly from the authority that administered the original examination.
- E. The Board shall waive the ~~in-training~~ fundamentals examination for an applicant who has a degree listed in R4-30-208(A) or other educational credit approved by the Board in the category, and branch if applicable, for which registration is sought, and meets all other requirements of A.R.S. § 32-126(D).
- F. All applicants who request a waiver of any examination requirement shall meet all other requirements for professional registration or in-training designation in R4-30-201 and R4-30-202. An applicant applying for a waiver under subsection (B) shall ensure that the required documentation is forwarded directly to the Board from the national ~~registration body~~ examination council.
- ~~G. The Board shall waive the remediation specialist examination requirement if the applicant has successfully completed a remediation specialist examination in another state or jurisdiction that is substantially equivalent to the remediation specialist examination provided in Arizona.~~

R4-30-204. Examinations

- A. Board Review For ~~Examination~~ Equivalency Authorization to Test: Applicants who wish to sit for professional examination who do not possess an educational degree recognized by the applicable national council shall submit to the Board the following

information for approval:

1. Name, residence address, mailing address if different from residence, and telephone number;
2. Date of birth and Social Security number;
3. Proof of citizenship or legal residence;
4. Category, and branch of engineering if applicable;
5. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution attended;
6. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution attended;
7. Evidence of at least 60 months of required education or experience, or both, in the category for which registration is sought.
 - a. The name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought;
 - b. Dates of employment;
 - c. Applicant's title;
 - d. Description of work performed; and
 - e. Number of hours worked per week;
8. Names and current addresses of applicant's ~~immediate supervisors in past and present employment~~ current and former employers (the names of companies within the last ten year period) in the category for which registration is sought. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three additional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought;
9. A release authorizing the Board to investigate the applicant's education and experience;
10. Certificate of Experience ~~Record and Reference Forms~~ Report from the applicant's present and past immediate supervisors. The applicant shall also

- provide Certificate of Experience Record and Reference Forms from additional professional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that ~~completed reference forms are provided to the Board~~ receives these Reports directly from the reference;
11. Evidence of successful completion, or waiver by the Board, of the applicable ~~in-training~~ fundamentals examination. An applicant who has successfully completed ~~an in-training~~ a fundamentals examination in another state or jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an ~~assayer~~, engineer, geologist, or land surveyor shall pass the applicable ~~in-training~~ fundamentals examination before admission to the professional examination. An applicant for registration as a geologist may take the in-training examination on the same date as the professional examination;
 12. Certification that the information provided to the Board is accurate, true, and complete; and
 13. The applicable fees.
 14. In addition to the above requirements, an applicant who does not possess education required for direct access to the NCARB Architect Registration Examination (ARE) shall provide the Board with sixty (60) months of a diversity of experience directly related to the practice of architecture and of a character satisfactory to the Board, in each of the following categories, in order to obtain Board authorization to sit for the required registration examination:
 - a. Practice Management. The experience obtained in this category shall demonstrate abilities to manage architectural practice, including professional ethics, fiduciary responsibilities, and the regulations governing the practice of architecture. The experience obtained shall focus on issues related to pre-contract tasks including negotiation, human resource management, and consultant development. Applicants shall demonstrate an understanding of

and abilities in business structure, business development, and asset development and protection.

- b. Project Management. The experience obtained in this category shall demonstrate abilities to manage architectural projects, including organizing principles, contract management, and consultant management. The experience shall focus on issues related to office standards, development of project teams, and overall project control of client, fee, and risk management. Experience shall demonstrate an understanding of and abilities in quality control, project team configuration, and project scheduling. In addition, the experience shall demonstrate the ability to establish and deliver project services per contractual requirements in collaboration with consultants.
- c. Programming and Analysis. The experience obtained in this category shall demonstrate abilities related to the evaluation of project requirements, constraints, and opportunities. The experience shall focus on issues related to programming, site analysis, and zoning and code requirements and demonstrate an understanding of and abilities in project type analysis, the establishment of qualitative and quantitative project requirements, evaluation of project site and context, and assessment of economic issues.
- d. Project Planning and Design. The experience obtained in this category shall demonstrate abilities to assess objectives related to the preliminary design of sites and buildings. The experience shall focus on issues related to the generation or evaluation of design alternatives that synthesize environmental, cultural, behavioral, technical and economic issues. The experience shall demonstrate an understanding of and abilities in design concepts, sustainability/environmental design, universal design, and other forms of governing codes and regulations.
- e. Project Development and Documentation. The experience obtained in this category shall demonstrate objectives related to the integration and documentation of building systems, material selection, and material assemblies into a project. The experience shall focus on issues related to the

development of design concepts, evaluation of materials and technologies, selection of appropriate construction techniques, and appropriate construction documentation. The experience shall demonstrate an understanding of and abilities in integration of civil, structural, mechanical, electrical, plumbing, and specialty systems into overall project design and documentation.

- f. Construction and Evaluation. The experience obtained in this category shall demonstrate objectives related to construction contract administration and post-occupancy evaluation of projects. The experience shall focus on issues related to bidding and negotiation processes, support of the construction process, and evaluation of completed projects. The experience shall demonstrate an understanding of and abilities in construction contract execution, construction support services (including construction observation and shop drawing or submittal review), payment request processing, and project closeout. In addition, candidates shall also demonstrate an understanding and abilities in project evaluation of integrated building systems and their performance.
- B. The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee evaluator who meets qualifications approved by the Board for evaluation. If the application for examination is complete and in the proper form and the Board staff or ~~committee~~ the evaluator is satisfied that all statements on the application are true and that the applicant is eligible to take the examination, the Board staff or ~~committee~~ evaluator shall recommend that the Board certify the applicant as eligible to take the examination. If for any reason the Board staff or ~~committee~~ evaluator is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for examination, the Board staff shall make a further investigation of the applicant.
- C. National Council Examinations:
1. Applicants for architect, landscape architect, engineer, or land surveyor registration who wish to sit for a professional examination, and who have earned an educational degree recognized by the applicable national council, may apply

directly to the applicable national council to take that exam.

2. Applicants not possessing the appropriate degree pursuant to subsection (C)(1) may apply to the Board for examination approval and after Board review, the Board may be recommended recommend them to the applicable national council for entry into the applicable national examination. Applicants shall meet all national council requirements for successful completion of applicable examinations.
3. An applicant for professional examination in any category shall take and pass the examination or at least one division of a multi-divisional examination within one year after receiving approval. If an applicant fails to take and pass an examination within one year after receiving approval, the applicant shall submit a new application for professional examination authorization to the Board.
4. An applicant who has failed any division of a national multi-divisional examination shall be required to meet the applicable national council's requirements for successful completion of the examination.
5. Examinations administered by a national council of which the Board is a member, or a professional association approved by the Board, shall be given at the times and places determined by the testing agency. Once approved to sit for a non-Board-administered examination, the applicant shall communicate all questions and concerns regarding extensions, additional time, special accommodation, reexamination, exam review and refunds to the applicable testing agency. The Board shall not refund any examination fee paid to a testing agency.
6. The Board shall close an examination authorization file for multi-divisional national examination if the applicant fails to pass all divisions of the applicable examination within five years after first passing any division of the examination unless the Board approves an extension.

D. Board Administered Examinations:

1. An examination administered by the Board shall be given at the times and places determined by the Board. Once the Board approves an applicant to sit for a Board-administered examination, shall take and pass the examination within one

- year from making the request to test unless the Board grants an extension. ~~the~~
The applicant shall communicate all questions and concerns regarding extensions,
special accommodations and refunds to the Board. The applicant shall make any
request for additional time or other special examination accommodation to the
Board within a reasonable time before the examination date.
2. An applicant who fails to achieve a passing grade on ~~any division of any~~
examination administered by the Board may request reexamination by notifying
the Board in writing of the applicant's desire to retake the examination and paying
the applicable examination fee. An applicant who retakes any examination shall
advise the Board of any changes in the information provided under subsection (A)
of this Section and R4-30-202(B) within 30 days from the date of the change. The
Board shall close an applicant's file if the Board does not receive written
confirmation from the applicant of the applicant's desire to retake and pass the
Board-administered examination within one year from the request for
reexamination. An applicant whose file has been closed and who later wishes to
apply for examination shall submit a new examination application package to the
Board.
 3. An applicant for a Board-administered examination who wishes to review the
applicant's examination scores shall file a written request with the Board within
30 days after receiving notification of the failing grade. The applicant may review
an examination by making prior arrangements with the staff and paying the
applicable fee. The applicant shall complete any review within 60 days of the
request for a review. In reviewing multiple choice questions, an applicant may
review only those questions that were incorrect.
 4. An applicant who desires a regrade of a Board administered examination shall file
a written request with the Board within 30 days after receiving notification of the
failing grade or within 30 days after reviewing the examination, whichever is
applicable, and pay the applicable fee. The applicant shall identify the questions
to be reviewed. The applicant shall state why a review of the item is justified. The
applicant shall provide specific facts, data, and references to support any assertion

that the solution deserves more credit. The Board shall determine whether it will regrade the examination.

- ~~5. The Board shall close an application file for examination if the applicant fails to pass all divisions of the applicable examination within five years after first passing any division of the examination unless the Board approves an extension.~~
- ~~6. If an applicant for professional examination fails to take the examination within five years from the examination approval date, the Board shall close the application file. The applicant shall submit a new application to take the applicable examination to the Board.~~

R4-30-208. Education and Work Experience

A. Education credit.

1. The Board shall grant credit according to the following:
 - a. Architectural applicants with ~~five-year~~ National Architectural Accrediting Board accredited degree (NAAB): ~~.....~~ 60 months
 - b. Architectural applicants with ~~four-year NAAB accredited degree~~ a four year architectural degree: ~~.....~~ 48 months
 - c. Landscape Architectural applicants with ~~five-year~~ a Landscape Architectural Accrediting Board accredited degree (LAAB): ~~.....60~~ 48 months
 - d. Landscape Architectural applicants with ~~four-year~~ LAAB accredited master's or doctorate degree: ~~.....48~~ 60 months
 - e. Engineering applicants with an Accreditation Board of Engineering and Technology (ABET) accredited ~~bachelor~~ bachelor's degree and a (ABET) master's or doctorate degree in the branch of engineering that registration is sought: ~~.....~~ 60 months
 - f. Engineering applicants with an ABET accredited ~~bachelor~~ bachelor's degree or equivalent in the branch of engineering that registration is sought: ~~.....~~ 48 months
 - g. Engineering applicants with four-year ABET accredited degrees in a branch other than that in which registration is sought: ~~.....~~ 36 months

- h. Land Surveying applicants with ABET accredited bachelor degree in land surveying:48 months
- i. Land Surveying applicants with a master's degree in land surveying: 60 months
- ~~i. j~~ Geology applicants with ~~four-year~~ bachelor's degree in geology or earth sciences: 48 months
- ~~j.~~ Assayer applicants with ~~four year degree in chemistry, metallurgy or other science directly related to the analysis of metal and ores~~ 48 months
- ~~k.~~ ~~Remediation specialist applicants with an undergraduate degree as specified in subsection (A), or up to five years of education directly relating to remediation.~~ Geology applicants with a master's or doctorate degree in geology or earth sciences: 60 months

2. The Board shall grant all other education credit according to the following:
 - a. Credit shall not be granted for course work obtained in the United States or its possessions unless attained at an institution of higher education accredited by an accrediting agency recognized by the U.S. Department of Education.
 - b. Pro rata credit shall be granted for successful completion of courses substantially equivalent to the courses contained in the pertinent degree program identified in subsection (A) of this rule.
 - c. Credit shall not be given for general education courses in excess of the number of hours allowed in the pertinent program identified in subsection (A).
 - d. In determining pro rata credit, 30 semester hours or 45 quarter hours shall equal 12 months' credit.
 - e. An applicant shall be granted both education and work experience for the same period provided the total months' credit granted in a period does not exceed the number of months in that period.
 - f. Foreign education evaluation service acceptable to the Board shall be required of foreign-educated applicants and shall be provided at applicants' cost.
- B.** The Board shall credit work experience as follows:
 1. One hundred and thirty hours or more of work per month is equal to one month of

- work experience.
2. Between 85 hours and 129 hours of work per month is equal to one-half month of work experience.
 3. The Board shall not grant credit for less than 85 hours of work experience in a month.
 4. Experience shall be ~~substantiated~~ verified by the employer before the Board grants the credit.
 5. ~~Remediation specialist applicants shall have at least eight years of acceptable education and remediation experience, including at least three years of experience supervising remediations~~

R4-30-209. Time-frames for Professional Registration, Certification, or In-training Designation

- A. Within 60 days of receiving the initial application package for professional registration, certification, or in-training designation, the Board shall finish an administrative completeness review.
1. If the application package is complete, the Board shall notify the applicant that the package is complete and that the administrative completeness review is finished.
 2. If the application package is incomplete, the Board shall notify the applicant that the package is deficient and specify the information or documentation that is missing. All time-frames are suspended from the date the notice is mailed to the applicant until the Board receives all missing information or documentation.
 3. An applicant with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. ~~However, the Board may hold a home inspector applicant's package for one year to permit a home inspector applicant to meet the requirements of R4-30-247(A)(7).~~ If the applicant fails to supply the missing information or documentation, the Board may close the applicant's application file. Any fee paid by the applicant is Nonrefundable. An applicant whose file has been closed and

- who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.
4. If an applicant requests to sit for the professional, certification, or ~~in-training~~ fundamentals examination, or requests a waiver of examination, the time-frames in R4-30-210 apply until the Board grants or denies the applicant's request.
- B.** The Board shall complete its substantive review of the application package and render a decision no later than 60 days after the date the Board mails the notice of administrative completeness to the applicant.
1. If the Board finds that the applicant meets all requirements in statute and rule, the Board shall approve the applicant for professional registration, certification, or intraining designation.
 - ~~2. If the Board finds that the applicant does not meet all requirements in statute and rule, the Board shall deny the applicant professional registration, certification, or intraining designation. The Board shall provide written notice of the denial. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, and an explanation of the applicant's right to appeal, including the number of days the applicant has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeals process.~~
 - ~~3.~~2. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a written request, specifying the additional information or documentation to be submitted and the deadline for submission. The time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is mailed until the date that all missing information or documentation is received or the deadline for submission passes.
 - ~~4.~~3. When the Board and applicant mutually agree in writing, the Board or its designee shall grant extensions of the substantive review time-frame totaling no more than 30 days.
 - ~~5.~~4. If the applicant fails to supply the missing information or documentation by the

deadline date, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.

5. If the Board finds that the applicant does not meet all requirements in statute and rule, the Board shall deny the applicant professional registration, certification, or in-training designation. The Board shall provide written notice of the denial. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, and an explanation of the applicant's right to appeal, including the number of days the applicant has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeals process.

C. Saturdays, Sundays, and legal holidays are not counted in calculating the number of days under this Section.

D. For purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for a candidate applying for professional registration, certification, or in-training designation:

1. Administrative completeness review time-frame: 60 days;
2. Substantive review time-frame: 60 days; and
3. Overall time-frame: 120 days. Days during which time is suspended under subsection (A)(2) are not counted in the computation of the overall time-frame.

R4-30-210. Time-frames for Approval to Sit for, or for Waiver of, the Professional, Certification, or ~~In-training~~ Fundamentals Examination

A. Within 60 days of receiving the initial application package to sit for, or for waiver of, the professional, certification, or ~~intraining~~ fundamentals examination, the Board shall finish an administrative completeness review.

1. If the application package is complete, the Board shall notify the applicant that the package is complete and that the administrative completeness review is finished.
2. If the application package is incomplete, the Board shall notify the applicant that

- the package is deficient and specify the information or documentation that is missing. All time-frames are suspended from the date the notice is mailed to the applicant until the Board receives all missing information or documentation.
3. An applicant with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. If the applicant fails to supply the missing information or documentation, the Board may close the applicant's application file. Any fee paid by the applicant is nonrefundable. An applicant whose file has been closed and who later wishes to sit for the ~~in-training~~ fundamentals, certification, or professional examination, or who requests a waiver of examination, shall submit a new application package and pay the applicable fee.
- B.** The Board shall complete its substantive review of the application package and render a decision no later than ~~120~~ 60 days after the date the Board mails the notice of administrative completeness to the applicant.
1. If the Board finds that the applicant meets all requirements in statute and rule, the Board shall either approve the applicant to sit for the next applicable examination, or the Board shall waive the examination requirement.
 - ~~2. If the Board finds that the applicant does not meet all requirements in statute or rule, the Board shall not allow the applicant to sit for the applicable examination or shall deny a waiver of examination.~~
 - ~~3. The Board shall provide written notice of its refusal to allow the applicant to sit for the examination, or for its decision to deny a waiver of the examination. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, an explanation of the applicant's right to appeal, including the number of days the applicant has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeal process. If the Board issues a denial of waiver of an examination, it may allow the applicant to sit for the applicable examination or, depending on the circumstances and the applicant's qualifications, require the applicant to submit an application to sit for the applicable examination,~~

4.2. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a written request, specifying the additional information or documentation to be submitted and the deadline for submission. The time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is mailed until the date that all missing information or documentation is received.

5.3. If the Board and applicant mutually agree in writing, the Board or its designee shall grant extensions of the substantive review time-frames totaling not more than ~~45~~ 30 days.

6.4. If the applicant fails to supply the missing information or documentation by the deadline date, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to sit for the applicable examination or request a waiver of examination shall submit a new application package and pay the applicable fee.

C. Saturdays, Sundays, and legal holidays are not counted in calculating the number of days under this Section.

D. For the purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for an applicant wishing to sit for the applicable examination or to request a waiver of examination:

1. Administrative completeness review time-frame: 60 days;
2. Substantive review time-frame: ~~120~~ 60 days; and
3. Overall time-frame: ~~180~~ 120 days.

R4-30-214. Architect Registration

An applicant for architect registration shall complete all of the following:

1. An applicant shall provide evidence of successful completion of the National Council of Architectural Registration Boards' (NCARB) ~~Intern Development Program (IDP)~~ professional training ~~experience~~ requirement.
2. An applicant shall successfully complete the professional architect examination designated by the Board and provided by the National Council of Architectural Registration Boards.

- ~~3. An applicant must demonstrate 96 months of architectural education or experience, or both, satisfactory to the Board prior to being granted registration.~~

R4-30-222. Engineer-In-Training Designation

- A.** To qualify for admission to the ~~in-training~~ fundamentals examination solely on the basis of education, an applicant shall be a graduate of a four-year engineering degree program accredited at the time of graduation by the Accreditation Board for Engineering and Technology (ABET) or an equivalent predecessor organization.
- B.** To qualify for admission to the ~~in-training~~ fundamentals examination, an applicant who is not a graduate of a four-year ABET-accredited engineering degree program shall have at least four years of education or experience or a combination of both directly related to the practice of engineering. Experience directly related to the practice of engineering of a character satisfactory to the Board includes but is not limited to the following in the candidate's branch of engineering:
1. Consultation: The active involvement in meetings, discussions or development of reports intended to provide information, facts or advice regarding the application of the accepted engineering principles to fulfill the client's specific requirements.
 2. Research investigation: The search, examination or study to determine the practicality or effectiveness of accepted principles for adaptation and application to novel situations or the development of new or alternative solutions to solve problems.
 3. Evaluation: The analysis, testing or study to determine or estimate the merit, effect, efficiency or practicality of approaches, methods, designs, structures or materials for use in a given situation or to achieve a specific result.
 4. Planning: The preliminary development of objectives, statements, outlines, drafts, drawings or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a problem.
 5. Design: Design, development and location experience.
 6. Construction review: The review or supervision of construction projects in the candidate's branch of engineering to determine conformance with contract documents and design specifications (maximum 12 months' credit).

7. Administration: Administrative experience in the candidate's branch of engineering, including office and field administration, field or laboratory testing, quotation requests, change orders, bidding procedures, cost accounting and project closeouts maximum 12 months' credit).
8. Surveying: The measurement, using accepted methods of surveying, of units of space, water, land or structures to determine boundaries, areas, shapes, slopes, distances, angles or other calculations (maximum 12 months' credit).
9. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials directly relating to the candidate's branch of engineering (maximum six months' credit).
10. Other engineering experience: Experience of a nature set forth in this subsection but in other recognized branches of engineering (maximum six months' credit).
11. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).

C. An applicant for Engineer In-Training Designation shall successfully complete the ~~engineer-in-training~~ fundamentals examination designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors.

R4-30-242. Geologist-in-training Designation

- A. To qualify for admission to the ~~in-training~~ fundamentals examination solely on the basis of education, an applicant shall be a graduate or be in the final year of a four-year degree program with a major in geology or earth science at a an accredited college or university ~~accredited at the time of graduation by a regional accrediting agency recognized by the Arizona Board of Regents.~~
- B. To qualify for admission to the ~~in-training~~ fundamentals examination, an applicant who is not a graduate of a four-year degree program as specified in subsection (A) shall have at least four years of education or experience or both directly related to the practice of geology. Experience directly related to the practice of geology of a character satisfactory to the Board shall include the following:
 1. Consultation: The active involvement in meetings, discussions and development

of reports intended to provide information, facts or advice regarding natural resources and surface and subsurface geological conditions and the preparation of geological maps for use in consultations with clients.

2. Evaluation: The evaluation of mining and petroleum properties, groundwater resources, unconsolidated earth materials, mineral fuels, natural hazards and land use limitations.
3. Supervision of exploration: The supervision of the geological phases of engineering investigation, exploration for mineral and natural resources, metallic and nonmetallic ores, petroleum and groundwater resources.
4. Administration: Administrative experience, including office and field administration, field or laboratory testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).
5. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials on geological subjects (maximum six months' credit).
6. Engineering: Experience in related branches of engineering (maximum six months' credit).
7. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).

C. An applicant for geologist in-training designation shall successfully complete the geologist in-training fundamentals examination designated by the Board and provided by the Association of State Boards of Geology.

R4-30-247. Home Inspector Certification

- A. An applicant for certification as a home inspector shall submit an original ~~and one copy of a~~ completed application package that contains the following:
1. Evidence of successful completion, within two years before the date of application, of the National Home Inspector Examination as administered by the Examination Board of Professional Home Inspectors;
 2. The information in subsections (B) ~~(1) through (10);~~ and (C);

3. A completed fingerprint card;
4. Applicable fees;
5. Evidence of successful completion of 84 hours of classroom training or an equivalent course conducted by an educational facility that is licensed by the applicable postsecondary education regulatory agency in the home state of the facility, Arizona State Board for Private Postsecondary Education, or accredited by the ~~Accrediting Commission of the Distance Education and Training Council~~ Distance Education Accrediting Commission, or by an accrediting agency approved by the United States Department of Education. The course of study shall encompass all of following major content areas:
 - a. Structural Components,
 - b. Exterior,
 - c. Roofing,
 - d. Plumbing,
 - e. Heating,
 - f. Cooling,
 - g. Electrical,
 - h. Insulation and Ventilation,
 - i. Interiors,
 - j. Fireplaces and Solid Fuel-Burning Devices,
 - k. Swimming Pools & Spas, and
 - l. Professional Practice;
6. ~~An applicant who has lawfully conducted home inspections as part of a business shall provide evidence of successful completion of 100 home inspections that meet the standards referenced in R4-30-301.01 on a form provided by the Board. An applicant under this subsection shall meet all other requirements for certification in this Section; and~~
7. ~~To complete a home inspector in-training program, an applicant who otherwise qualifies for certification as a home inspector except for meeting the qualification in subsection (A)(6), shall present evidence~~ Evidence of completion of 30 parallel

inspections. The 30 parallel inspections and home inspection report shall meet the standards in R4-30-301.01 and be retained by the applicant for at least two years from the date of application. The applicant shall conduct these inspections on separate residential dwelling units and shall list them on a log provided by the Board. The log shall include, with respect to each inspection, the address of the property, the date of the inspection, and the name and certification number of the supervising home inspector. The Board may hold the applicant's package for a period of one year based solely on the need for time to permit the applicant to complete the required parallel inspections. All time-frames promulgated under A.R.S. Title 41, Chapter 6, Article 7.1 are suspended during this period.

- B.** A certified home inspector is not required to inspect a pool and/or spa as part of a home inspection. If a certified home inspector conducts a pool and/or spa inspection, it shall be conducted in accordance with the “Standards of Professional Practice for the Inspection of Swimming Pools & Spas for Arizona Home Inspectors,” (“Standards”) adopted and published by ~~Arizona Chapter of the American Society of Home Inspectors on March 11, 2011, and incorporated by reference, without any later amendments or editions,~~ by the Board on February 28, 2012. Copies of the Standards are available at the Board's office and at the ~~Arizona Chapter of the American Society of Home Inspectors' web site,~~ www.azashi.org.
- C.** The application package shall contain the following:
1. Name, residence address, mailing address if different from residence address, and telephone number;
 2. Date of birth and Social Security number of the applicant;
 3. Citizenship or legal residence;
 4. A detailed explanatory statement regarding:
 - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant in any state or jurisdiction;
 - b. Refusal of any professional or occupational registration, license, or certification by any state or jurisdiction;

- c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant;
 - d. Any alias or other name used by the applicant;
 - e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.
5. Documentation of absolute discharge from sentence at least five years before the date of application if an applicant has been convicted of one or more felonies;
 6. State or jurisdiction in which any professional or occupational registration, license or certification is held; type of registration, license, or certification; number; year granted, and how registration, license, or certification was granted (that is, by examination, education, experience, or reciprocity);
 7. The current status of any application for any type of professional or occupational registration, license, or certification pending in another state or jurisdiction;
 8. A release authorizing the Board to investigate the applicant's education, experience, and moral character and repute;
 9. Certification that the information provided to the Board is accurate, true, and complete;
 10. Copy of one home inspection report that meets the standards in R4-30-301.01 and reports on at least one immediate major repair as defined in the standards, along with the Report Checklist Supplement ; and
 11. Sworn statement or statements by the supervising certified home inspector or inspectors that the parallel inspections conducted by the applicant meet the standards in R4-30-301.01.
- D.** The Board staff shall review all applications and, if necessary, refer completed applications to the Home Inspector Rules and Standards Committee or a certified home inspector evaluator for evaluation. If the application is complete and in the proper form, the Board staff, ~~or~~ committee, or evaluator is satisfied that all statements on the application are true, and the applicant is eligible in all other aspects to be certified as a home inspector, the Board staff, ~~or~~ committee, or evaluator shall

recommend that the Board certify the applicant. If the evidence is not clear and convincing of qualification for certification, the matter shall be reviewed by the committee and the committee may request additional information regarding any issue upon which the applicant has not established qualification by clear and convincing evidence.

- E. A certified home inspector shall notify the Board in writing within five business days of any loss of, or change in, financial assurance. The Board shall suspend the certificate holder's certification immediately and prohibit further home inspections until current proof of financial assurance is provided to the Board. The Board shall revoke a certificate if the certificate holder fails to provide proof of financial assurance within 90 days of loss of financial assurance or lapse of policy. All certified home inspectors shall provide proof of financial assurance at the time of each annual certification renewal. The Board shall not renew a home inspector certification unless the financial assurance is in full force and effect.
- F. ~~A registrant who has been certified by the Board to conduct home inspections prior to February 28, 2012, will be exempt from any additional education or testing requirements relating to pools and spas.~~ In order to reactivate an inactive home inspector certificate, a home inspector who has not practiced as a certified home inspector during that time in another state requiring registration for the previous five years shall take and pass the National Home Inspector Examination.

R4-30-252. Landscape Architect in training Designation Repealed

- A. ~~To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four- or five-year landscape architectural degree program accredited at the time of graduation by the Landscape Architectural Accreditation Board (LAAB) or an equivalent predecessor organization.~~
- B. ~~To qualify for admission to the in-training examination, an applicant who is not a graduate of a four- or five-year LAAB accredited landscape architectural degree program shall have at least four years of education or experience or both directly~~

related to the practice of landscape architecture. Experience directly related to the practice of landscape architecture of a character satisfactory to the Board shall include the following:

1. ~~Consultation: The active involvement in meetings, discussions and development of reports intended to provide information, facts or advice regarding the application of landscape architectural principles to fulfill the client's specific requirements.~~
2. ~~Investigation, reconnaissance and research: The search, examination or study to determine the practicality or effectiveness of accepted landscape architectural principles to novel situations or the development of new or alternative solutions to landscape architectural problems.~~
3. ~~Planning: The preliminary development of objectives, statements, outlines, drafts, drawings, maps or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a landscape architectural problem.~~
4. ~~Design: The preparation and use of sketches, plans, drawings, outlines, models or schemes to convey the use and development of land, plantings, landscapings, settings, approaches to buildings, structures or facilities, traffic patterns and drainage or erosion patterns.~~
5. ~~Supervision of development: The supervision of the development of land and incidental water areas for the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and esthetic values, settings and approaches, natural drainage and the consideration and determination of inherent problems of the land, including erosion, wear and tear, light and other hazards.~~
6. ~~Administration: Administrative experience, including office and field administration, field testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).~~
7. ~~Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials on landscape architectural subjects~~

~~(maximum six months' credit).~~

~~8. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).~~

~~C. An applicant shall successfully complete the landscape architect in training examination designated by the Board and provided by the Council of Landscape Architectural Registration Boards.~~

R4-30-254. Landscape Architect Registration

- To qualify for landscape architect registration, an applicant shall provide proof to the Board of the successful completion of 96 months of landscape architecture education or experience or both. To satisfy the education requirement, an applicant must be a graduate of a four- or five-year landscape architectural degree program accredited at the time of graduation by the Landscape Architectural Accreditation Board (LAAB) or an equivalent predecessor organization.
- To satisfy the experience requirement, an applicant who is a graduate of a five-year landscape architectural degree program shall demonstrate successful completion of at least three years of experience directly related to the practice of landscape architecture. An applicant who is a graduate of a four-year landscape architectural degree program shall demonstrate successful completion of at least four years of experience directly related to the practice of landscape architecture. Experience directly related to the practice of landscape architecture shall demonstrate an applicant's dedication to the protection of the public's health, safety and welfare and shall include the following:
 1. Consultation: The active involvement in meetings, discussions and development of reports intended to provide information, facts or advice regarding the application of landscape architectural principles to fulfill the client's specific requirements.
 2. Investigation, reconnaissance and research: The search, examination or study to determine the practicality or effectiveness of accepted landscape architectural principles to novel situations or the development of new or alternative solutions to

landscape architectural problems.

3. Planning: The preliminary development of objectives, statements, outlines, drafts, drawings, maps or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a landscape architectural problem.
4. Design: The preparation and use of sketches, plans, drawings, specifications, contracts, outlines, models or schemes to convey the use and development of land, plantings, landscapings, settings, approaches to buildings, structures or facilities, traffic patterns and drainage or erosion patterns.
5. Supervision of development: The supervision of the development of land and incidental water areas for the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and esthetic values, settings and approaches, natural drainage and the consideration and determination of inherent problems of the land, including erosion, wear and tear, light and other hazards, including storm water quality.
6. Administration: Administrative experience, including office and field administration, field testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).
7. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).

C. An applicant shall successfully complete the professional landscape architect examination designated by the Board and provided by the Council of Landscape Architectural Registration Boards.

R4-30-262. Assayer-in-training Designation Repealed

~~A. To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four-year degree program with a major in chemistry, metallurgy or other science directly related to the analysis of metals and ores at a college or university accredited at the time of graduation by a regional accrediting agency recognized by the Arizona Board of Regents.~~

- ~~B. To qualify for admission to the in-training examination, an applicant who is not a graduate of a four-year degree program with a major in chemistry, metallurgy or other science directly related to the analysis of metals and ores at an accredited college or university specified in subsection (A), shall have at least four years of education or experience or both directly related to the practice of assaying. Experience directly related to the practice of assaying of a character satisfactory to the Board shall include the following:~~
- ~~1. Experience in the analysis of ferrous and nonferrous metals, minerals, fabrics and rock or powdered ores.~~
 - ~~2. Experience in all phases of fire analysis for the isolation or quantification of precious metals or minerals or any other substance in them, the experience to include: identification of sample metals, ores, minerals or alloys; preweighing of sample preparations; use of assaying weights; grit sizing; dehydration; sampling; crushing; mixing; rolling; coning; truncating; quartering; firing; choice and use of fluxes; button processing; cupellation; weighing; parting; and calculation.~~
 - ~~3. Experience in wet analysis or titration procedures.~~
 - ~~4. Experience in analysis by atomic absorption.~~
 - ~~5. Experience in the use of mineral standards.~~
 - ~~6. Consultation with clients or colleagues in service or work requiring the use of the knowledge of mineral sciences and assaying and the application of this knowledge in assignments involving the evaluation and analysis of metals, minerals and ores.~~
 - ~~7. Editing or writing for publication of articles, books, newsletters or other written materials on assaying related subjects (maximum six months' credit).~~
 - ~~8. Subprofessional experience as defined in rule R4-30-101 (maximum six months' credit).~~
- ~~C. An applicant shall successfully complete the assayer in-training examination administered and provided by the Board.~~

R4-30-264. Assayer Registration Repealed

~~An applicant shall successfully complete the professional assayer examination administered and provided by the Board.~~

R4-30-270. Drug Laboratory Site Remediation Firm Registration Repealed

~~An applicant for drug laboratory site remediation firm registration shall submit an original and one copy of a completed application package that contains the following:~~

- ~~1. Name of business, business address, mailing address if different from business address, and business telephone number;~~
- ~~2. Description of the applicant's services offered to the public;~~
- ~~3. Name and certification number of each on-site supervisor who is authorized and responsible for the services being offered;~~
- ~~4. Legal status of business, such as corporation, partnership, sole proprietorship, or other status;~~
- ~~5. Name and address of the responsible individual in the firm to whom notices and correspondence from the Board should be mailed; and~~
- ~~6. Certification that the information provided to the Board is accurate, true, and complete;~~
- ~~7. Copy of a current license issued by the Registrar of Contractors, the scope of which permits the applicant to perform the activities required of drug laboratory site remediation firms certified pursuant to this Chapter;~~
- ~~8. The applicable fee.~~

R4-30-271. Onsite Supervisor Certification and Renewal Repealed

~~A. An applicant for onsite supervisor certification shall submit an original and one copy of a completed application package containing the following:~~

- ~~1. Name, residence address, mailing address if different from residence address, and telephone number;~~
- ~~2. Date of birth and Social Security number of the applicant;~~
- ~~3. Proof of citizenship or legal residence;~~
- ~~4. State or jurisdiction in which any other professional or occupational certification, registration, or license is held by the applicant, type of certification, registration,~~

- or license, number, and year granted;
5. ~~Name of the state or jurisdiction, the type of professional or occupational certification, registration, or license the applicant is seeking, and the status of any professional or occupational certification, registration, or license application pending in any state or jurisdiction;~~
 6. ~~A detailed explanatory statement, regarding:~~
 - a. ~~Denial of professional or occupational certification, registration, or license by any state or jurisdiction;~~
 - b. ~~Any pending disciplinary action in any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant;~~
 - c. ~~Any alias or other name used by the applicant;~~
 - d. ~~Any conviction for a felony or misdemeanor, other than a minor traffic violation; and~~
 - e. ~~Any disciplinary action taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction.~~
 7. ~~Certification that the information provided to the Board is accurate, true, and complete;~~
 8. ~~A copy of a current 40-hour HAZWOPER training certificate or a copy of a current eight-hour HAZWOPER training refresher certificate and a copy of a 40-hour HAZWOPER training certificate;~~
 9. ~~Documentation of 12 months or more of onsite experience in hazardous chemical decontamination projects and a copy of a HAZWOPER training certificate that shows the applicant held valid HAZWOPER training certification during the 12 months of experience;~~
 10. ~~Documentation of current AHERA contractor or supervisor certification or a copy of a current AHERA refresher certificate and a copy of an AHERA contractor or supervisor training certificate;~~
 11. ~~Documentation of successful completion of a lead training course that meets the~~

requirements of 29 CFR 1926.62(1), effective January 8, 1998, 63 FR 1296, (published by the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 and available electronically through the federal digital system at www.gpo.gov/fdsys/. The provisions of this regulation are incorporated by reference and copies are available at the office of the Board of Technical Registration. This rule does not include any later amendments or editions of the incorporated matter.);

12. Documentation of successful completion of an eight hour training course approved by the Board that encompasses the following:
 - a. ~~Clandestine drug laboratory site remediation best standards and practices contained in R4-30-305;~~
 - b. ~~Chemical and physical hazards of a clandestine drug laboratory;~~
 - c. ~~Typical manufacturing methods for methamphetamine, LSD, and ecstasy;~~
 - d. ~~Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;~~
 - e. ~~Potential sharps and biohazards at a clandestine drug laboratory;~~
 - f. ~~Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and~~
 - g. ~~Other potential hazards or dangers that can be associated with a clandestine drug laboratory;~~
13. Documentation of successful completion of an 8-hour training course approved by the Board that encompasses the following:
 - a. ~~Hazardous conditions and precautionary measures upon initial entry into a clandestine drug laboratory site;~~
 - b. ~~Assessing residual contamination;~~
 - c. ~~Preparing the work plans for remediation of a clandestine drug laboratory;~~
 - d. ~~Assessing structural stability for safe entry into a clandestine drug laboratory site;~~
 - e. ~~Characterizing waste from the remediation of a clandestine drug laboratory, and~~

- ~~f. Preparing final reports on the remediation of the clandestine drug laboratory;~~
- ~~14. A signed release authorizing the Board to investigate the applicant's education, experience, and good moral character and repute; and~~
- ~~15. The applicable fee.~~
- ~~B. An applicant for renewal of onsite supervisor certification shall submit an application package that contains:~~
 - ~~1. A completed renewal application form provided by the Board, signed and dated by the applicant that provides the information contained in subsections (A)(1), (2), (6), and (7);~~
 - ~~2. A copy of the registrant's current eight-hour HAZWOPER training refresher certificate;~~
 - ~~3. A copy of the registrant's current AHERA refresher certificate;~~
 - ~~4. Documentation of successful completion of a two-hour refresher training course approved by the Board that encompasses the following:~~
 - ~~a. Clandestine drug laboratory site remediation best standards and practices contained in R4-30-305,~~
 - ~~b. Hazardous conditions and precautionary measures upon initial entry into a clandestine drug laboratory site,~~
 - ~~c. Preparation of the work plan for remediation of a clandestine drug laboratory,~~
 - ~~d. Assessment of the structural stability for safe entry into a clandestine drug laboratory site,~~
 - ~~e. Characterizing waste from the remediation of a clandestine drug laboratory,~~
 - ~~and~~
 - ~~f. Preparing the final report on the remediation of a clandestine drug laboratory;~~
 - ~~5. The applicable fee.~~
- ~~C. The Board staff shall review all applications and, if necessary, refer completed applications to the Environmental Remediation Rules and Standards Committee for evaluation. If the application is complete and in the proper form, and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be certified, the Board staff or committee~~

~~shall recommend that the Board certify the applicant. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for certification.~~

~~R4-30-272. Onsite Worker Certification and Renewal~~ Repealed

~~A. An applicant for onsite worker certification shall submit an original and one copy of a completed application package containing the following:~~

- ~~1. Name, residence address, mailing address if different from residence address, and telephone number;~~
- ~~2. Date of birth and Social Security number of the applicant;~~
- ~~3. Proof of citizenship or legal residence;~~
- ~~4. State or jurisdiction in which any professional or occupational certification, registration, or license is held by the applicant, type of certification, registration, or license number and year granted;~~
- ~~5. Name of the state or jurisdiction, the type of professional or occupational certification, registration, or license the applicant is seeking, and the status of any professional or occupational application pending in any state or jurisdiction;~~
- ~~6. A detailed explanatory statement regarding:~~
 - ~~a. Any denial of professional or occupational certification, registration, or license by any state or jurisdiction;~~
 - ~~b. Any pending disciplinary action in any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant;~~
 - ~~c. Any alias or other name used by the applicant;~~
 - ~~d. Any conviction for a felony or misdemeanor, other than a minor traffic violation; and~~
 - ~~e. Any disciplinary action taken by any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant in~~

~~any state or jurisdiction;~~

- ~~7. Certification that the information provided to the Board is accurate, true, and complete;~~
- ~~8. Copy of a current 40-hour HAZWOPER training certificate or copy of a current eight-hour HAZWOPER training refresher certificate and a copy of a 40-hour HAZWOPER training certificate;~~
- ~~9. Documentation of successful completion of an eight-hour training course approved by the Board that encompasses the following:
 - ~~a. Clandestine Drug Laboratory Site Remediation Best Standards and Practices contained in R4-30-305;~~
 - ~~b. Chemical and physical hazards of a clandestine drug laboratory;~~
 - ~~c. Typical manufacturing methods for methamphetamine, LSD, and ecstasy;~~
 - ~~d. Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;~~
 - ~~e. Potential sharps and biohazards at a clandestine drug laboratory;~~
 - ~~f. Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and~~
 - ~~g. Other potential hazards or dangers that can be associated with a clandestine drug laboratory;~~~~
- ~~10. A signed release authorizing the Board to investigate the applicant's education, experience, and good moral character and repute; and~~
- ~~11. The applicable fee.~~

~~**B.** An applicant for renewal of onsite worker certification shall submit an application package that contains:~~

- ~~1. A completed renewal application form provided by the Board, signed and dated by the applicant that provides the information contained in subsections (A)(1), (2), (6) and (7);~~
- ~~2. A copy of the applicant's current eight-hour HAZWOPER training refresher certificate;~~
- ~~3. The applicable fee.~~

~~C. The Board staff shall review all applications and, if necessary, refer completed applications to the Environmental Remediation Rules and Standards Committee for evaluation. If the application is complete and in the proper form, and the Board staff or committee is satisfied that all statements on the application are true and the applicant is eligible in all other respects to be certified, the Board staff or committee shall recommend that the Board certify the applicant. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for certification.~~

R4-30-282. Land Surveyor-in-training Designation

- A. To qualify for admission to the ~~in-training~~ fundamentals examination solely on the basis of education, an applicant shall be a graduate of a four-year land surveying degree program accredited at the time of graduation by the Accreditation Board for Engineering and Technology (ABET) or an equivalent predecessor organization.
- B. To qualify for admission to the ~~in-training~~ fundamentals examination, an applicant who is not a graduate of a four-year ABET-accredited land surveying degree program shall have at least four years of education or experience or both directly related to the practice of land surveying. Experience directly related to the practice of land surveying of a character satisfactory to the Board shall include the following:
1. The measurement of space, water, land or structures located or to be located upon or within them, to determine boundaries, areas or other necessary calculations through the use of any mechanical, physical, electric or electronic equipment or devices commonly used by registered professional land surveyors.
 2. The analysis of measurement data through the use of professional knowledge or education or practical experience in the mathematical and physical sciences and in the principles of land surveying.
 3. The location or relocation, establishment or re-establishment of boundaries,

easements, rights-of-way, bench marks or corners.

4. Consultation with clients to determine the necessity of land surveying services and the determination of the correct type of services necessary to fulfill the client's needs and objectives.
5. The search of any source of public or private records for the purpose of performing a survey or to determine and, if necessary, to reconcile differences between the surveyor's collected data and such records.
6. The platting or subdividing of land or the planning and design of parcels of land for development purposes.
7. The preparation and maintenance of survey records.
8. Other land surveying activities, analyses or investigations defined in the Act.
9. The participation in office and field administration, quotation requests, bidding procedures, cost accounting and project closeouts (maximum 12 months' credit).
10. ~~The editing or writing for publication of articles, books, newsletters or other written materials on land surveying subjects (maximum six months' credit).~~
11. Construction staking (maximum 12 months' credit).
12. ~~11.~~ Subprofessional experience as defined in R4-30-101 (maximum six months' credit).

C. The applicant for land surveyor in-training designation shall apply to the Board and provide proof of successfully complete successful completion of the land surveyor in-training fundamentals of surveying examination designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors.

R4-30-284. Land Surveyor Registration

The candidate shall first successfully complete the fundamentals of surveying examination. Second, the candidate shall successfully complete the professional land surveyor examination provided by the National Council of Examiners for Engineers and Surveyors. Third, the candidate shall successfully complete the the Arizona State Specific Examination provided by the Board. ~~Part One of the professional examination is designated by the Board and provided by the National Council of Examiners for~~

~~Engineers and Surveyors. Part Two of the professional examination is designated and provided by the Board.~~

ARTICLE 3. REGULATORY PROVISIONS

R4-30-301. Rules of Professional Conduct

All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration or certification, or in response to a subpoena.
2. A registrant shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
3. A registrant shall not commit bribery of a public servant as proscribed in A.R.S. § 13-2602, commit commercial bribery as proscribed in A.R.S. § 13-2605, or violate any federal statute concerning bribery.
4. A registrant shall comply with state, municipal, and county laws, codes, ordinances, and regulations pertaining to the registrant's area of practice.
5. ~~A~~ If a registrant ~~shall not violate~~ violates any state or federal criminal statute, ~~involving dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, bribery, or breach of fiduciary duty. The~~ the Board may take action against a registrant's license or certificate if a violation of the law is reasonably related to a registrant's area of practice.
6. A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
7. A registrant shall not accept an engagement if the duty to a client or the public would conflict with the registrant's personal interest or the interest of another client without making a full written disclosure of all material facts of the conflict to each person who might be related to or affected by the engagement.

8. A registrant shall not accept compensation for services related to the same engagement from more than one party without making a full written disclosure of all material facts to all parties and obtaining the express written consent of all parties involved.
9. A registrant shall make full disclosure to all parties concerning:
 - a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except payments for actual and substantial technical assistance in preparing the proposal; or
 - b. Any monetary, financial, or beneficial interest the registrant holds in a contracting firm or other entity providing goods or services, other than the registrant's professional services, to a project or engagement.
10. A registrant shall not solicit, receive, or accept compensation from material, equipment, or other product or services suppliers for specifying or endorsing their products, goods or services to any client or other person without full written disclosure to all parties.
11. If a registrant's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant shall immediately notify the responsible party appropriate building official, or agency, and the Board of the specific nature of the public threat.
12. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform any other arbitration duties, the registrant shall render decisions impartially and without bias to any party.
13. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Land Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, available at www.azapls.org and from APLS, 3346 East ~~Menadota Drive, Phoenix, AZ~~. The Board of Technical Registration adopted ~~them~~ the standards on June 15, 2001 and incorporated them into this subsection by reference. This incorporation by reference does not include any later amendments

- or editions and is available at the office of the Board of Technical Registration.
14. A registrant shall comply with any subpoena issued by the Board or its designated administrative law judge.
 15. A registrant shall update the registrant's address and telephone number of record with the Board within 30 days of the date of any change.
 16. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee of the registrant.
 17. Except as provided below and in subsections (18) and (19), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
 - a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
 - b. The work is exempt under A.R.S. § 32-143.
 18. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
 19. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services that the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
 20. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.
 21. A registrant shall not enter into a contract for expert witness services on a contingency fee basis or any other arrangement in a disputed matter where the registrant's fee is directly related to the outcome of the dispute.

R4-30-301.01. Home Inspector Rules of Professional Conduct

A. To the extent applicable, a certified home inspector shall conduct a home inspection in accordance with the “Standards of Professional Practice” adopted by the Arizona Chapter of the American Society of Home Inspectors, Inc. on January 1, 2002, the provisions of which are incorporated by reference and on file with the Office of the Secretary of State. This rule does not include any later amendments or editions of the incorporated matter. Copies of these standards are available at the office of the Board of Technical Registration.

B. A Certified Home Inspector shall not:

1. Pay ~~or receive~~, directly or indirectly, in full or in part, a commission or compensation as a referral or finder’s fee to a real estate company, real estate office, real estate broker/salesperson(s), real estate employees or real estate independent contractors in order to obtain referrals for home inspection business. This prohibition includes, but is not limited to, participation in pay-to-play programs by any name (e.g. “preferred vendor,” “approved vendor,” “marketing partner,” “marketing services agreement”);
2. Pay or receive, directly or indirectly, in full or in part, a commission or compensation as a referral or finder’s fee related to the correction of defects found within the scope of the home inspection;
2. 3. Perform, or offer to perform, for an additional fee, or have any financial interest in the performance of any repairs to a structure the property that has been inspected by that inspector or the inspector’s firm for a period of twenty-four months following the inspection; or
- ~~3.~~ 4. Be accompanied by more than four home inspector candidates while conducting any parallel home inspection.

R4-30-303. Securing Seals

A. Each registrant required to use a seal shall secure and use an ink seal 1 1/2 inches in diameter and identical in style, size, and appearance to the sample shown in Appendix A. The upper portion of the annular space between the second and third circles shall bear whichever of the following phrases is applicable to the registrant:

1. “Registered Architect”; “Registered Professional Engineer” together with the branch of engineering in which registered; “Registered Professional Geologist”; “Registered Professional Landscape Architect”; or “Registered Land Surveyor.”
or “Registered Assayer.”
 2. The inscription “Arizona U.S.A.” shall appear at the bottom of the annular space between the second and third circles; the inner circle shall contain the name of the registrant, registration number, and the words “date signed.”
- B.** The registrant may order the seal through any vendor and shall pay the cost of its manufacture. Immediately upon receipt of the seal and before using the seal for any purpose, the registrant shall file with the Board, for its records, on a form provided by the Board, an imprint of the seal with an original signature superimposed over it and an affidavit regarding the use of the seal. The Board, within 10 working days of receipt of the form from the registrant, shall disapprove any seal that does not meet the exact specifications of subsection (A) and require that the registrant obtain and pay for another seal that meets those specifications before sealing any work. Engineers registered in more than one branch shall secure and use a seal for each branch of engineering in which registration has been granted.

R4-30-304. Use of Seals

- A.** A registrant shall place a permanently legible imprint of the registrant’s seal and signature on the following:
1. Each sheet of drawings or maps;
 2. Each of the master sheets when reproduced into a single set of finished drawings or maps;
 3. Either the cover, title, index, or table of contents page, first sheet of each set of project specifications;
 4. Either the cover, index page, or first sheet of each addenda or change order to plans, contract documents or specifications;
 5. Either the cover, index page, or first sheet of bound details when prepared to supplement project drawings or maps;

6. Either the cover, title, index, or table of contents page, or first sheet of any report, specification, or other professional document prepared by a registrant or the registrant's bona fide employee;
 7. The signature line of any letter or other professional document prepared by a registrant, or the registrant's bona fide employee; and
 8. Shop drawings that require professional services or work as described in the Act. Examples of shop drawings that do not require a seal include drawings that show only:
 - a. Sizing and dimensioning information for fabrication purposes;
 - b. Construction techniques or sequences;
 - c. Components with previous approvals or designed by the registrant of record; or
 - d. Modifications to existing installations that do not affect the original design parameters and do not require additional computations.
 9. Public Works projects which require the signature of each professional involved in the project.
- B.** A registrant shall apply a label that describes the name of the project and an original imprint of the registrant's seal and signature on all video cassettes that contain copies of professional documents.
- C.** In the event that a copy of a professional document is provided to a client, regulatory body, or any other person for any reason by computer disk, tape, CD, or any other electronic form, and the document does not meet the requirements of subsection (D), the registrant shall mark the copy of the professional document: "Electronic copy of final document; sealed original document is with (identify the registrant's name and registration number)."
- D.** A registrant shall sign, date, and seal a professional document:
1. Before the document is submitted to a client, contractor, any regulatory or review body, or any other person, unless the document is marked "preliminary," "draft," or "not for construction" except when the document is work product intended for use by other members of a design team; and

2. In all cases, if the document is prepared for the purpose of dispute resolution, litigation, arbitration, or mediation.

E. For purposes of subsection (A), all original documents shall include:

1. An original seal imprint or a computer-generated seal that matches the seal on file at the Board's office;
2. An original signature that does not obscure either the registrant's printed name or registration number; and
3. The date the document was sealed; ~~and,~~
4. ~~A notation beneath the seal either written, typed, or electronically generated that provides the day, month, and year of expiration of current registration, as shown in Appendix B.~~

F. Methods of transferring a seal other than an original seal imprint or a computer-generated seal are not acceptable.

G. An electronic signature, as an option to a permanently legible signature, in accordance with A.R.S. Title 41 and Title 44, is acceptable for all professional documents. The registrant shall provide adequate security regarding the use of the seal and signature.

R4-30-305. Drug Laboratory Site Remediation Best Standards and Practices Repealed

~~A. Preliminary procedures.~~

- ~~1. The onsite supervisor shall determine the nature and extent of damage and contamination of the residually contaminated portion of the real property.~~
- ~~2. The onsite supervisor shall request a copy of any document from a law enforcement agency, state agency, or other reporting agency regarding the nature and extent of illegal drug activity, evidence of what materials were removed from the real property, the location from which they were removed, and the area posted by the notice of removal.~~
- ~~3. The onsite supervisor shall:~~
 - ~~a. Evaluate all information obtained regarding the nature and extent of damage~~

- and contamination,
- ~~b. Develop procedures to safely enter the residually contaminated portion of the real property in order to conduct a visual assessment,~~
 - ~~c. Wear the appropriate personal protective equipment for all conditions assessed,~~
 - ~~d. Visually inspect the residually contaminated portion of the real property, and~~
 - ~~e. Be assisted by at least one onsite worker during the initial entry into the residually contaminated portion of the real property.~~
- ~~4. The onsite supervisor shall conduct and document required testing for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the residually contaminated portion of the real property, such as using a LEL/O₂ meter, pH paper, PID, FID, or equivalent equipment.~~
 - ~~5. If the notice of removal posting is no longer present at the time of the initial entry by the drug laboratory site remediation firm, then the entire house, mobile home, recreational vehicle, detached garage or shed, hotel room, motel room or apartment unit shall be considered the residually contaminated portion of the real property.~~
 - ~~6. If there was a fire or explosion in the residually contaminated portion of the real property that appears to have compromised the integrity of the structure, the drug laboratory site remediation firm shall obtain a structural assessment of the residually contaminated portion of the real property.~~
 - ~~7. The owner may retain a drug laboratory site remediation firm to demolish, and dispose of the residually contaminated portion of the real property rather than perform the remediation described in subsection (B).~~
 - ~~8. The drug laboratory site remediation firm shall prepare a written work plan that contains:
 - ~~a. Complete identifying information of the real property, and the drug laboratory site remediation firm including but not limited to:
 - ~~i. Street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a~~~~~~

- ~~mobile home or recreational vehicle;~~
- ~~ii. Registration number of the drug laboratory site remediation firm, name and certification number of the onsite supervisor and onsite workers that will be performing remediation services on the residually contaminated portion of the real property;~~
- ~~b. Copies of the current certification of the onsite supervisor and onsite workers that will be performing remediation services on the residually contaminated portion of the real property;~~
- ~~c. Photographs or drawings, and a written description of the residually contaminated portion of the real property that depicts the location and type of any residual contamination;~~
- ~~d. A description of the personal protective equipment to be used at the residually contaminated portion of the real property;~~
- ~~e. The health and safety procedures that will be followed in performing the remediation of the residually contaminated portion of the real property;~~
- ~~f. A list of emergency contacts and telephone numbers;~~
- ~~g. The route and location of the nearest hospital with emergency service facilities;~~
- ~~h. A detailed summary of the work to be performed by the drug laboratory site remediation firm including:~~
 - ~~i. Any pre-remediation sampling and testing of non-porous or porous materials;~~
 - ~~ii. Any demolition work;~~
 - ~~iii. Any and all materials or articles to be removed or cleaned;~~
 - ~~iv. All procedures to be employed to remove the residual contamination;~~
 - ~~v. All procedures to be employed to evaluate plumbing, septic, sewer, and soil;~~
 - ~~vi. All procedures for decontamination or disposal of contaminated materials or demolition debris;~~
 - ~~vii. All containment and negative pressure enclosure plans; and~~

- ~~6. If the dwelling has an attic or crawl space, the onsite supervisor shall assess the attic or crawl space. If the attic or crawl space was not used for the manufacturing of drugs, the storage of drugs or chemicals, or the ventilation of manufacturing areas, and these areas will not be occupied, then the attic or crawl space does not require remediation.~~
- ~~7. The residually contaminated portion of the real property shall be assessed for asbestos-containing materials prior to demolition. Any Freon-containing appliances, propane tanks, tires, or other hazardous materials shall be removed from the residually contaminated portion of the real property prior to any demolition activities. The preliminary procedures described in subsection (A) shall be followed prior to demolition activities to verify the removal of all chemicals from the residually contaminated portion of the real property and to assist with characterization of the demolition wastes. The procedures for evaluating plumbing, septic, sewer, and soil described in subsection (B)(14) shall be followed prior to demolition activities. Mobile homes, travel trailers, or other recreational vehicles may be transported to the landfill prior to demolition. The demolition work shall be conducted in a manner to prevent visible dust emissions from the work area that may impact persons on adjacent property. The demolition debris shall be properly characterized prior to disposal as required in subsection (B)(15). After demolition, any remaining building components shall be remediated as described in subsection (B).~~
- ~~8. Onsite workers or onsite supervisors shall conduct the removal of the contamination from the residually contaminated portion of the real property, except for porous materials from areas not highly suggestive of contamination that may be cleaned by a dry cleaning or laundry service.~~
- ~~9. If pre-remediation sampling and testing are performed, non-porous materials and areas shall be sampled and tested using the personnel and procedures described in subsection (C) prior to any remediation services. If the non-porous materials or areas meet the post-remediation clearance levels described in subsections (C)(2) and (4), then no removal or cleaning of these non-porous materials or areas is~~

~~required. If pre-remediation sampling and testing are performed, porous materials and areas shall be sampled and tested using the personnel and procedures described in subsection (C) prior to any remediation services. If the porous materials or areas meet the post-remediation clearance levels described in subsections (C)(2) and (4), then no removal or cleaning of these porous materials or areas is required. If pre-remediation sampling and testing are performed to evaluate whether remediation is required, the pre-remediation sampling and testing shall include an evaluation of plumbing, septic, sewer, and soil described in subsection (B)(14).~~

~~10. Procedures for areas highly suggestive of contamination:~~

- ~~a. All porous materials, such as carpets, draperies, bedding, fabric covered furniture, drop ceilings, clothing, and related items that were present in the area highly suggestive of contamination at the time of the initial notice of removal (A.R.S. § 12-1000) shall be removed and properly disposed of. All items to be removed and disposed of shall be destroyed to prevent future reuse of the items.~~
- ~~b. All porous materials such as carpets, draperies, bedding, fabric covered furniture, clothing, and related items, that were moved into the area highly suggestive of contamination after the time of the initial notice of removal (A.R.S. § 12-1000) shall be removed and properly disposed of, except porous drop ceilings, which shall be HEPA vacuumed and left in place. At the owner's discretion, all or some porous materials with no evidence of staining may be cleaned by HEPA vacuuming and one of the following methods:
 - ~~i. Steam cleaning: Hot water and detergent shall be injected into the porous materials under pressure to agitate and loosen any contamination. The water and detergent solution shall then be extracted from the porous material by a wet vacuum.~~
 - ~~ii. Chemical dry cleaning: Porous materials that cannot be washed with detergent and water shall be dry cleaned using a liquid solvent dry cleaning solution in a dry cleaning machine for at least 15 minutes.~~~~

- ~~iii. Detergent and water solution: Porous materials shall be washed with detergent and water for at least 15 minutes. The porous materials shall be rinsed with water.~~
- ~~iv. If any porous materials are removed from the real property for cleaning, the materials shall be HEPA vacuumed, and the cleaning facility shall be notified in writing, by the drug laboratory site remediation firm, that the materials being cleaned are from a clandestine drug laboratory.~~
- ~~c. All stained materials from the laboratory operations including wall board (sheet rock), wood furniture, wood flooring, and tile flooring shall be removed and properly disposed of, unless the owner requests cleaning and testing to meet the post remediation clearance levels contained in subsections (C)(2) and (4). If cleaned, the materials shall be washed with a detergent and water solution and then thoroughly rinsed. This procedure shall be repeated at least two additional times using new detergent solution and rinse water.~~
- ~~d. All non-porous surfaces, such as bathtubs, toilets, mirrors, windows, floors, walls, ceilings, doors, appliances, counter-tops, sinks, and non-fabric furniture may be cleaned to the point of stain removal and left in place or removed and properly disposed of. If cleaned, these surfaces shall be washed with a detergent and water solution and then thoroughly rinsed. This procedure shall be repeated at least two additional times using new detergent solution and rinse water.~~
- ~~e. All exposed concrete surfaces shall be thoroughly washed with a detergent and water solution and then thoroughly rinsed, or may be removed and properly disposed of. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water; and~~
- ~~f. All appliances shall be removed and properly disposed of, unless the owner requests cleaning and testing to meet the post remediation clearance levels contained in subsections (C)(2) and (4). If cleaned, the appliances shall be washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new~~

~~detergent solution and rinse water.~~

~~11. Procedures for areas not highly suggestive of contamination.~~

- ~~a. All porous materials, such as carpets, draperies, bedding, fabric covered furniture, clothing, and related items shall be removed and properly disposed of, except porous drop ceilings, which shall be HEPA vacuumed and left in place. At the owner's discretion, all or some porous materials with no evidence of staining may be cleaned by HEPA vacuuming and one of the following methods:
 - ~~i. Steam cleaning: Hot water and detergent shall be injected into the porous materials under pressure to agitate and loosen any contamination. The water and detergent solution shall then be extracted from the porous material by a wet vacuum.~~
 - ~~ii. Chemical dry cleaning: Porous materials that cannot be washed with detergent and water shall be dry cleaned using a liquid solvent dry cleaning solution in a dry cleaning machine for at least 15 minutes.~~
 - ~~iii. Detergent and water solution: Porous materials shall be washed with detergent and water for at least 15 minutes. The porous materials shall be rinsed with water.~~
 - ~~iv. If any porous materials are removed from the real property for cleaning, the materials shall be HEPA vacuumed, and the cleaning facility shall be notified in writing, by the drug laboratory site remediation firm, that the materials being cleaned are from a clandestine drug laboratory.~~~~
- ~~b. All non-porous surfaces, such as bathtubs, toilets, floors, countertops, sinks, walls, ceilings, mirrors, windows, doors, appliances, and non-fabric furniture, shall be thoroughly HEPA vacuumed and washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using a new detergent solution and rinse water.~~
- ~~c. Doors or other openings to areas with no visible contamination shall be cordoned off from all other areas with at least 4 mil plastic sheeting after being cleaned, to avoid recontamination during further remediation of the~~

~~residually contaminated portion of the real property.~~

- ~~d. Spray on acoustical ceilings shall be left undisturbed, and shall be sampled and tested for asbestos, and for residual contamination to determine whether ceilings meet the post remediation clearance levels contained in subsections (C)(2) and (4). If the postremediation clearance levels are exceeded, these materials shall be removed and disposed of according to applicable laws relating to asbestos removal.~~
- ~~e. All exposed concrete surfaces shall be thoroughly washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water.~~

~~12. Structural Integrity and Security Procedures. If, as a result of the remediation, the structural integrity or security of the real property is compromised, the drug laboratory site remediation firm shall contact a qualified, registered professional to conduct a structural assessment and recommend corrective action for the real property.~~

~~13. Ventilation Cleaning Procedures.~~

- ~~a. The ventilation system shall be turned off at the start of the remediation work and remain off until completion of the remediation work.~~
- ~~b. Air registers shall be removed and washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water.~~
- ~~c. Temporary filter media shall be attached to air register openings.~~
- ~~d. A fan-powered HEPA filter collection machine shall be connected to the ductwork to develop negative air pressure in the ductwork.~~
- ~~e. Air lances, mechanical agitators, or rotary brushes shall be inserted into the ducts through the air register openings to loosen all dirt, dust and other loose materials.~~
- ~~f. The air handler unit, including the return air housing, coils, each fan, each system, and each drip pan, shall be washed with a detergent and water~~

~~solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water.~~

~~g. All porous linings or filters in the ventilation system shall be removed and properly disposed of.~~

~~h. The ventilation system shall be sealed off at all openings with at least 4 mil plastic sheeting to prevent recontamination until the residually contaminated portion of the real property meets the postremediation clearance levels contained in subsections (C)(2) and (4).~~

~~14. Procedures for Plumbing, Septic, Sewer, and Soil.~~

~~a. All plumbing inlets to the septic or sewer system, including but not limited to sinks, floor drains, bathtubs, showers, and toilets, shall be visually assessed for any staining or other visible residual contamination. All plumbing traps shall be assessed for VOC concentrations with a PID or FID, and for mercury vapors, using a mercury vapor analyzer. If VOC concentrations or mercury vapor concentrations exceed the post-remediation clearance levels contained in subsections (C)(2) and (4), the accessible plumbing and traps where the excess levels are found shall be removed and properly disposed of, or shall be cleaned and tested to meet the post-remediation clearance levels contained in R4-30-305(C)(2) and (4).~~

~~b. The onsite supervisor shall determine whether the dwelling is connected to a local sewer system or to an onsite septic system. If the dwelling is connected to an onsite septic system, water from the remediation work shall not be disposed of in the septic system, and a sample of the septic tank liquids shall be obtained and tested for VOC concentrations.~~

~~i. If VOCs are not found in the septic tank sample or are found at concentrations less than AWQS or less than 700 milligrams per liter (mg/l) for acetone, no additional work is required in the septic system area, unless requested by the owner of the real property.~~

~~ii. If VOCs are found in the septic tank at concentrations exceeding the AWQS or exceeding 700 mg/l for acetone, the following shall apply:~~

- ~~(1) The discharge area, such as the leach field, seepage pit, or evaporation mounds, shall be investigated under the direct supervision of an Arizona-registered geologist or an Arizona-registered engineer;~~
 - ~~(2) The septic system discharge area shall be investigated for VOCs using EPA Method 8260B or an equivalent test method and, unless there is evidence that mercury or lead was not used in the manufacturing of methamphetamine, LSD or ecstasy at the clandestine drug laboratory, the septic system discharge area shall also be investigated for mercury and lead;~~
 - ~~(3) The vertical extent of any VOCs, mercury, and lead detected in the soil samples shall be delineated to concentrations at or below laboratory detection limits or to background concentrations, and the horizontal extent of any VOCs, mercury, and lead shall be delineated to concentrations at or below each compound's SRL;~~
 - ~~(4) If any VOCs, mercury, or lead used by the clandestine drug laboratory migrated down to groundwater level, the extent of groundwater contamination shall be investigated under the direct supervision of an Arizona-registered geologist or an Arizona-registered engineer and the vertical and horizontal extent of the groundwater contamination shall be delineated to concentrations at or below the AWQS or below 700 mg/l for acetone; and~~
 - ~~(5) After complete characterization of a release, the impacted soils shall be remediated to concentrations below the SRL or background concentrations, and any impacted groundwater shall be remediated to concentrations at or below the AWQS or below 700 mg/l for acetone.~~
- ~~e. The onsite supervisor shall observe the real property for evidence of burn areas, burn or trash pits, debris piles or stained areas. The on-site supervisor shall test any burn areas, burn or trash pits, debris piles or stained areas with applicable testing equipment, such as a LEL/O₂ meter, pH paper, PID, FID, mercury vapor analyzer or equivalent equipment.~~

- ~~i. If the burn areas, burn or trash pits, debris piles, or stained areas are not part of the residually contaminated portion of the real property, the drug laboratory site remediation firm shall recommend to the owner of the real property that these areas be investigated. If the owner advises the drug laboratory site remediation firm not to investigate these areas, the drug laboratory site remediation firm shall take appropriate action pursuant to R4-30-301(11).~~
- ~~ii. If the burn areas, burn or trash pits, debris piles or stained areas are part of the residually contaminated portion of the real property, these areas shall be investigated and remediated by the drug laboratory site remediation firm.~~
 - ~~(1) Any wastes remaining from the operation of the clandestine drug laboratory or other wastes impacted by compounds used by the clandestine drug laboratory shall be characterized, removed, and properly disposed of.~~
 - ~~(2) Any potentially impacted soil or groundwater shall be investigated under the direct supervision of an Arizona registered geologist or an Arizona registered engineer.~~
 - ~~(3) The burn areas, burn or trash pits, debris piles, or stained areas shall be investigated for the VOCs used by the drug laboratory. Unless there is evidence that mercury or lead was not used in the manufacturing of methamphetamine, LSD, or ecstasy at the clandestine drug laboratory, the burn areas, burn or trash pits, debris piles, or stained areas shall be investigated for lead and mercury.~~
 - ~~(4) The vertical extent of any VOCs, lead, or mercury detected in the soil samples shall be delineated to concentrations below laboratory detection limits or to background concentrations. The horizontal extent of these compounds shall be delineated to concentrations below each compound's SRL.~~
 - ~~(5) If any of the compounds used by the clandestine drug laboratory~~

~~migrated down to groundwater level, the extent of groundwater contamination shall be investigated under the direct supervision of an Arizona-registered geologist or an Arizona-registered engineer. The vertical and horizontal extent of the groundwater contamination shall be delineated to concentrations below the AWQS and below 700 mg/l for acetone.~~

~~(6) After complete characterization of a release, the impacted soils shall be remediated to concentrations below the SRL or background concentrations, and any impacted groundwater shall be remediated to concentrations below the AWQS and below 700 mg/l for acetone.~~

~~15. Waste Characterization and Disposal Procedures.~~

- ~~a. All items removed from the clandestine drug laboratory remediation site, and waste generated during the remediation or demolition work, shall be characterized and properly disposed of. All items to be removed and disposed of shall be destroyed to prevent future reuse of the items.~~
- ~~b. All suspect asbestos-containing building materials shall be properly sampled and tested for asbestos pursuant to EPA rule prior to disturbance or removal.~~
- ~~c. All waste shall be characterized by sampling and testing, or the waste shall be considered hazardous waste and disposed of pursuant to applicable law, except the waste shall not be deemed to be household hazardous waste.~~
- ~~d. The drug laboratory site remediation firm shall comply with all federal, state, municipal, county laws, codes, ordinances and regulations pertaining to waste transportation and disposal.~~

~~C. Pre-remediation and Post-remediation Testing Procedures.~~

- ~~1. Remediation sampling shall be conducted under the direct supervision of an independent Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist or Arizona-registered engineer. The individual taking the samples and the Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer directing the sampling shall have experience with remediation of hazardous~~

~~substances, confirmation sampling of remedial projects, and evaluation of health risks and exposures to chemicals. All sampling used to verify that no additional removal or cleaning is required shall be conducted under the direct supervision of a Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer. The drug laboratory site remediation firm and its employees shall not conduct the sampling and testing. All sample locations shall be photographed for documentation purposes, and these photographs shall be included in the final report.~~

~~2. Sampling and testing shall be conducted for all of the compounds listed below.~~

~~All areas and materials shall meet the following remediation clearance levels:~~

| Compound | Remediation Standard |
|--|--|
| Red Phosphorus pursuant to | Removal of stained material or cleaned these standards |
| Iodine Crystals pursuant to | Removal of stained material or cleaned these standards |
| Methamphetamine | 1.5 µg Methamphetamine/100 cm² |
| VOCs in Air | VOC air monitoring < 1 ppm |
| Corrosives | Surface pH of 6 to 8 |
| LSD | 0.1 µg LSD/100 cm² |
| Eestasy | 0.1 µg Eestasy/100 cm² |

~~3. If methamphetamine, eestasy, or LSD is detected in the pre-remediation sampling and testing of porous materials and surfaces, then the porous materials shall be disposed of or cleaned as described in subsection (B).~~

~~4. The drug laboratory site remediation firm shall conduct sampling and testing for all of the metals listed below in all cases except where there is evidence that these metals were not used in the manufacturing of methamphetamine, LSD, or eestasy at the drug laboratory:~~

| Compound | Remediation Standard |
|---------------------|---------------------------------|
|---------------------|---------------------------------|

~~Lead~~ 4.3 µg Lead/100 cm²

~~Mercury~~ 3.0 µg Mercury/m³ air

- ~~5. All sampling and testing shall be conducted in accordance with the following procedures:~~
- ~~a. All sample locations shall be photographed, and the photographs shall be included in the final report.~~
 - ~~b. All sample locations shall also be shown on a floor plan of the residually contaminated portion of the real property, and the floor plan shall be included in the final report.~~
 - ~~c. All samples shall be obtained from areas representative of the materials or surfaces being tested. All samples shall be obtained, preserved, and handled in accordance with industry standards for the types of samples and analytical testing to be conducted and maintained under chain-of-custody protocol.~~
 - ~~d. The individual conducting the sampling shall wear a new pair of gloves to obtain each sample.~~
 - ~~e. All reusable sampling equipment shall be decontaminated prior to sampling.~~
 - ~~f. All testing equipment shall be equipped and calibrated for the types of compounds to be analyzed.~~
 - ~~g. Methamphetamine, ecstasy, or LSD sampling and testing of non-porous materials and surfaces:~~
 - ~~i. Whatman 40 ashless filter paper or an equivalent filter paper shall be used for all wipe sampling. The filter paper shall be wetted with analytical grade methanol or deionized water for the wipe sampling. The filter paper shall be blotted or wiped at least five times in two perpendicular directions within each sampling area. The same filter paper may be used for up to three wipe areas or a new filter paper may be used for each area, and the three filter papers combined for analytical testing.~~
 - ~~ii. Three 10 cm x 10 cm areas (100 cm²) shall be wipe sampled from each room of the residually contaminated portion of the real property. The three samples shall be obtained from the nonporous floor, one wall, and the~~

ceiling in each room.

- iii. ~~Three 10 cm x 10 cm areas (100 cm²) shall be wipe sampled from different areas of the ventilation system.~~
- iv. ~~If there is a kitchen in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm²) shall be wipe sampled from a combination of the counter top, sink, or stove top, and from the floor in front of the stove top.~~
- v. ~~If there is a bathroom in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100cm²) shall be wipe sampled from a combination of the counter top, sink, toilet, and any shower or bathtub.~~
- vi. ~~If there are any cleaned appliances in the residually contaminated portion of the real property, one 10 cm x 10 cm area (100 cm²) shall be wipe sampled from the exposed portion of each appliance. If multiple appliances are present, each wipe sample may be a composite of up to three 100 cm² areas on three separate appliances.~~
- vii. ~~After sampling, the wipe sample shall be placed in a new clean sample jar and sealed with a teflon lined lid. The sample jar shall be labeled with at least the site or project identification number, date, time, and actual sample location. The sample jar shall be placed in a cooler with ice until delivered to an analytical laboratory licensed in any state in the United States to perform GC/MS testing. The sample shall be analyzed for methamphetamine, LSD, or ecstasy, depending upon the type of clandestine drug laboratory, using a GC/MS instrument, or an equivalent.~~
- h. ~~Methamphetamine, ecstasy, and LSD sampling and testing of porous materials and surfaces:~~
 - i. ~~Microvacuum sampling shall be conducted using a 37 mm microvac cassette equipped with a glass fiber filter and backup pad, a short piece of tygon tubing (1 to 2 inches) with one end cut at a 45 degree angle to be used as the "vacuum hose," and flexible tygon tubing to connect the pump to the filter. The person conducting the sampling shall connect the cassette with tygon~~

tubing to a high volume sampling pump and calibrate the sampling pump, with a primary calibration standard, to a flow rate from 15 to 20 liters per minute.

- ii. ~~Select sampling areas of 10 cm x 10 cm (100 cm²). In general, visibly soiled, dusty, or heavily used areas are good choices for sampling. Three 10 cm x 10 cm areas (100 cm²) of carpet shall be microvacuum sampled from each room of the residually contaminated portion of the real property.~~
- iii. ~~If there are porous furniture, lamp shades, or other fixtures in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm²) of these materials shall be microvacuum sampled from each room where present. If multiple porous furnishings are present, the three sampled areas shall be taken from three separate furnishings.~~
- iv. ~~If there are porous wall coverings, curtains, shades, or paintings in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm²) of these materials shall be microvacuum sampled from each room where present. If multiple porous wall coverings are present, the three sampled areas shall be taken from three separate wall coverings.~~
- v. ~~If there are clothes, linens, or other porous materials in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm²) of these materials shall be microvacuum sampled from each room where present. If multiple other porous materials are present, the three sampled areas shall be taken from three separate items.~~
- vi. ~~Perform the first vacuuming, in one direction, from side to side, from top to bottom. Use a slow sweeping motion. During the sampling of softer materials, press the angled tubing nozzle firmly onto the sampling surface to agitate particles. Perform a second vacuuming, in one direction, from top to bottom from side to side across the entire area. Use a slow sweeping motion. During the sampling of softer materials, press the angled tubing nozzle firmly onto~~
~~Lead 4.3 µg Lead/100 cm² Mercury 3.0 µg Mercury/m³ air the sampling surface to agitate particles. The same filter may be used for up to three~~

~~vacuum areas, or a new filter may be used for each area, and the three filters combined for analytical testing.~~

- ~~vii. After sampling, immediately turn off the pump and remove the filter cassette from the inlet and outlet tubing sections, replace the cassette plugs and place the sample into a labeled, resealable plastic bag.~~
- ~~viii. If additional samples are being collected, remove and discard the short vacuum nozzle tubing and place a clean vacuum nozzle on a new filter cassette to collect additional samples.~~
- ~~ix. After all sampling has been completed, the pump exterior should be decontaminated (wiped with a 10% bleach solution or an equivalent solution.) The collection tubing should also be discarded.~~
- ~~x. All sample cassette bags shall be labeled with at least the site or project identification number, date, time, and actual sample location. The samples shall be submitted to an analytical laboratory licensed in any state in the United States to perform GC/MS testing. The samples shall be analyzed for methamphetamine, LSD, and ecstasy, depending on the type of clandestine drug laboratory using a GC/MS instrument or an equivalent.~~
- ~~i. VOC sampling and testing procedures:
 - ~~i. A PID or FID calibrated to manufacturer's specifications capable of detecting VOCs shall be used for testing. The background concentration of VOCs shall be obtained by testing three exterior areas outside the limits of the residually contaminated portion of the real property and in areas with no known or suspected sources of VOCs. All VOC readings shall be recorded for each sample location.~~
 - ~~ii. At least three locations in each room of the residually contaminated portion of the real property shall be tested for VOC readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.~~
 - ~~iii. All accessible plumbing traps shall be tested for VOCs by holding the testing equipment probe in the plumbing pipe above the trap for at least 60~~~~

seconds.

j. ~~pH testing procedures:~~

- ~~i. Surface pH measurements shall be made using deionized water and pH test strips with a visual indication for a pH between six and eight. The pH reading shall be recorded for each sample location.~~
- ~~ii. For horizontal surfaces, deionized water shall be applied to the surface and allowed to stand for at least three minutes. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.~~
- ~~iii. For vertical surfaces, a Whatman 40 ashless filter paper or equivalent filter paper shall be wetted with deionized water and wiped over a 10 cm x 10 cm area at least five times in two perpendicular directions. The filter paper shall then be placed into a clean sample container and covered with enough deionized water to cover the filter paper. The filter and water shall stand for at least three minutes prior to testing. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.~~
- ~~iv. pH testing shall be conducted on at least three locations in each room within the areas with visible contamination and within areas known to store or handle chemicals used for the clandestine drug laboratory in the residually contaminated portion of the real property.~~

k. ~~Lead Sampling and Testing Procedures:~~

- ~~i. Unless there is evidence that lead was not used in the manufacturing of methamphetamine, LSD, or ecstasy at the clandestine drug laboratory, lead sampling shall be conducted as follows:
 - ~~(1) Whatman 40 ashless filter paper or an equivalent filter paper shall be used for wipe sampling. The filter paper shall be wetted with analytical grade 3% nanograde nitric acid for the wipe sampling. The filter paper shall be blotted or wiped at least five times in two perpendicular directions within each sampling area. The same filter paper may be used for up to three wipe areas or a new filter paper may be used for each area and the three filter papers combined for analytical testing.~~~~

- ~~(2) Three 10-cm x 10-cm areas (100-cm²) shall be sampled in each room within the areas with visible contamination or within areas known to store or handle chemicals used for the clandestine drug laboratory in the residually contaminated portion of the real property, and~~
- ~~(3) After sampling, the wipe sample shall be placed in a new clean sample jar and sealed with a teflon-lined lid. The sample jar shall be labeled with at least the site or project identification number, date, time, and actual sample location. The sample jar shall be placed in a cooler with ice until delivered to an Arizona-licensed analytical laboratory.~~
- ~~ii. The sample shall be analyzed for lead using EPA Method 6010B or an equivalent.~~
- ~~i. Mercury Sampling and Testing Procedures:~~
- ~~i. A mercury vapor analyzer calibrated in accordance with manufacturer's specifications shall be used for evaluating the remediated areas for the presence of mercury. All mercury readings shall be recorded for each sample location.~~
- ~~ii. At least three locations in each room within the areas with visible contamination or within areas known to store or handle chemicals used for the clandestine drug laboratory in the residually contaminated portion of the real property shall be tested for mercury vapor readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.~~
- ~~iii. All accessible plumbing traps shall be tested for mercury by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.~~
- ~~m. Septic Tank Sampling and Testing Procedures:~~
- ~~i. The liquid in the septic tank shall be sampled with a new clean bailer or similar equipment.~~
- ~~ii. The liquid shall be decanted or poured with minimal turbulence into three new VOA vials prepared by the laboratory.~~
- ~~iii. The VOA vials shall be filled so that there are no air bubbles in the sealed container. If air bubbles are present, the vial must be emptied and refilled.~~
- ~~(1) The sample vials shall be labeled with at least the date, time, and sample~~

location.

~~(2) The sample vials shall be placed in a cooler with ice until delivered to an Arizona-licensed analytical laboratory.~~

~~(3) The sample shall be analyzed for acetone and methanol using EPA Method 8015B or an equivalent method.~~

~~D. Final report.~~

~~1. A final report shall be:~~

~~a. Prepared by the drug laboratory site remediation firm,~~

~~b. Submitted to the owner of the remediated property and the Board within 30 days after completion of the remediation services, and~~

~~c. Retained by the firm for a minimum of three years.~~

~~2. The final report shall include the following information and documentation:~~

~~a. Complete identifying information of the real property, and the drug laboratory site remediation firm, including but not limited to street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home or recreational vehicle, registration number of the drug laboratory site remediation firm, name and certification number of the onsite supervisor, and name and certification numbers of the onsite workers who performed the remediation services on the residually contaminated portion of the real property;~~

~~b. A summary of any pre-remediation sampling and testing and all post-remediation sampling and testing including the name and certification, registration, or license number of the Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer supervising the sampling and testing;~~

~~c. A summary of the remediation and demolition services completed on the residually contaminated portion of the real property, with any deviations from the approved work plan, including a list of the rooms, surfaces, materials, and articles cleaned, a list of the materials and articles removed and disposed of, and the procedures used to evaluate the plumbing, septic, sewer, and soil and~~

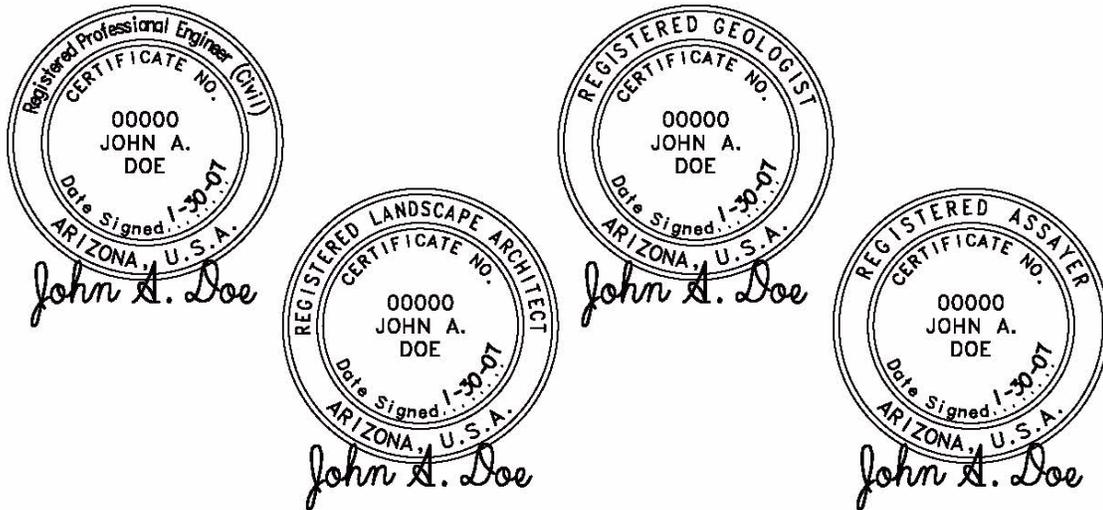
- ~~to document the extent of the remediation or demolition services;~~
- ~~d. Photographs documenting the remediation services and showing each of the sample locations, and a drawing or sketch of the residually contaminated areas that depict the sample locations;~~
 - ~~e. A copy of the sampling and testing results for VOCs and mercury, a copy of any asbestos sampling and testing results, a copy of the laboratory test results on all samples, and a copy of the chain of custody protocol documents for all samples from the residually contaminated portion of the real property;~~
 - ~~f. A summary of the waste characterization work, and copies of any waste sampling and testing results and transportation and disposal documents, including but not limited to, bills of lading, weight tickets, and manifests for all materials removed from the real property;~~
 - ~~g. A summary of the onsite supervisor's observation and testing of the real property for evidence of burn areas, burn or trash pits, debris piles, or stained areas;~~
 - ~~h. A copy of any reports provided to the drug laboratory site remediation firm including:
 - ~~i. A copy of any report prepared by the Certified Industrial Hygienist, Certified Safety Professional, Arizona registered geologist, or Arizona registered engineer, and~~
 - ~~ii. A signed statement confirming that the sampling was conducted under direct supervision;~~~~
 - ~~i. A statement that the residually contaminated portion of the real property has been remediated in accordance with R4-30-305; and~~
 - ~~j. The total cost of any pre-remediation sampling and testing, as described in subsection (B)(9), the total cost of all post-remediation sampling and testing, as described in subsection (C) and the total cost of the remediation decontamination services as described in subsections (B)(9), (10), (12), (13), and (14);~~
- ~~3. Within 24 hours after the final report described in subsection (D) has been~~

prepared, the drug laboratory site remediation firm shall deliver, or send by certified mail, a copy of the complete and final report to the State Board of Technical Registration. The drug laboratory site remediation firm shall also deliver or send a separate document to all other individuals and entities stating that the residually contaminated portion of the real property has been remediated pursuant to A.R.S. § 12-1000 (E).

Appendix A. Sample Seals

Samples:

Sign your name across lower portion of the seal. Do not cover your name or registration number with your signature.





** ENGINEERS MUST LIST BRANCH – Agriculture,

Architectural, Chemical, Civil, Control Systems, Electrical, Environmental, Fire Protection, Geological, Industrial, Mechanical, Mining, Metallurgical, Nuclear, Petroleum, Sanitary, or Structural. The original seal shall be the following size:

Outer circle ~~should~~ shall be $1 \frac{1}{2}'' \pm 1/16''$

Inner circle ~~should~~ shall be $1 \frac{1}{8}'' \pm 1/16''$

Appendix B. Sample Expiration Date Notification Repealed

~~Sample:~~

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT
STATEMENT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 30. BOARD OF TECHNICAL REGISTRATION**

**ARTICLE 1. GENERAL PROVISIONS
ARTICLE 2. REGISTRATION PROVISIONS
ARTICLE 3. REGULATORY PROVISIONS**

**R4-30-101, R4-30-102, R4-30-103, R4-30-106, R4-30-107, R4-30-120, R4-30-121,
R4-30-123, R4-30-126, R4-30-201, R4-30-202, R4-30-202.01, R4-30-203, R4-30-204,
R4-30-208, R4-30-209, R4-30-209.01, R4-30-210, R4-30-214, R4-30-222, R4-30-242,
R4-30-247, R4-30-252, R4-30-254, R4-30-262, 264, R4-30-270, R4-30-271, R4-30-272,
R4-30-282, R4-30-284, R4-30-301, R4-30-301.01, R4-30-303, R4-30-304, R4-30-305,
R4-30-306 appendix A and appendix B**

1. Identification of rulemaking.

This final rulemaking submitted by the Arizona Board of Technical Registration, (Board), amends rules to reflect legislative amendments that became effective in 2016, improve clarity and conciseness for licensing and enforcement rules, and update rules to reflect current industry standards. The final rulemaking also amends the agency fee schedule to eliminate the roster of registrants, an archaic product that is no longer requested by the public. The amendment adds a commercial fee for computer generated lists as opposed to the non-commercial lists as authorized the A.R.S. § 39-121.03. The minor increase in fees for services reflects the increased expense to the Board for staffing, supplies, equipment, digital production and postage. The proposed fee increases are consistent with fees charged for similar services by other Arizona agencies. The increase in fees will offset the cost of implementation of the Board's ability to accept payment for services by credit card. The Board will absorb the cost of the credit card transaction rather than impose that fee on the cardholders. Finally, the fees for miscellaneous services remain equitable with the fee schedule for similar Board-offered services published in 1983.

• **The conduct and its frequency of occurrence that the rule is designed to change:**

The Board's rules are intended to reflect the standards of the professions and occupations the Board regulates and their professional conduct. These standards can change rapidly to reflect technological and environmental factors, and therefore require periodic review and updating. Similarly, the Legislature amends the Board practice act as it deems necessary. Legislative amendments, repeals, and additions occur periodically but usually not on an annual basis.

The Board's fee schedule has remained essentially the same since 1983. The Board only reviews the need to adjust fees to reflect costs to the agency when necessary to carry out agency functions.

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

The standards of practice reflected in the Board rules are evaluated and adjusted to respond to health, safety, and welfare issues that arise for consumers of the services of highly technical professions. The failure of rules to reflect current standards carries substantial physical and financial risk to the public. Failure on the part of the Board to update the rules also leads to public and professional confusion about required standards. It is the responsibility of the Board to provide clear and concise rules for the benefit of all parties.

This rulemaking includes changes required by statutes that were amended in 2016 eliminating licensing of architects in-training, landscape architects in-training, assayers, and remediation specialists, and which transferred the clandestine drug lab regulation to the Department of Environmental Quality.

- **The estimated change in frequency of the targeted conduct expected from the rule change:**

Failure to apply current knowledge and skill is a primary cause for the public to file complaints and for the Board to discipline registrants. Amending rules to reflect current standards will not eliminate unprofessional conduct but does reduce the incidence of negligent conduct and public harm.

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

Rule amendments which provide clarity and conciseness and adopt current industry standards will not impose a financial burden on any party and benefits all. Registrants will have better information that will avert complaints or discipline and the public will better understand what to expect of a registrant or certificate holder.

Rule amendments that reflect statutory changes will minimize consumer misunderstandings or misconceptions and clarify that the Board still regulates certain registrants.

The amendments to the fee schedule reflect costs that are paid by either registrants/certificate holders, the public, or both.

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 agency will not incur a cost to implement these rule changes, other than the publication of the rule changes to the registrant/certificate stakeholders. Other agencies will not be affected.

ii. Benefit:

The proposed rule amendments will improve clarity and conciseness and reflect current standards will benefit the agency through stakeholder education which will reduce the amount of staff time explaining the rules and responding to complaints and promote better guidance in law.

The rules reflecting statutory changes will have little impact on the agency.

The adjustments to the fees will benefit the agency by recovering the current costs to provide the listed services. The fee adjustment will also offset the anticipated expense to the agency for absorbing the cost of credit card transactions. That cost is expected to be approximately \$3.50 per transaction.

iii. Need for additional Full-time Employees:

None

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

Not applicable.

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.

Not applicable.

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

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

The only section of this rulemaking that may impact small businesses is the

proposed amendment to the fee schedule. The other sections are related to clarity, conciseness and statutory compliance, and are not expected to have an economic impact on businesses. Small businesses within the regulated community, businesses marketing education or exam preparation, professional associations, professional recruiting or law firms may be minimally impacted by the change in fees.

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

Minimal costs to the agency associated with distributing information on the rules changes may occur.

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

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

The 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;

The 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;

The 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.

The benefit to private persons and consumers will be realized through clearer communications on the law and professional standards. The positive economic impact of that benefit cannot be determined at this time.

R4-30-106. Fees

The only rule amendment that is anticipated to have a measurable cost is the rule updating the agency's fee schedule.

All persons who make purchases with a credit card will benefit from absence of a credit card transaction fee. The agency will absorb the anticipated \$3.50 fee per transaction.

A list for non-commercial use: The maximum cost for this type of list has increased to reflect the significant growth in the number of registrants under the Board's jurisdiction. The current list could include over 43,000 registrants. Three such lists were requested within the past year. The number of registrants in the lists varied between 9, 18, and 11,015. The fee for the two shorter lists under the proposed change would be \$2.25 and \$4.50. Under the proposed amended fee schedule, the list of 11,015 registrants would be capped at \$300.00 rather than \$2,753.75 (\$.25 per registrant,) that would be charged under the present rule. The Board won't benefit from the proposed rule change because maintaining the resources necessary to produce longer lists will cost more than production of those lists. Additionally, the Board is in the process of implementing digital access to the lists through its website. The public will benefit from this service because there will be no fee associated with such lists.

A list for commercial use: Pursuant to A.R.S. § 39-121.03, fees for the production of lists for commercial use may reflect the value on the commercial market. Commercial requests have been made in order to recruit association members, marketing education courses, and to a lesser extent, recruiting talent. The Board has over 43,000 registrants. The minimum fee of \$250.00 supports the cost to the Board for the resources required to collect, retain, sort, and produce the data that comprises the list, as well as the personnel, equipment and other costs associated with it. The fee, as proposed, equals or falls below the monetary benefit to a requesting party. The average request for a commercial list includes 1,872 registrants. That list, under the proposed fee would be \$458.00. The largest list requested over the last year was for 10,925 registrants. If that list was requested after the proposed fee was implemented, it would have cost \$1,092. Associations and professional course providers collect new revenues for each new member or student recruited, using the low-cost lists provided by the State. Recruiters use the list to charge firms for new talent searches. The proposed rule's fee change will provide the Board with minimal economic benefit and will be used to support the data collection and maintenance system, staffing, materials, and postage associated with each

request. The Board is in the process of implementing digital access to the lists through the Board's website. The public will benefit from this service and lists obtained in this manner will have no associated fee.

The photocopy fee: The proposed fee takes into account the cost to the agency to produce any copy request, regardless of size, including the agency cost to maintain a staff person assigned to communicate with the requesting party, ensure accuracy of the product when delivered, search for the record, pull the record, redact sensitive information, produce copies, return the record, complete any forms necessary when removing a record from storage and sending the copy, in addition to the costs for supplies, equipment purchase and maintenance and postage. The average request for photocopies is 34 pages. The cost under the proposed fee would be \$8.75.

Replacement certificate fee: The current fee for a replacement certificate is \$10.00. The proposed amendment clarifies that the fee is for each certificate.

Local examination review: Applicants that fail an examination have the option to review the examination. A staff person must be present for an examination review. The current fee for this service is \$25.00. The proposed amendment clarifies that the fee is \$25.00 per hour to cover the use of staff and facility time. Applicants in the past have used one to two hours for a review. Three reviews have been requested in 2017.

Returned check fee: The current fee for a returned check is \$25.00. The proposed amendment clarifies that the fee is for each returned check.

Verification of registration or certificate: Individuals who the Board registers, including Engineers, Architects, Landscape Architects, Geologists, and Land Surveyors, may need the Board to verify that their registrations are in good standing, as well as to verify the date the registration was issued, the registration's expiration date, and document that they passed nationally required professional examinations.

The Board has over 43,000 registrants and certificate holders who may submit a verification request to the Board for processing at any time. Due to inefficient record maintenance by a prior administration and the lack of record maintenance by the national entities responsible for administering the professional examinations, the Board's records search to complete a single verification may take 10 or more minutes. Staff has been receiving an average of 120 verification requests monthly.

Due to the high number of verification requests the Board receives, it has dedicated a .5 FTE staff member to the task, and included programming in the Board's new e-licensing system to retain, track, and compile verification information. Additional staff are also assigned to assist as needed. The proposed verification fee of \$25.00 will support the \$34,000 plus per year cost to the agency to process verifications, as well as costs associated with postage mail the verifications that are not transmitted electronically.

The initiation of the fee will also benefit registrants by contributing to the efficiency of processing verifications by discouraging submission of duplicate verification requests. Approximately 1 in 15 verification requests the Board receives are duplicates. Fewer duplicates will translate into faster processing of incoming requests. The \$25.00 fee is consistent with the fee charged by other Arizona licensing Boards and by other states' boards that regulate the same populations nationally for the same service. Most registrants will request that a verification be sent to one or two entities at a cost of \$25.00 to \$50.00. The Board is currently implementing digital access to verifications for the limited circumstances in which another jurisdiction will accept website verification. It is not anticipated that the web service will decrease the need for staff processing of verifications because most states require that the verification be submitted directly from the licensing Board of jurisdiction.

Laminated Pocket Cards: The Board provides laminated pocket cards to alarm agents and alarm controlling persons as part of the certification for those occupations. The cost for the cards is incorporated into the application and renewal fee the industry pays. Members of several other professions and occupations under the Board's jurisdiction have requested access to the service as well. All registrants are provided with a paper copy of a card at no cost that they can laminate. However, the Board would like to offer its laminating service to interested parties at a fee of \$10.00 per card. It would be a voluntary fee and would cover the cost of materials, equipment, and staff time to produce and mail the cards.

6. Statement of the probable effect on state revenues.

The only rule amendment that would impact State revenues is the change to R4-30-106, the fee schedule. The Board deposits ten percent of all its fees into the State's general fund. Ninety percent of all fees are deposited into the Board's fund, pursuant to A.R.S. sec. 32-109. Most of the fee changes requested in this rule package are minimal and would have little impact on either fund. The fee for registration verification could potentially deposit \$3,600 into the State's general fund, and deposit \$32,400 into the Board's fund. Those fees would be applied to the cost of staff and other resources necessary for the processing of registration verifications.

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.

Other alternatives were not considered because the revisions to the rules as proposed will have minimal impact on registrants, the agency, and the public.

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 Board did not rely on any data for this rulemaking.

Board of Technical Registration

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

Authority: A.R.S. § 32-101 et seq.

Chapter 30, consisting of Sections R4-30-101 through R4-30-126, R4-30-201 through R4-30-284, and R4-30-301 through R4-30-307, adopted effective August 3, 1983.

Former Chapter 30, consisting of Sections R4-30-01 through R4-30-04, R4-30-13 through R4-30-19, R4-30-27 through R4-30-31, R4-30-41 through R4-30-43, R4-30-52 through R4-30-56, R4-30-66, and R4-30-76, repealed effective August 3, 1983.

ARTICLE 1. GENERAL PROVISIONS

Section

| | |
|------------|--|
| R4-30-101. | Definitions |
| R4-30-102. | Home Inspection Definitions |
| R4-30-103. | Drug Laboratory Site Remediation Definitions |
| R4-30-104. | Repealed |
| R4-30-105. | Repealed |
| R4-30-106. | Fees |
| R4-30-107. | Registration and Certification Expiration Dates |
| R4-30-108. | Reserved |
| R4-30-109. | Reserved |
| R4-30-110. | Reserved |
| R4-30-111. | Reserved |
| R4-30-112. | Reserved |
| R4-30-113. | Reserved |
| R4-30-114. | Reserved |
| R4-30-115. | Reserved |
| R4-30-116. | Reserved |
| R4-30-117. | Reserved |
| R4-30-118. | Reserved |
| R4-30-119. | Reserved |
| R4-30-120. | Complaint Review Process |
| R4-30-121. | Investigation of Violations |
| R4-30-122. | Issuance of Subpoenas |
| R4-30-123. | Informal Compliance Procedures |
| R4-30-124. | Repealed |
| R4-30-125. | Reserved |
| R4-30-126. | Service of Board Decisions; Rehearing of Board Decisions |

ARTICLE 2. REGISTRATION PROVISIONS

Section

| | |
|---------------|--|
| R4-30-201. | Registration as an Architect, Assayer, Engineer, Geologist, Landscape Architect, or Land Surveyor |
| R4-30-202. | In-training Designation |
| R4-30-202.01. | Remediation Specialist Certification |
| R4-30-203. | Waiver of Examination |
| R4-30-204. | Examinations |
| R4-30-205. | Reserved |
| R4-30-206. | Repealed |
| R4-30-207. | Renumbered |
| R4-30-208. | Education and Work Experience |
| R4-30-209. | Time-frames for Professional Registration, Certification, or In-training Designation |
| R4-30-210. | Time-frames for Approval to Sit for, or for Waiver of, the Professional, Certification, or In-training Examination |
| R4-30-211. | Repealed |
| R4-30-212. | Expired |
| R4-30-213. | Reserved |
| R4-30-214. | Architect Registration |
| R4-30-215. | Reserved |
| R4-30-216. | Reserved |
| R4-30-217. | Reserved |
| R4-30-218. | Reserved |
| R4-30-219. | Reserved |

| | |
|------------|--|
| R4-30-220. | Reserved |
| R4-30-221. | Engineering Branches Recognized |
| R4-30-222. | Engineer-in-training Designation |
| R4-30-223. | Reserved |
| R4-30-224. | Engineer Registration |
| R4-30-225. | Reserved |
| R4-30-226. | Reserved |
| R4-30-227. | Reserved |
| R4-30-228. | Reserved |
| R4-30-229. | Reserved |
| R4-30-230. | Reserved |
| R4-30-231. | Reserved |
| R4-30-232. | Reserved |
| R4-30-233. | Reserved |
| R4-30-234. | Reserved |
| R4-30-235. | Reserved |
| R4-30-236. | Reserved |
| R4-30-237. | Reserved |
| R4-30-238. | Reserved |
| R4-30-239. | Reserved |
| R4-30-240. | Reserved |
| R4-30-241. | Reserved |
| R4-30-242. | Geologist-in-training Designation |
| R4-30-243. | Reserved |
| R4-30-244. | Geologist Registration |
| R4-30-245. | Reserved |
| R4-30-246. | Reserved |
| R4-30-247. | Home Inspector Certification |
| R4-30-248. | Reserved |
| R4-30-249. | Reserved |
| R4-30-250. | Reserved |
| R4-30-251. | Reserved |
| R4-30-252. | Landscape Architect-in-training Designation |
| R4-30-253. | Reserved |
| R4-30-254. | Landscape Architect Registration |
| R4-30-255. | Reserved |
| R4-30-256. | Reserved |
| R4-30-257. | Reserved |
| R4-30-258. | Reserved |
| R4-30-259. | Reserved |
| R4-30-260. | Reserved |
| R4-30-261. | Reserved |
| R4-30-262. | Assayer-in-training Designation |
| R4-30-263. | Reserved |
| R4-30-264. | Assayer Registration |
| R4-30-265. | Reserved |
| R4-30-266. | Reserved |
| R4-30-267. | Reserved |
| R4-30-268. | Reserved |
| R4-30-269. | Reserved |
| R4-30-270. | Drug Laboratory Site Remediation Firm Registration |
| R4-30-271. | Onsite Supervisor Certification and Renewal |
| R4-30-272. | Onsite Worker Certification and Renewal |
| R4-30-273. | Reserved |
| R4-30-274. | Reserved |
| R4-30-275. | Reserved |

| | |
|------------|---------------------------------------|
| R4-30-276. | Reserved |
| R4-30-277. | Reserved |
| R4-30-278. | Reserved |
| R4-30-279. | Reserved |
| R4-30-280. | Reserved |
| R4-30-281. | Reserved |
| R4-30-282. | Land Surveyor-in-training Designation |
| R4-30-283. | Reserved |
| R4-30-284. | Land Surveyor Registration |

ARTICLE 3. REGULATORY PROVISIONS

Section

| | |
|---------------|---|
| R4-30-301. | Rules of Professional Conduct |
| R4-30-301.01. | Home Inspector Rules of Professional Conduct |
| R4-30-302. | Electrical Plans |
| R4-30-303. | Securing Seals |
| R4-30-304. | Use of Seals |
| R4-30-305. | Drug Laboratory Site Remediation Best Standards and Practices |
| R4-30-306. | Securing and Using Identifying Markers |
| R4-30-307. | Repealed |
| Appendix A. | Sample Seals |
| Appendix B. | Sample Expiration Date Notification |
| Appendix C. | Repealed |
| Appendix D. | Repealed |
| Appendix E. | Repealed |
| Appendix F. | Repealed |

ARTICLE 1. GENERAL PROVISIONS

R4-30-101. Definitions

The following definitions apply in this Chapter unless the context otherwise requires:

1. "Act" means the Technical Registration Act, A.R.S. Title 32, Chapter 1.
2. "Active engagement" means actually practicing or providing architectural, assaying, engineering, geological, landscape architectural, or land surveying services.
3. "Bona fide employee" means:
 - a. Any person employed by a town, city, county, state, or federal agency working under the direction or supervision of a registrant;
 - b. Any person employed by a business entity and working under the direct supervision of a registrant who is also employed by the same business entity; or
 - c. Any person working under the direct supervision of a registrant who:
 - i. Receives direct wages from the registrant;
 - ii. Receives contract compensation from the registrant; or
 - iii. Receives direct wages from the project prime professional who has a contract with another registrant and whose work product is the responsibility of the latter registrant.
4. "Branch" means a specialty area within the category of engineering.
5. "Category" means the professions of architecture, assaying, geology, engineering, landscape architecture, and land surveying.
6. "De minimis violations" means violations of Board statutes or rules that do not present a threat to public welfare, health, or safety.
7. "Design team" means a group of individuals that includes one or more professional registrants collaborating with any other individuals on a specific project to develop professional documents.
8. "Detached single family dwelling" as used in the Act means a single family dwelling unit such as a house, which is structurally and physically separate from all other family dwelling units. This does not mean any single family dwelling unit which is part of a multiple dwelling unit building such as a duplex, townhouse, apartment building, condominium, or cooperative. The term "detached single family dwelling" also includes all subsidiary buildings, structures and improvements such as garage, storage areas, swimming pool, and landscaping.
9. "Direct supervision" means a registrant's critical examination and evaluation of a bona fide employee's work product, during and after the preparation, for purposes of compliance with applicable laws, codes, ordinances, and regulations pertaining to professional practice.
10. "Experience" is classified as follows:
 - a. "Subprofessional experience" means task work done under direct supervision and not falling within the definition of professional experience, including but not limited to time spent as a rodman, chainman, recorder, instrument technician, survey aide, technician, clerk of the works, or similar work.
 - b. "Professional experience" means work calling for substantial technical knowledge, skill, and responsibility as well as a lesser degree of supervision.
 - c. "Responsible charge experience" means work in the field or in the office, where the applicant had responsibility for the direction of the work and its successful accomplishment and where the applicant had to make professional decisions without relying on advice or instructions from or first referring the decisions for approval to a superior.
 - d. "Design experience" means professional experience, including work defined under "responsible charge experience," where the applicant must fulfill the requirements of local circumstances and conditions and yet not violate any of the requirements of the profession and ensure that the executed plan meets the purpose for which it was designed.
11. "Federal agency" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.
12. "Good moral character and repute" means that the registration or certification applicant:
 - a. Has not been convicted of a class 1 felony as under in A.R.S. § 13-601(A).
 - b. Has not been convicted of a felony or misdemeanor if the offense has a reasonable relationship to the functions of the employment or category for which the registration, certification, or designation is sought;
 - c. Has not, within five years of application for registration or certification, committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the candidate's proposed area of practice;
 - d. Is not currently incarcerated in a penal institution;
 - e. Has not engaged in fraud or misrepresentation in connection with the application for registration, certification, or related examination;
 - f. Has not had a registration or certification revoked or suspended for cause by this state or by any other jurisdiction, or surrendered a professional license in lieu of disciplinary action;

Board of Technical Registration

- g. Has not practiced without the required technical registration or certification in this state or in another jurisdiction within the two years immediately preceding the filing of the application for registration or certification; and
- h. Has not, within five years of application for registration or certification, committed an act that would constitute unprofessional conduct, as set forth in R4-30-301 or R4-30-301.01.
13. "Gross negligence" means a substantial deviation from professional practice from the standard of professional care exercised by members of the registrant's profession, or a substantial deviation from any technical standards issued by a nationally recognized professional organization comprised of members of the registrant's profession, or a substantial deviation from requirements contained in state, municipal, and county laws, ordinances, and regulations pertaining to the registrant's professional practice.
14. "Incompetence" means to lack the professional qualifications, experience, or education to undertake a professional engagement or assignment.
15. "Insufficient evidence to support disciplinary action" means:
- The Board determines there was no evidence to warrant disciplinary action, but believes that continuation of the actions leading to the investigation may result in future Board action against the registrant; or
 - The Board determines that there were de minimis violations of Board statutes or rules, but no disciplinary action should be taken against the certification or registration and that a letter of concern would be as effective a resolution as a letter of reprimand in deterring future violations of a like nature.
16. "Other misconduct" means the registrant:
- Has been convicted of a class 1 felony;
 - Has been convicted of a felony or misdemeanor, if the offense has a reasonable relationship to the functions of the registration;
 - Is presently incarcerated in a penal institution;
 - Has had a professional license or registration suspended or revoked for cause by this state or by any other jurisdiction or has surrendered a professional license in lieu of disciplinary action;
 - Has knowingly acted in violation or knowingly failed to act in compliance with any provisions of the Act, or rules of the Board or any state, municipal, or county law, code, ordinance, or regulation pertaining to the practice of the registrant's profession; or
 - Has refused to respond fully to a Board inquiry relating to an applicant's qualifying experience, or provided the Board with false information relating to an applicant's qualifying experience.
17. "Practicing" means offering or performing professional services regulated by the Act within the state of Arizona.
18. "Prepared" means to exercise direct supervision over the preparation of professional documents.
19. "Professional documents" mean the professional work product of a registrant that requires professional judgment, design, analysis, or conclusions, including original plans, drawings, maps, plats, reports, written opinions, specifications, and calculations.
20. "Project Prime Professional" means the registrant is responsible for the coordination, continuity, and compatibility of each collaborating registrant's work (when retained by the project prime professional).
21. "Public works" project means a work or undertaking that is financed, in whole or in part, by a federal agency or by a state public body, as defined in this Article.
22. "Registrant" means a person or firm who has been granted registration or certification to practice any profession regulated pursuant to the Act.
23. "Retired from active practice" means that the registrant no longer performs professional services.
24. "State public body" means the state or a county, city, town, municipal corporation, authority, or any other subdivision, agency, or instrumentality of such an entity, corporate or otherwise.
25. "Structure" as used in the Act means any constructed or designed improvement or improvements to real property including all onsite improvements, fixed equipment, and landscaping, pursuant to an engagement or project.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
 Amended effective December 18, 1991 (Supp. 91-4).
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 968, effective May 5, 2007 (Supp. 07-1).

R4-30-102. Home Inspection Definitions

The following definitions apply to home inspection requirements in this Chapter:

- "Automatic safety controls" means devices designated and installed to protect systems and components from high or low pressures and temperatures, electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions.
- "Central air conditioning" means a system that uses ducts to distribute cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.
- "Component" means a readily accessible and observable aspect of a system, such as a floor or wall, but not individual pieces such as boards or nails where many similar pieces make up the system.
- "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.
- "Dangerous or adverse situations" means situations that pose a threat of injury to the inspector, and those situations that require the use of special protective clothing or safety equipment.
- "Dismantle" means to take apart or remove any component, device, or piece of equipment that is bolted, screwed, or fastened by other means and that would not be taken apart or removed by a homeowner in the course of normal household maintenance.
- "Major defect" means a system or component that is dangerous or not functioning.
- "Observe" means the act of making a visual examination of a system or component and reporting on its condition.

9. "On-site water supply quality" means water quality based on the bacterial, chemical, mineral, and solids content of the water.
10. "Parallel inspection" means a home inspection by an applicant supervised by a certified home inspector, in the presence of no more than three other applicants, that includes a written report prepared by the applicant, reviewed and corrected by the supervising certified home inspector, and returned to the applicant within 10 days after the supervising certified home inspector receives the written report.
11. "Primary windows and doors" means windows and exterior doors that are designed to remain in their respective openings year round.
12. "Readily openable access panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices so the panel can be lifted off, swung open, or otherwise removed by one person; and has edges and fasteners that are not painted in place; is within normal reach or accessible from a four-foot stepladder, and is not blocked by stored items, furniture, or building components.
13. "Recreational facilities" means spas, saunas, steam baths, swimming pools, tennis courts, play-ground equipment, and other exercise, entertainment, or athletic facilities.
14. "Representative number" means for multiple identical components such as windows and electrical outlets, the inspection of one component per room. For multiple identical exterior components, the inspection of one component on each side of the building.
15. "Safety glazing" means tempered glass, laminated glass, or rigid plastic.
16. "Shut down" means a piece of equipment whose switch or circuit breaker is in the "off" position, or its fuse is missing or blown, or a system cannot be operated by the device or control that a home owner should normally use to operate it.
17. "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.
18. "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads). For purposes of this definition, a dead load is the fixed weight of a structure or piece of equipment, such as a roof structure on bearing walls; and a live load is a moving variable weight added to the dead load or intrinsic weight of a structure.
19. "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.
20. "Technically exhaustive" means an inspection involving measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4). New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp.

03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-103. Drug Laboratory Site Remediation Definitions

In addition to the definitions provided in A.R.S. §§ 12-990, 32-101, and R4-30-101, the following definitions shall apply only to drug laboratory site remediation requirements in this Chapter:

1. "ADHS" means the Arizona Department of Health Services.
2. "AHERA" means the Asbestos Hazard Emergency Response Act of 1986 training provisions contained in 40 CFR 763.92, effective November 15, 2000, 65 FR 69216, the provisions of which are incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at the office of the Board of Technical Registration and from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 6397-9000, and on the federal digital system at www.gpo.gov/fdsys.
3. "AWQS" means the Arizona Aquifer Water Quality Standards contained in A.A.C. R18-11-406.
4. "Background concentration" means the level of naturally occurring contaminant in soil.
5. "Certificate" or "certificates" means registrations or certifications issued to onsite workers or onsite supervisors by the Board.
6. "Certified Industrial Hygienist" means a person certified in the comprehensive practice of industrial hygiene by the American Board of Industrial Hygiene.
7. "Certified Safety Professional" means a person certified in safety practices and procedures by the Board of Certified Safety Professionals.
8. "Chain-of-custody protocol" means a procedure used to document each person that has had custody or control of an environmental sample from its source to the analytical laboratory, and the time of possession of each person.
9. "Characterize" means to determine the quality or properties of a material by sampling and testing to determine the concentration of contaminants, or specific properties of the material such as flammability or corrosiveness.
10. "Combustible" means vapor concentration from a liquid that has a flash point greater than 100° F.
11. "Confirmation sampling of remedial projects" means collecting material samples after a remedial effort to confirm that the remedial effort reduced contaminant concentrations or material properties to a level at or below the remedial standard.
12. "Contamination" or "contaminated" means the state of being impacted or polluted by hazardous or petroleum substances or chemicals.
13. "Corrosive" means a material such as acetic acid, acetic anhydride, acetyl chloride, ammonia (anhydrous), ammonium hydroxide, benzyl chloride, dimethylsulfate, formaldehyde, formic acid, hydrogen chloride/hydrochloric acid, hydrobromic acid, hydriodic acid, hydroxylamine, methylamine, methylene chloride (dichloromethane, methylene dichloride), methyl methacrylate, nitroethane, oxalylchloride, perchloric acid, phenylmagnesium bromide, phosphine, phosphorus oxychloride, phosphorus pentoxide, sodium amide (sodamide), sodium metal, sodium hydroxide, sulfur trioxide, sulfuric acid, tetrahydrofuran, or thionyl chloride that increases or decreases the pH of a material and may cause degradation of the material.
14. "Delineated" means to determine the extent of a contaminant by sampling, testing, and showing the size and shape of the contaminant plume on a drawing.

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15. "EPA" means the United States Environmental Protection Agency.
16. "EPA Method 8015B" means the EPA approved method for determining the concentration of various non-halogenated volatile organic compounds and semi-volatile organic compounds by gas chromatography/flame ionization detector. The EPA first published the second revision to the report, SW-846, citing this Method in Ch. 4.3.1, in the South West Region, in December 1996. It is incorporated by reference. The material incorporated by reference does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and at the office of the Board of Technical Registration.
17. "EPA Method 6010B" means the EPA approved method for determining the concentration of various heavy metals by inductively coupled plasma. The EPA first published the report, SW-846, citing this Method in Ch. 3.3, in the South West Region, in December 1996. It is incorporated by reference. The material incorporated by reference does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and at the office of the Board of Technical Registration.
18. "EPA Method 8260B" means the EPA approved method for determining the concentration of various volatile organic compounds by GC/MS. The EPA first published the report, SW-846, citing this Method in Ch. 4.3.2, in the South West Region, in December 1996. It is incorporated by reference. The material incorporated by reference does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105 or on the EPA website at http://epa.gov/wastes/hazard/testmethods/sw846/online/8_series.htm, and at the office of the Board of Technical Registration.
19. "Exposed" means open to the atmosphere and not covered by a non-porous material.
20. "Final Report" means the report required in R4-30-305(D).
21. "FID" means flame ionization detector.
22. "Flammable" means vapor concentration from a liquid that has a flash point less than 100° F.
23. "GC/MS" means gas chromatograph/mass spectrometer.
24. "Hazardous chemical decontamination projects" means work or services related to the remediation, removal, or clean-up of hazardous chemicals, hazardous substances, petroleum substances, or other hazardous materials.
25. "Hazardous substance" means red phosphorus, iodine crystals, tincture of iodine, methamphetamine, ephedrine, pseudoephedrine, volatile organic compounds, corrosives, LSD, ecstasy, lead, mercury, and any other chemical used at a clandestine drug laboratory site to manufacture methamphetamine, LSD, or ecstasy.
26. "Hazardous waste" means toxic materials to be discarded as defined in 40 CFR 261.3, and 66 FR 60153, effective December 3, 2001, and published by the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 and available electronically through the federal digital system at www.gpo.gov/fdsys/. The text of this regulation is incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available in the office of the Board of Technical Registration.
27. "HAZWOPER" or Hazardous Waste Operations and Emergency Response training means Hazardous Waste Operations Training as defined in 29 CFR 1910.120(e), and 67 FR 67964, effective November 7, 2002, and published by the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000, and available electronically through the federal digital system at www.gpo.gov/fdsys/. The text of this regulation is incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of these standards are available at the office of the Board of Technical Registration.
28. "HEPA" means high-efficiency particulate air.
29. "Highly suggestive of contamination" means visible or olfactory indication of contamination, or locations that are within 10 feet of areas where hazardous substances were stored or used to manufacture methamphetamine, LSD, or ecstasy and could likely be contaminated with hazardous substances, unless separated by a full-height, non-porous wall with no openings.
30. "Impacted groundwater" means water present beneath ground surface that contains hazardous or petroleum substances at concentrations above background concentrations.
31. "Impacted soil" means soil that contains hazardous or petroleum substances at concentrations above background concentrations.
32. "Inaccessible" means unable to be reached without removal of a construction material or component.
33. "LEL/O2" means lower explosive limit/oxygen.
34. "Laboratory detection limit" means the lowest concentration of a hazardous or petroleum substance that can be reliably quantified or measured by an analytical laboratory under ideal operating conditions for a particular test method on a sample.
35. "Negative pressure enclosure" means an air-tight enclosure using a local exhaust and HEPA filtration system to maintain a lower air pressure in the work area than in any adjacent area and to generate a constant flow of air from the adjacent areas into the work area.
36. "Non-porous" means resistant to penetration of hazardous substances or non-permeable substance or materials, such as concrete floors, wood floors, ceramic tile floors, vinyl tile floors, sheet vinyl floors, painted drywall or sheet rock walls or ceilings, doors, appliances, bathtubs, toilets, mirrors, windows, counter-tops, sinks, sealed wood, metal, glass, plastic, and pipes.
37. "Personal protective equipment" means various types of clothing such as suits, gloves, hats, and boots, or apparatus such as face masks or respirators designed to prevent inhalation, skin contact, or ingestion of hazardous chemicals.
38. "Personnel decontamination procedures" means procedures used to clean or remove potential contamination from personal protective equipment.
39. "PID" means photo ionization detector.
40. "Porous" means easily penetrated or permeated by hazardous substances or permeable substances or materials such as carpets, draperies, bedding, mattresses, fabric covered furniture, pillows, drop ceiling or other fiberboard ceiling panels, cork paneling, blankets, towels, clothing, and cardboard.
41. "Properly disposed of" means to discard at a licensed facility in accordance with all applicable laws and not reused or sold, or metal recycled by giving or selling to a licensed recycling facility for scrap metal.

42. "Remedial standard" or "remediation standard" means the level or concentration to be achieved by the drug laboratory site remediation firm as defined in R4-30-305(C)(2) and (C)(4).
43. "Remediated" or "remediation" means treatment of the residually contaminated portion of the real property by a drug laboratory site remediation firm to reduce contaminant concentrations to a level below the remedial standards.
44. "Residual contamination" means contamination resulting from spills or releases of hazardous or petroleum substances.
45. "Return air housing" means the main portion of an air ventilation system where air from the livable space returns to the air handling unit for heating or cooling.
46. "Reusable" means not disposable or equipment that can be used more than one time for sampling after cleaning.
47. "Sample location" means the actual place where an environmental sample was obtained.
48. "Shoring plan" means a written description or drawing that shows the structural supports required to safely occupy the building during remediation.
49. "Seepage pit" means a hole in the ground used to dispose of septic fluids.
50. "Services" means the activities performed by the drug laboratory site remediation firm in the course of remediating residual contamination from the manufacturing of methamphetamine, ecstasy, or LSD, or from the storage of chemicals used in manufacturing methamphetamine, ecstasy, or LSD.
51. "SRL" means the Arizona residential soil remediation levels contained in, 18 A.A.C. 7, Article 2, Appendices A and B.
52. "Temporary filter media" means a device used to filter or clean air.
53. "Toxic" means hazardous substances that can cause local or systemic detrimental effects to people.
54. "VOA" means volatile organic analyte.
55. "VOCs" means volatile organic compounds or chemicals that can evaporate at ambient temperatures such as acetone, acetonitrile, aniline, benzene, benzaldehyde, benzyl chloride, carbon tetrachloride, chloroform, cyclohexanone, dioxane, ethanol, ethyl acetate, ethyl ether, Freon 11, hexane, isopropanol, methanol, methyl alcohol, methylene chloride, naphtha, nitroethane, petroleum ether, petroleum distillates, pyridine, toluene, o-toluidine, and any other volatile organic chemical used at the clandestine drug laboratory site to manufacture methamphetamine, LSD, or ecstasy.
56. "Waste" means refuse, garbage, or other discarded material.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4). New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 1911, effective October 7, 2013 (Supp. 13-3).

R4-30-104. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

R4-30-105. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

R4-30-106. Fees

- A.** The Board shall charge the following fees:
1. A roster of registrants is \$15.00.
 2. A code or rule booklet is \$5.00.
 3. The computer printout fee per name is \$0.10 (non-commercial use). The maximum charge is \$150.00 per run.
 4. The photocopy fee is \$0.20 per page (non-commercial use).
 5. The replacement certificate fee is \$10.00.
 6. The recording medium copy fee is \$10.00 per recording.
 7. The local examination review fee is \$25.00.
 8. The returned check fee is \$25.00.
- B.** A person paying fees shall remit them in United States dollars in the form of cash, check, or money order. If a check is returned for insufficient funds, repayment, including payment of the returned check charge, shall be made in the form of cash, money order, or certified check.
- C.** Upon written request, the Board shall waive renewal fees for registrants whose registration is in inactive status.
- D.** Application fee refunds are not allowed after the application has been assigned an application number and processing commences.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Emergency amendments adopted effective May 7, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency amendments readopted without change effective August 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Emergency amendments readopted without change effective February 13, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments readopted without change effective May 31, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency amendments readopted with changes effective October 22, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency amendments permanently adopted with changes effective December 18, 1991 (Supp. 91-4). Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended effective January 12, 1996 (Supp. 96-1). Amended effective January 15, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

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R4-30-107. Registration and Certification Expiration Dates

- A. Registrants with triennial registration have expiration dates based on the date of initial registration. The following table indicates triennial registration renewal periods:

| Initial Registration Granted Date | Initial Triennial Renewal Expiration Date |
|-----------------------------------|---|
| Jan. 1 through Mar. 31 | Three years from Mar. 31 |
| Apr. 1 through Jun. 30 | Three years from Jun. 30 |
| Jul. 1 through Sept. 30 | Three years from Sept. 30 |
| Oct. 1 through Dec. 31 | Three years from Dec. 31 |

- B. Subsequent triennial renewal dates will be three years from the initial triennial renewal expiration date.
- C. All annual registrations and certifications expire one year from the date of issuance.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1).
Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-108. Reserved**R4-30-109. Reserved****R4-30-110. Reserved****R4-30-111. Reserved****R4-30-112. Reserved****R4-30-113. Reserved****R4-30-114. Reserved****R4-30-115. Reserved****R4-30-116. Reserved****R4-30-117. Reserved****R4-30-118. Reserved****R4-30-119. Reserved****R4-30-120. Complaint Review Process**

- A. The Board shall select a pool of volunteers who have submitted resumes and letters of interest to serve on enforcement advisory committees. The Executive Director shall select registrants and public members from the pool of volunteers to serve on the committees as needed. Each committee shall be comprised of one public member and a minimum of four registrants, at least one of whom is registered in the same category or branch as the respondent. The committee members shall provide technical assistance to Board staff in the evaluation and investigation of complaints. A quorum of three committee members is required for each committee meeting.
- B. During the preliminary informal investigation of a complaint, registrants named as respondents may appear before an enforcement advisory committee for an informal conference relating to the complaint. Respondents may elect to appear with or without counsel. The committee shall attempt to assess the complaint and discuss the complaint with the respondent

and others, if deemed necessary, and prepare a recommendation for disposition of the complaint.

- C. Respondents are not required to participate in the informal conference and no inference shall be drawn from a respondent's decision not to attend.
- D. If a respondent chooses not to attend the informal conference, the committee may meet and review information presented by staff and others and prepare a recommendation for disposition of the complaint.
- E. The Board shall advise the respondent of the committee recommendation and offer the respondent the opportunity to attend an informal compliance conference as outlined in R4-30-123 as part of the informal investigation.
- F. After the informal investigation has been completed, if the committee recommendation supports a determination that the complaint is unfounded, the recommendation shall be forwarded to the Board for review and final disposition.
- G. In all cases where the advisory committee finds probable cause to believe that disciplinary action is warranted, the staff will attempt to obtain a signed consent agreement. The Board shall review the committee recommendation, staff recommendation, consent agreement, and, in the event a signed consent agreement cannot be obtained, any counterproposal from the respondent.

Historical Note

Adopted effective December 18, 1991 (Supp. 91-4).
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3).
Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

R4-30-121. Investigation of Violations

If any information concerning a possible violation of the Act or any of these rules is received or obtained by the Board or Board staff, an investigation shall be conducted prior to the initiation of formal proceedings. Investigative reports, enforcement advisory committee recommendations, and other documents and materials relating to an investigation shall remain confidential until the matter is closed, until the issuance of a hearing notice under A.R.S. § 32-128, or until the matter is settled by consent order; however, the Board shall inform the respondent that an investigation is being conducted and explain the general nature of the investigation. The public may obtain information that an investigation is being conducted and an explanation of the general nature of the investigation. The Board may refer investigative information to other public agencies as appropriate under the circumstances.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1).

R4-30-122. Issuance of Subpoenas

Any party desiring the Board to issue a subpoena shall make application, stating the substance of the testimony expected of the witness or the relevancy of the evidence to be produced. If the testimony or evidence appears to the Board to be material and necessary, a subpoena shall be supplied. The affixing of the seal of the Board and the signature of the Chairman, Secretary, Executive Director, shall be sufficient attestation of the same. The party apply-

ing for the subpoena shall pay for service of the subpoena. A party is considered served at the time of personal service or mailing of the document by certified mail that is addressed to the person's last known address of record on file with the Board.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

R4-30-123. Informal Compliance Procedures

- A.** Upon notification of the recommendation of an enforcement advisory committee, a registrant may attend a compliance conference with Board staff. The registrant may appear with or without counsel. The Board staff shall mail the notice of the compliance conference to the registrant at least 15 days before the date of the conference. The purpose of the compliance conference is to discuss informal settlement of the investigative matter. Upon completion of the interview, a Board enforcement officer shall make recommendations to the Board.
- B.** At any time either before or after formal disciplinary proceedings have been instituted against a registrant, the registrant may submit to the Board an offer of settlement whereby, in lieu of formal disciplinary action by the Board, the registrant agrees to accept certain sanctions such as suspension, civil penalties, enrolling in relevant professional education courses, limiting the scope of practice, submitting work product to professional peer review, or other sanctions. If the Board determines that the proposed settlement will adequately protect the public welfare, the Board shall accept the offer and enter a decision consented to by the registrant, incorporating the proposed settlement.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

R4-30-124. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Section repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

R4-30-125. Reserved

R4-30-126. Service of Board Decisions; Rehearing of Board Decisions

- A.** Except as provided in subsection (G), any party to an appealable agency action or contested case before the Board who is aggrieved by a decision rendered in the matter may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the motion. A decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known address of record with the agency. The filing of a motion for rehearing is a condition precedent to the right of appeal provided in A.R.S. § 32-128(J).

- B.** A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument. The filing of a motion for rehearing or review suspends the operation of the Board's order and allows the registrant to practice in his or her profession pending denial or granting of the motion, and pending the decision of the Board on the rehearing or review if the motion is granted.
- C.** A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the agency, members of the Board or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 2. Misconduct of the Board or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
 7. The decision is unjustified based upon the evidence or is contrary to law.
- D.** The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- E.** Not later than 30 days after a decision is rendered, the Board may on its own motion order a rehearing or review of its decision for any reason listed in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting a rehearing shall specify the grounds for the rehearing.
- F.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within ten days after service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G.** If the Board makes specific findings that the immediate effectiveness of a decision is necessary for preservation of the public welfare, health or safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

ARTICLE 2. REGISTRATION PROVISIONS

R4-30-201. Registration as an Architect, Assayer, Engineer, Geologist, Landscape Architect, or Land Surveyor

- A.** An applicant for registration as an architect, assayer, engineer, geologist, landscape architect, or land surveyor shall submit an original and one copy of a completed application package for professional registration that contains the following:
1. Evidence of successful completion of the current national professional examination or waiver of the examination pursuant to A.R.S. § 32-126 and R4-30-203 in the category, and branch if applicable, for which registration is sought. Applicants shall arrange to have their examination results sent directly to the Board from the applicable testing agency holding the examination results;
 2. Name, residence address, mailing address if different from residence, and telephone number, of the applicant;
 3. Date of birth and social security number of the applicant;
 4. Citizenship or legal residence of the applicant;
 5. Category, and branch of engineering if applicable, for which the applicant is seeking registration;
 6. A detailed explanatory statement and documentation, regarding:
 - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction;
 - b. Refusal of any professional or occupational registration, certification, or license to the applicant by any state or jurisdiction;
 - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant;
 - d. Any alias or other name used by the applicant; and
 - e. Any conviction of the applicant for a felony or misdemeanor, other than a minor traffic violation.
 7. State or jurisdiction in which the applicant holds any other professional or occupational registration, certification, or license, type of registration, certification or license number, year granted, how registration, certification, or license was granted (by examination, education, experience, or reciprocity), and the number of examination hours taken by the applicant;
 8. State or jurisdiction in which the applicant has pending an application for any type of professional or occupational license, registration, or certification, type of license, registration or certification being sought, and the status of the application;
 9. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution the applicant attended;
 10. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended, unless previously provided to the Board pursuant to R4-30-204;
 11. Name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought; dates of employment; applicant's title; description of the work performed; and number of hours worked per week, unless previously provided to the Board pursuant to R4-30-204;
 12. Names and addresses of immediate supervisors in past and present employment in the category for which registration is sought. An applicant who has been working in the category for which registration is sought for 10 or more years shall provide the names and address of all immediate supervisors during the most recent 10-year period. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought, unless previously provided to the Board pursuant to R4-30-204;
 13. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
 14. Certificate of Experience Record and Reference Forms from the applicant's present and past immediate supervisors, unless previously provided to the Board pursuant to R4-30-204. The applicant shall also provide Certificate of Experience Record and Reference Forms from additional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board;
 15. Evidence of successful completion, or waiver by the Board, of the applicable in-training examination, unless previously provided to the Board pursuant to R4-30-204. An applicant for registration who has successfully completed an in-training examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an architect or landscape architect may take the in-training examination at the same time as the professional examination. An applicant seeking professional registration as an assayer, engineer, geologist or land surveyor shall pass the applicable in-training examination before admission to the professional examination;
 16. Certification that the information provided to the Board is accurate, true and complete; and
 17. The applicable fee.
- B.** If an applicant does not have the required education and experience for registration, the Board may, upon request of the applicant, hold the application for a period of time that does not exceed one year from the date the application is filed with the Board. All time-frames adopted pursuant to Title 41, Chapter 6, Article 7.1 are suspended during the above-referenced time.
- C.** An applicant holding a certificate of qualification issued by one of the national registration bodies recognized in R4-30-203(B) shall arrange to have the record forwarded to the Board by the national registration body. If the forms provided by the national registration body contain all the information described in A.R.S. § 32-122.01 and subsection (A), the Board may accept the forms in lieu of requiring the applicant to furnish the information directly to the Board.
- D.** The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee for evaluation. If the application for registration is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be registered in the field for which the application was filed, the Board staff or committee shall recommend that the Board certify the applicant as eligible for registration. If for any reason the Board staff or committee is not satisfied that all of the statements on

the application are true or that the applicant is eligible in all respects for registration, the Board staff shall make a further investigation of the applicant. The Board staff and committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for registration.

- E. The Board may accept documentation that an applicant has passed a written national examination in the area for which registration is sought from a national council of which the Board is a member or a professional association approved by the Board.
- F. The Board shall not accept an application for registration renewal unless the applicant has responded to the questions on the application relating to good moral character and other misconduct and signed the application for renewal. The Board shall return an incomplete application to the applicant which may result in assessment of a delinquent renewal fee.
- G. An applicant may withdraw an application for registration by written request to the Board. Any fee paid by the applicant is non-refundable. If an applicant withdraws an application, the Board shall close the file. An applicant whose file has been closed and who later wishes to apply for professional registration shall submit a new application package to the Board pursuant to R4-30-201 and R4-30-202.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
 Amended effective December 18, 1991 (Supp. 91-4).
 Amended effective November 10, 1998 (Supp. 98-4).
 Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (05-3).

R4-30-202. In-training Designation

- A. An applicant for in-training designation shall submit an original and one copy of a completed in-training application package that contains the following:
 - 1. Evidence of successful completion, or waiver by the Board, of the current in-training examination in the category and branch, if applicable, for which in-training designation is sought;
 - 2. The information set forth in subsections (B)(1) through (9); and
 - 3. The applicable fee.
- B. An in-training applicant who wants to sit for an in-training examination shall submit an original and one copy of a completed application for in-training designation to the Board, and provide the following:
 - 1. Name, residence address, mailing address if different from residence, and telephone number of the applicant;
 - 2. Date of birth and social security number of the applicant;
 - 3. Citizenship or legal residence;
 - 4. Category, and branch of engineering if applicable, for which the applicant is seeking an in-training designation;
 - 5. Information regarding any conviction for a felony or misdemeanor, other than a minor traffic violation, and any alias or other name used by the applicant;
 - 6. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution that the applicant attended;
 - 7. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended;

- 8. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
 - 9. Certification that the information provided to the Board is accurate, true, and complete.
- C. If otherwise qualified, the Board shall permit an applicant for in-training designation to take the in-training examination in the final year of a baccalaureate, masters, or other degree program accepted by the Board and accredited in the category for which the application is made. The applicant shall have the application form endorsed by the applicant's college dean or faculty advisor, or, if already a graduate, may arrange to have a final transcript, indicating the degree awarded, sent directly from the registrar to the Board, in lieu of the endorsement.
 - D. The Board shall permit an applicant for in-training designation without an accredited college degree to take the in-training examination after submitting to the Board evidence of four years, or if an architect-in-training applicant, five years of satisfactory experience or education or both. The applicant shall provide the name, current address, and telephone number of all current and former employers; names of all supervisors and their titles; dates of employment; applicant's title, and a description of the work performed. The applicant shall provide Certificate of Experience Record and Reference Forms to immediate supervisors at present and past employers. The applicant shall ensure the completed reference forms are submitted to the Board. The applicant shall meet all other requirements of this Section.

Historical Note

New Section R4-30-202 renumbered from R4-30-203 and amended effective November 10, 1998 (Supp. 98-4).
 Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-202.01. Remediation Specialist Certification

- A. An applicant for certification as a remediation specialist shall submit an original and one copy of a completed application package that contains the following:
 - 1. Name, residence address, mailing address if different from residence, and residence telephone number of the applicant;
 - 2. Date of birth and social security number of the applicant;
 - 3. A detailed explanatory statement regarding:
 - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction;
 - b. Refusal of any professional or occupational registration, certification, or license by any state or jurisdiction;
 - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant;
 - d. Any alias or other name used by the applicant; and
 - e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.
 - 4. State or jurisdiction in which any professional or occupational registration, certification, or license is held; type of professional or occupational registration, certification, or license; registration, certification, or license number, year granted, how registration, certification, or license was granted (that is, by examination, education, experience or reciprocity), and the number of examination hours taken by the applicant;
 - 5. Name of the state or jurisdiction, type of professional or occupational registration, certification, or license the

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applicant is seeking, and the current status of any application for professional or occupational registration, certification, or license pending in any state or jurisdiction;

6. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university or educational institution the applicant attended;
 7. Relevant certified transcripts sent directly to the Board from the registrar of educational institutions the applicant attended;
 8. Name, current address, and telephone number of the applicant's current and former employers in the area of remediation; dates of employment; applicant's title; description of the work performed, and the number of hours worked per week;
 9. Names and addresses of immediate supervisors in past and present employment in the area of remediation. Applicants who have been working in remediation for 10 or more years shall provide the names and addresses of all immediate supervisors during the most recent ten-year period. If an applicant cannot supply the names and addresses of all immediate supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information;
 10. A release authorizing the Board to investigate the applicant's education, experience, moral character and repute;
 11. Certificate of Experience Record and Reference forms from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record and Reference forms to additional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references and ensure that completed reference forms are provided to the Board;
 12. Certification that the information provided to the Board is accurate, true, and complete;
 13. A completed fingerprint card; and
 14. The applicable fees.
- B.** The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee for evaluation. If the application is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be certified as a remediation specialist, the Board staff or committee shall recommend that the Board certify the applicant as eligible to take the examination. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true or that the applicant is eligible in all other respects for registration, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for examination or certification.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-203. Waiver of Examination

- A.** The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who holds a valid profes-

sional or occupational registration, certification, or license in the category for which registration, certification, or licensure is sought, and is in good standing in another state or jurisdiction provided:

1. The applicant submits verifiable documentation to the Board that the education, experience, and examination requirements under which the applicant was registered in the original state or jurisdiction were substantially identical to those existing in Arizona at the time of the applicant's original registration, certification, or licensure; or
 2. The applicant submits verifiable documentation to the Board that the applicant has been actively engaged as a professional or occupational registrant, certificant, or licensee in another state or jurisdiction for at least 10 years in the category for which registration, certification, or licensure is sought. For purposes of this subsection, "actively engaged as a professional registrant" means that the applicant holds a valid professional or occupational registration, certification, or license in good standing, and has been practicing or offering professional services for at least 10 of the last 15 years.
- B.** The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who submits verifiable documentation to the Board that the applicant holds one of the following professional records, issued by a national registration body, and is registered in good standing in another state or jurisdiction. The Board recognizes the following national registration body records:
1. National Council of Architectural Registration Boards Certificate Record, with design and seismic (lateral forces) qualifications;
 2. National Council of Examiners for Engineers and Surveyors Council Record; or
 3. Council of Landscape Architectural Registration Boards Council Record and Certification.
- C.** When reviewing an engineering applicant's experience and examination information, the Board shall take into account the specific branch of engineering in which the applicant is seeking proficiency recognition.
- D.** The Board shall waive the in-training examination if an applicant has successfully completed an in-training examination in another state or jurisdiction in the category for which registration is sought, which is equivalent to those examinations administered in Arizona. The applicant shall ensure that proof of successful completion is forwarded directly from the authority that administered the original examination.
- E.** The Board shall waive the in-training examination for an applicant who has a degree listed in R4-30-208(A) or other educational credit approved by the Board in the category, and branch if applicable, for which registration is sought, and meets all other requirements of A.R.S. § 32-126(D).
- F.** All applicants who request a waiver of any examination requirement shall meet all other requirements for professional registration or in-training designation in R4-30-201 and R4-30-202. An applicant applying for a waiver under subsection (B) shall ensure that the required documentation is forwarded directly to the Board from the national registration body.
- G.** The Board shall waive the remediation specialist examination requirement if the applicant has successfully completed a remediation specialist examination in another state or jurisdiction that is substantially equivalent to the remediation specialist examination provided in Arizona.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).

Amended effective May 1, 1995 (Supp. 95-2). R4-30-203 renumbered to R4-30-202; new Section R4-30-203 renumbered from R4-30-207 and amended effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-204. Examinations

- A. Board Review For Examination Equivalency:** Applicants who wish to sit for professional examination who do not possess an educational degree recognized by the applicable national council shall submit to the Board the following information for approval:
1. Name, residence address, mailing address if different from residence, and telephone number;
 2. Date of birth and Social Security number;
 3. Proof of citizenship or legal residence;
 4. Category, and branch of engineering if applicable;
 5. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution attended;
 6. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution attended;
 7. Evidence of at least 60 months of required education or experience, or both, in the category for which registration is sought.
 - a. The name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought;
 - b. Dates of employment;
 - c. Applicant's title;
 - d. Description of work performed; and
 - e. Number of hours worked per week;
 8. Names and addresses of applicant's immediate supervisors in past and present employment in the category for which registration is sought. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three additional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought;
 9. A release authorizing the Board to investigate the applicant's education and experience;
 10. Certificate of Experience Record and Reference Forms from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record and Reference Forms from additional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board;
 11. Evidence of successful completion, or waiver by the Board, of the applicable in-training examination. An applicant who has successfully completed an in-training examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an assayer, engineer, geologist, or land surveyor shall pass the applicable in-training examination before admission to the professional examination;
 12. Certification that the information provided to the Board is accurate, true, and complete; and
 13. The applicable fees.
- B.** The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee for evaluation. If the application for examination is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible to take the examination, the Board staff or committee shall recommend that the Board certify the applicant as eligible to take the examination. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for examination, the Board staff shall make a further investigation of the applicant.
- C. National Council Examinations:**
1. Applicants for architect, landscape architect, engineer, or land surveyor registration who wish to sit for a professional examination, and who have earned an educational degree recognized by the applicable national council, may apply directly to the applicable national council to take that exam.
 2. Applicants not possessing the appropriate degree pursuant to subsection (C)(1) may apply to the Board for examination approval and after Board review, may be recommended to the applicable national council for entry into the applicable national examination. Applicants must meet all national council requirements for successful completion of applicable examinations.
 3. An applicant for professional examination in any category must take the examination within one year after receiving approval. If an applicant fails to take an examination within one year after receiving approval, the applicant must submit a new application for professional examination to the Board.
 4. An applicant who has failed any division of a national multi-divisional examination shall be required to meet the applicable national council's requirements for successful completion of the examination.
 5. Examinations administered by a national council of which the Board is a member, or a professional association approved by the Board, shall be given at the times and places determined by the testing agency. Once approved to sit for a non-Board-administered examination, the applicant shall communicate all questions and concerns regarding extensions, additional time, special accommodation, reexamination, exam review and refunds to the applicable testing agency. The Board shall not refund any examination fee paid to a testing agency.
- D. Board Administered Examinations:**
1. An examination administered by the Board shall be given at the times and places determined by the Board. Once the Board approves an applicant to sit for a Board-administered examination, the applicant shall communicate all questions and concerns regarding extensions, special accommodations and refunds to the Board. The applicant shall make any request for additional time or other special examination accommodation to the Board within a reasonable time before the examination date.
 2. An applicant who fails to achieve a passing grade on any division of any examination administered by the Board may request reexamination by notifying the Board in writing of the applicant's desire to retake the examination and paying the applicable examination fee. An applicant who retakes any examination shall advise the Board of any changes in the information provided under subsection

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(A) of this Section and R4-30-202(B) within 30 days from the date of the change. The Board shall close an applicant's file if the Board does not receive written confirmation from the applicant of the applicant's desire to retake the Board-administered examination within one year from the request for reexamination. An applicant whose file has been closed and who later wishes to apply for examination shall submit a new examination application package to the Board.

3. An applicant for a Board-administered examination who wishes to review the applicant's examination scores shall file a written request with the Board within 30 days after receiving notification of the failing grade. The applicant may review an examination by making prior arrangements with the staff and paying the applicable fee. The applicant shall complete any review within 60 days of the request for a review. In reviewing multiple choice questions, an applicant may review only those questions that were incorrect.
4. An applicant who desires a regrade of a Board administered examination shall file a written request with the Board within 30 days after receiving notification of the failing grade or within 30 days after reviewing the examination, whichever is applicable, and pay the applicable fee. The applicant shall identify the questions to be reviewed. The applicant shall state why a review of the item is justified. The applicant shall provide specific facts, data, and references to support any assertion that the solution deserves more credit. The Board shall determine whether it will regrade the examination.
5. The Board shall close an application file for examination if the applicant fails to pass all divisions of the applicable examination within five years after first passing any division of the examination unless the Board approves an extension.
6. If an applicant for professional examination fails to take the examination within five years from the examination approval date, the Board shall close the application file. The applicant shall submit a new application to take the applicable examination to the Board.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended effective May 1, 1995 (Supp. 95-2). Amended effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

R4-30-205. Reserved

R4-30-206. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Repealed effective November 10, 1998 (Supp. 98-4).

R4-30-207. Renumbered

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended effective May 1, 1995 (Supp. 95-2). Section R4-30-207 renumbered to R4-30-203 effective November 10, 1998 (Supp. 98-4).

R4-30-208. Education and Work Experience**A. Education credit.**

1. The Board shall grant credit according to the following:
 - a. Architectural applicants with five-year National Architectural Accrediting Board accredited degree (NAAB) 60 months
 - b. Architectural applicants with four-year NAAB accredited degree 48 months
 - c. Landscape Architectural applicants with five-year Landscape Architectural Accrediting Board accredited degree (LAAB) 60 months
 - d. Landscape Architectural applicants with four-year LAAB accredited degree 48 months
 - e. Engineering applicants with an Accreditation Board of Engineering and Technology (ABET) accredited bachelor degree and a (ABET) master's or doctorate degree in the branch of engineering that registration is sought 60 months
 - f. Engineering applicants with an ABET accredited bachelor degree in the branch of engineering that registration is sought 48 months
 - g. Engineering applicants with four-year ABET accredited degrees in a branch other than that in which registration is sought 36 months
 - h. Land Surveying applicants with ABET accredited bachelor degree in land surveying 48 months
 - i. Geology applicants with four-year degree in geology 48 months
 - j. Assayer applicants with four-year degree in chemistry, metallurgy or other science directly related to the analysis of metal and ores 48 months
 - k. Remediation specialist applicants with an undergraduate degree as specified in subsection (A), or up to five years of education directly relating to remediation.
2. The Board shall grant all other education credit according to the following:
 - a. Credit shall not be granted for course work obtained in the United States or its possessions unless attained at an institution of higher education accredited by an accrediting agency recognized by the U.S. Department of Education.
 - b. Pro rata credit shall be granted for successful completion of courses substantially equivalent to the courses contained in the pertinent degree program identified in subsection (A) of this rule.
 - c. Credit shall not be given for general education courses in excess of the number of hours allowed in the pertinent program identified in subsection (A).
 - d. In determining pro rata credit, 30 semester hours or 45 quarter hours shall equal 12 months' credit.
 - e. An applicant shall be granted both education and work experience for the same period provided the total months' credit granted in a period does not exceed the number of months in that period.
 - f. Foreign education evaluation service acceptable to the Board shall be required of foreign-educated applicants and shall be provided at applicants' cost.

B. The Board shall credit work experience as follows:

1. One hundred and thirty hours or more of work per month is equal to one month of work experience.
2. Between 85 hours and 129 hours of work per month is equal to one-half month of work experience.
3. The Board shall not grant credit for less than 85 hours of work experience in a month.

4. Experience shall be substantiated by the employer before the Board grants the credit.
5. Remediation specialist applicants shall have at least eight years of acceptable education and remediation experience, including at least three years of experience supervising remediations

Historical Note

Adopted effective December 18, 1991 (Supp. 91-4).
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1).

R4-30-209. Time-frames for Professional Registration, Certification, or In-training Designation

- A.** Within 60 days of receiving the initial application package for professional registration, certification, or in-training designation, the Board shall finish an administrative completeness review.
1. If the application package is complete, the Board shall notify the applicant that the package is complete and that the administrative completeness review is finished.
 2. If the application package is incomplete, the Board shall notify the applicant that the package is deficient and specify the information or documentation that is missing. All time-frames are suspended from the date the notice is mailed to the applicant until the Board receives all missing information or documentation.
 3. An applicant with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. However, the Board may hold a home inspector applicant's package for one year to permit a home inspector applicant to meet the requirements of R4-30-247(A)(7). If the applicant fails to supply the missing information or documentation, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.
 4. If an applicant requests to sit for the professional, certification, or in-training examination, or requests a waiver of examination, the time-frames in R4-30-210 apply until the Board grants or denies the applicant's request.
- B.** The Board shall complete its substantive review of the application package and render a decision no later than 60 days after the date the Board mails the notice of administrative completeness to the applicant.
1. If the Board finds that the applicant meets all requirements in statute and rule, the Board shall approve the applicant for professional registration, certification, or in-training designation.
 2. If the Board finds that the applicant does not meet all requirements in statute and rule, the Board shall deny the applicant professional registration, certification, or in-training designation. The Board shall provide written notice of the denial. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, and an explanation of the applicant's right to appeal, including the number of days the applicant has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeals process.
 3. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a

written request, specifying the additional information or documentation to be submitted and the deadline for submission. The time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is mailed until the date that all missing information or documentation is received or the deadline for submission passes.

4. When the Board and applicant mutually agree in writing, the Board or its designee shall grant extensions of the substantive review time-frame totaling no more than 30 days.
 5. If the applicant fails to supply the missing information or documentation by the deadline date, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.
- C.** Saturdays, Sundays, and legal holidays are not counted in calculating the number of days under this Section.
- D.** For purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for a candidate applying for professional registration, certification, or in-training designation:
1. Administrative completeness review time-frame: 60 days;
 2. Substantive review time-frame: 60 days; and
 3. Overall time-frame: 120 days. Days during which time is suspended under subsection (A)(2) are not counted in the computation of the overall time-frame.

Historical Note

Adopted effective November 10, 1998 (Supp. 98-4).
Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-210. Time-frames for Approval to Sit for, or for Waiver of, the Professional, Certification, or In-training Examination

- A.** Within 60 days of receiving the initial application package to sit for, or for waiver of, the professional, certification, or in-training examination, the Board shall finish an administrative completeness review.
1. If the application package is complete, the Board shall notify the applicant that the package is complete and that the administrative completeness review is finished.
 2. If the application package is incomplete, the Board shall notify the applicant that the package is deficient and specify the information or documentation that is missing. All time-frames are suspended from the date the notice is mailed to the applicant until the Board receives all missing information or documentation.
 3. An applicant with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. If the applicant fails to supply the missing information or documentation, the Board may close the applicant's

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application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to sit for the in-training, certification, or professional examination, or who requests a waiver of examination, shall submit a new application package and pay the applicable fee.

B. The Board shall complete its substantive review of the application package and render a decision no later than 120 days after the date the Board mails the notice of administrative completeness to the applicant.

1. If the Board finds that the applicant meets all requirements in statute and rule, the Board shall either approve the applicant to sit for the next applicable examination, or the Board shall waive the examination requirement.
2. If the Board finds that the applicant does not meet all requirements in statute or rule, the Board shall not allow the applicant to sit for the applicable examination or shall deny a waiver of examination.
3. The Board shall provide written notice of its refusal to allow the applicant to sit for the examination, or for its decision to deny a waiver of the examination. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, an explanation of the applicant's right to appeal, including the number of days the applicant has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeal process. If the Board issues a denial of waiver of an examination, it may allow the applicant to sit for the applicable examination or, depending on the circumstances and the applicant's qualifications, require the applicant to submit an application to sit for the applicable examination.
4. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a written request, specifying the additional information or documentation to be submitted and the deadline for submission. The time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is mailed until the date that all missing information or documentation is received.
5. If the Board and applicant mutually agree in writing, the Board or its designee shall grant extensions of the substantive review time-frames totaling not more than 45 days.
6. If the applicant fails to supply the missing information or documentation by the deadline date, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to sit for the applicable examination or request a waiver of examination shall submit a new application package and pay the applicable fee.

C. Saturdays, Sundays, and legal holidays are not counted in calculating the number of days under this Section.

D. For the purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for an applicant wishing to sit for the applicable examination or to request a waiver of examination:

1. Administrative completeness review time-frame: 60 days;
2. Substantive review time-frame: 120 days; and
3. Overall time-frame: 180 days.

Historical Note

Adopted effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final

rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-211. Repealed**Historical Note**

Adopted effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Section repealed by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

R4-30-212. Expired**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

R4-30-213. Reserved**R4-30-214. Architect Registration**

An applicant for architect registration shall complete all of the following:

1. An applicant shall provide evidence of successful completion of the National Council of Architectural Registration Boards (NCARB) Intern Development Program (IDP) training requirement.
2. An applicant shall successfully complete the professional architect examination designated by the Board and provided by the National Council of Architectural Registration Boards.
3. An applicant must demonstrate 96 months of architectural education or experience, or both, satisfactory to the Board prior to being granted registration.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Correction to subsection (B) (Supp. 96-1). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

R4-30-215. Reserved**R4-30-216. Reserved****R4-30-217. Reserved****R4-30-218. Reserved****R4-30-219. Reserved****R4-30-220. Reserved****R4-30-221. Engineering Branches Recognized**

A. The Board shall recognize the branches of engineering described below for review of experience, selection of exam-

ination, definition of examination areas, and definition of demonstrated proficiency areas to be inscribed on the registrant's seal. The branches do not limit the areas of a registrant's practice of engineering. (See R4-30-301(18))

1. Agriculture: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning agricultural machinery, drainage, irrigation, terracing, farm electricity or water pumps and wells for the maintenance of adequate potable water supplies for crops, people, animals, or industry.
2. Architectural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning building mechanical, acoustical, electrical, lighting, or structural systems.
3. Chemical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning chemical enterprises, chemical and biological processes, plant layout, production of pilot plants, water, wastewater and pollution control plants, piping and distribution systems, heat exchanges, energy production management and distribution systems, process instrumentation and control systems, biomedical equipment, mining and minerals beneficiation, corrosion retardation, heat, mass and momentum transfer systems, reaction kinetics, thermodynamics, quality assurance controls, or systems for heat transmission.
4. Civil: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning highways, streets, transportation systems, drainage and flood control structures, surface and subsurface hydrologics, sewers, tunnels, railroads, geotechnical analysis, waterfronts, water and wastewater systems, water power and supply apparatus, wells, pumps, bridges, dams, irrigation structures, water purification apparatus, incinerators, or site fire protection systems.
5. Control Systems: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning control systems and their constituent devices including, but not limited to, dynamic stability and the application of instrumentation and feedback control principles to regulate and operate chemical plants, petroleum refineries, food processing plants, water and waste treatment plants, power plants, pollution abatement systems, transportation systems, or other dynamic processes and systems.
6. Electrical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning power systems, electronic and transmission equipment, electric service and supply systems, lighting systems, communication service and supply systems, fire alarm and detection systems, control systems, or electrical installations.
7. Environmental: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning water and wastewater systems, domestic and process (industrial/commercial) solid waste and hazardous materials systems, air quality systems, or health, safety, and environmental protection including, but not limited to systems relating to emergency response, risk analysis, radiation protection, noise toxicology, or industrial hygiene.
8. Fire Protection: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning building exiting and life safety systems, fire suppression systems and devices, fire detection and alarm systems and devices, smoke exhaust and smoke management systems, fire resistance for building components and assemblies, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems, and the reduction and control of fire hazards due to processes subject to fire or explosion.
9. Geological: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning geological studies related to surface and subsurface excavations and foundations, stability of slopes, groundwater locations, geological material age and strength determinations near surface or deep subsurface geological structures or geophysical mapping of geological formations and groundwater locations.
10. Industrial: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning factory layouts, tools and fixtures, factory planning, time and motion study systems, rate plans, production plans, quality control systems and analysis, work simplification systems, methods studies and cost, production control, organizational, operational and labor needs, or safety analysis.
11. Mechanical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning air conditioning, refrigeration, ventilation, combustion, heat transfer, energy, power, fuels, propulsion, machinery, tools, manufacturing, fluids, plumbing, fire suppression systems and devices, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems.
12. Metallurgical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning the production of metals or metal objects, testing procedures, metal processing, failure analysis procedures, mining and mineral beneficiation, or the development of metal alloys.
13. Mining: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning the construction of plants, shaft and bottom layouts, ventilation and hoisting systems, head frames, washery or concentration mills, mining methods and testing procedures, or metallurgical works and production procedures.
14. Nuclear: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning nuclear waste management, alternative waste management systems, disposal criteria and risk evaluation, transportation, packaging, decontamination, handling, welding evaluation, site stabilization, recovery techniques, water and air quality control systems, waste volume management, evaporation systems, reactor safety methods, health safety systems, cycle analysis, or nuclear fuels.
15. Petroleum: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning drilling equipment, pipelines, refinery plants, gathering systems, handling and storage systems, exploitation and selection methods, gas measurement and core analysis, phase behavior studies, reserve calculations, or the development of petroleum products.

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16. Sanitary: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning water treatment and sewage disposal plants, water systems, sewers, incinerators, distribution systems, sewage and industrial waste treatment plants, pollution reduction systems, sanitary facilities, or public health systems.
 17. Structural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning force-resisting and load-bearing members and their connections for structures such as foundations, bridges, walls, columns, slabs, beams, trusses, or similar members used singly or as part of a larger structure.
- B.** An applicant shall submit to the Board a separate application and application fee for each branch for which application is made. An applicant who wishes to change the branch of application after notification by the Board that the application has been evaluated by the Board shall submit the request in writing and pay an additional application fee.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
 Amended effective December 18, 1991 (Supp. 91-4).
 Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended effective December 18, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1606, effective July 1, 2006 (Supp. 06-2).

R4-30-222. Engineer-In-Training Designation

- A.** To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four-year engineering degree program accredited at the time of graduation by the Accreditation Board for Engineering and Technology (ABET) or an equivalent predecessor organization.
- B.** To qualify for admission to the in-training examination, an applicant who is not a graduate of a four-year ABET-accredited engineering degree program shall have at least four years of education or experience or a combination of both directly related to the practice of engineering. Experience directly related to the practice of engineering of a character satisfactory to the Board includes but is not limited to the following in the candidate's branch of engineering:
1. Consultation: The active involvement in meetings, discussions or development of reports intended to provide information, facts or advice regarding the application of the accepted engineering principles to fulfill the client's specific requirements.
 2. Research investigation: The search, examination or study to determine the practicality or effectiveness of accepted principles for adaptation and application to novel situations or the development of new or alternative solutions to solve problems.
 3. Evaluation: The analysis, testing or study to determine or estimate the merit, effect, efficiency or practicality of approaches, methods, designs, structures or materials for use in a given situation or to achieve a specific result.
 4. Planning: The preliminary development of objectives, statements, outlines, drafts, drawings or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a problem.

5. Design: Design, development and location experience.
 6. Construction review: The review or supervision of construction projects in the candidate's branch of engineering to determine conformance with contract documents and design specifications (maximum 12 months' credit).
 7. Administration: Administrative experience in the candidate's branch of engineering, including office and field administration, field or laboratory testing, quotation requests, change orders, bidding procedures, cost accounting and project closeouts (maximum 12 months' credit).
 8. Surveying: The measurement, using accepted methods of surveying, of units of space, water, land or structures to determine boundaries, areas, shapes, slopes, distances, angles or other calculations (maximum 12 months' credit).
 9. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials directly relating to the candidate's branch of engineering (maximum six months' credit).
 10. Other engineering experience: Experience of a nature set forth in this subsection but in other recognized branches of engineering (maximum six months' credit).
 11. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).
- C.** An applicant shall successfully complete the engineer-in-training examination designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
 Amended effective December 18, 1991 (Supp. 91-4).
 Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-223. Reserved**R4-30-224. Engineer Registration**

- A.** Work experience credited toward the eight-year active engagement requirement shall be directly related to the applicant's branch of engineering and of a character satisfactory to the Board and attained as described in R4-30-222, except that work experience for specific branches of engineering as described in R4-30-221 shall be for the purpose of qualifying an applicant for registration only and shall not be construed to restrict or confine the work practices of or engineering engagements accepted by a registrant.
- B.** An applicant shall successfully complete the professional engineer examinations offered in the applicant's branch of engineering designated by the Board.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
 Amended effective December 18, 1991 (Supp. 91-4).
 Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-225. Reserved**R4-30-226. Reserved****R4-30-227. Reserved**

R4-30-228. Reserved

R4-30-229. Reserved

R4-30-230. Reserved

R4-30-231. Reserved

R4-30-232. Reserved

R4-30-233. Reserved

R4-30-234. Reserved

R4-30-235. Reserved

R4-30-236. Reserved

R4-30-237. Reserved

R4-30-238. Reserved

R4-30-239. Reserved

R4-30-240. Reserved

R4-30-241. Reserved

R4-30-242. Geologist-in-training Designation

- A. To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four-year degree program with a major in geology at a college or university accredited at the time of graduation by a regional accrediting agency recognized by the Arizona Board of Regents.
- B. To qualify for admission to the in-training examination, an applicant who is not a graduate of a four-year degree program as specified in subsection (A) shall have at least four years of education or experience or both directly related to the practice of geology. Experience directly related to the practice of geology of a character satisfactory to the Board shall include the following:
1. Consultation: The active involvement in meetings, discussions and development of reports intended to provide information, facts or advice regarding natural resources and surface and subsurface geological conditions and the preparation of geological maps for use in consultations with clients.
 2. Evaluation: The evaluation of mining and petroleum properties, groundwater resources, unconsolidated earth materials, mineral fuels, natural hazards and land use limitations.
 3. Supervision of exploration: The supervision of the geological phases of engineering investigation, exploration for mineral and natural resources, metallic and nonmetallic ores, petroleum and groundwater resources.
 4. Administration: Administrative experience, including office and field administration, field or laboratory testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).
 5. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials on geological subjects (maximum six months' credit).
 6. Engineering: Experience in related branches of engineering (maximum six months' credit).
 7. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).
- C. An applicant shall successfully complete the geologist-in-training examination designated by the Board and provided by the Association of State Boards of Geology.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-243. Reserved

R4-30-244. Geologist Registration

An applicant shall successfully complete the professional geologist examination designated by the Board and provided by the Association of State Boards of Geology.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-245. Reserved

R4-30-246. Reserved

R4-30-247. Home Inspector Certification

- A. An applicant for certification as a home inspector shall submit an original and one copy of a completed application package that contains the following:
1. Evidence of successful completion, within two years before the date of application, of the National Home Inspector Examination as administered by the Examination Board of Professional Home Inspectors;
 2. The information in subsections (B)(1) through (10);
 3. A completed fingerprint card;
 4. Applicable fees;
 5. Evidence of successful completion of 84 hours of classroom training or an equivalent course conducted by an educational facility that is licensed by the applicable post-secondary education regulatory agency in the home state of the facility, or accredited by the Accrediting Commission of the Distance Education and Training Council, or by an accrediting agency approved by the United States Department of Education. The course of study shall encompass all of following major content areas:
 - a. Structural Components,
 - b. Exterior,
 - c. Roofing,
 - d. Plumbing,
 - e. Heating,
 - f. Cooling,
 - g. Electrical,
 - h. Insulation and Ventilation,
 - i. Interiors,
 - j. Fireplaces and Solid Fuel-Burning Devices,
 - k. Swimming Pools & Spas, and
 - l. Professional Practice;
 6. An applicant who has lawfully conducted home inspections as part of a business shall provide evidence of successful completion of 100 home inspections that meet the standards referenced in R4-30-301.01 on a form provided by the Board. An applicant under this subsection shall meet all other requirements for certification in this Section; and
 7. To complete a home inspector in-training program, an applicant who otherwise qualifies for certification as a home inspector except for meeting the qualification in subsection (A)(6), shall present evidence of completion of 30 parallel inspections. The 30 parallel inspections and

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home inspection report shall meet the standards in R4-30-301.01 and be retained by the applicant for at least two years from the date of application. The applicant shall conduct these inspections on separate residential dwelling units and shall list them on a log provided by the Board. The log shall include, with respect to each inspection, the address of the property, the date of the inspection, and the name and certification number of the supervising home inspector. The Board may hold the applicant's package for a period of one year based solely on the need for time to permit the applicant to complete the required parallel inspections. All time-frames promulgated under A.R.S. Title 41, Chapter 6, Article 7.1 are suspended during this period.

- B.** A certified home inspector is not required to inspect a pool and/or spa as part of a home inspection. If a certified home inspector conducts a pool and/or spa inspection, it shall be conducted in accordance with the "Standards of Professional Practice for the Inspection of Swimming Pools & Spas for Arizona Home Inspectors," ("Standards") adopted and published by Arizona Chapter of the American Society of Home Inspectors on March 11, 2011, and incorporated by reference, without any later amendments or editions, by the Board on February 28, 2012. Copies of the Standards are available at the Board's office and at the Arizona Chapter of the American Society of Home Inspectors' web site, www.azashi.org.
- C.** The application package shall contain the following:
1. Name, residence address, mailing address if different from residence address, and telephone number;
 2. Date of birth and Social Security number of the applicant;
 3. Citizenship or legal residence;
 4. A detailed explanatory statement regarding:
 - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant in any state or jurisdiction;
 - b. Refusal of any professional or occupational registration, license, or certification by any state or jurisdiction;
 - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant;
 - d. Any alias or other name used by the applicant;
 - e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.
 5. Documentation of absolute discharge from sentence at least five years before the date of application if an applicant has been convicted of one or more felonies;
 6. State or jurisdiction in which any professional or occupational registration, license or certification is held; type of registration, license, or certification; number; year granted, and how registration, license, or certification was granted (that is, by examination, education, experience, or reciprocity);
 7. The current status of any application for any type of professional or occupational registration, license, or certification pending in another state or jurisdiction;
 8. A release authorizing the Board to investigate the applicant's education, experience, and moral character and repute;
 9. Certification that the information provided to the Board is accurate, true, and complete;
 10. Copy of one report that meets the standards in R4-30-301.01; and

11. Sworn statement or statements by the supervising certified home inspector or inspectors that the parallel inspections conducted by the applicant meet the standards in R4-30-301.01.

- D.** The Board staff shall review all applications and, if necessary, refer completed applications to the Home Inspector Rules and Standards Committee for evaluation. If the application is complete and in the proper form, the Board staff or committee is satisfied that all statements on the application are true, and the applicant is eligible in all other aspects to be certified as a home inspector, the Board staff or committee shall recommend that the Board certify the applicant. If the evidence is not clear and convincing of qualification for certification, the matter shall be reviewed by the committee and the committee may request additional information regarding any issue upon which the applicant has not established qualification by clear and convincing evidence.
- E.** A certified home inspector shall notify the Board in writing within five business days of any loss of, or change in, financial assurance. The Board shall suspend the certificate holder's certification immediately and prohibit further home inspections until current proof of financial assurance is provided to the Board. The Board shall revoke a certificate if the certificate holder fails to provide proof of financial assurance within 90 days of loss of financial assurance or lapse of policy. All certified home inspectors shall provide proof of financial assurance at the time of each annual certification renewal. The Board shall not renew a home inspector certification unless the financial assurance is in full force and effect.
- F.** A registrant who has been certified by the Board to conduct home inspections prior to February 28, 2012, will be exempt from any additional education or testing requirements relating to pools and spas.

Historical Note

New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 713 (Supp. 13-2).

R4-30-248. Reserved

R4-30-249. Reserved

R4-30-250. Reserved

R4-30-251. Reserved

R4-30-252. Landscape Architect-in-training Designation

- A.** To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four- or five-year landscape architectural degree program accredited at the time of graduation by the Landscape Architectural Accreditation Board (LAAB) or an equivalent predecessor organization.
- B.** To qualify for admission to the in-training examination, an applicant who is not a graduate of a four- or five-year LAAB-accredited landscape architectural degree program shall have at least four years of education or experience or both directly related to the practice of landscape architecture. Experience directly related to the practice of landscape architecture of a character satisfactory to the Board shall include the following:

1. Consultation: The active involvement in meetings, discussions and development of reports intended to provide information, facts or advice regarding the application of landscape architectural principles to fulfill the client's specific requirements.
 2. Investigation, reconnaissance and research: The search, examination or study to determine the practicality or effectiveness of accepted landscape architectural principles to novel situations or the development of new or alternative solutions to landscape architectural problems.
 3. Planning: The preliminary development of objectives, statements, outlines, drafts, drawings, maps or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a landscape architectural problem.
 4. Design: The preparation and use of sketches, plans, drawings, outlines, models or schemes to convey the use and development of land, plantings, landscapings, settings, approaches to buildings, structures or facilities, traffic patterns and drainage or erosion patterns.
 5. Supervision of development: The supervision of the development of land and incidental water areas for the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and esthetic values, settings and approaches, natural drainage and the consideration and determination of inherent problems of the land, including erosion, wear and tear, light and other hazards.
 6. Administration: Administrative experience, including office and field administration, field testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).
 7. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials on landscape architectural subjects (maximum six months' credit).
 8. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).
- C. An applicant shall successfully complete the landscape architect-in-training examination designated by the Board and provided by the Council of Landscape Architectural Registration Boards.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
 Amended effective December 18, 1991 (Supp. 91-4).
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-253. Reserved

R4-30-254. Landscape Architect Registration

An applicant shall successfully complete the professional landscape architect examination designated by the Board and provided by the Council of Landscape Architectural Registration Boards.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
 Amended effective December 18, 1991 (Supp. 91-4).
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-255. Reserved

R4-30-256. Reserved

R4-30-257. Reserved

R4-30-258. Reserved

R4-30-259. Reserved

R4-30-260. Reserved

R4-30-261. Reserved

R4-30-262. Assayer-in-training Designation

- A. To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four-year degree program with a major in chemistry, metallurgy or other science directly related to the analysis of metals and ores at a college or university accredited at the time of graduation by a regional accrediting agency recognized by the Arizona Board of Regents.
- B. To qualify for admission to the in-training examination, an applicant who is not a graduate of a four-year degree program with a major in chemistry, metallurgy or other science directly related to the analysis of metals and ores at an accredited college or university specified in subsection (A), shall have at least four years of education or experience or both directly related to the practice of assaying. Experience directly related to the practice of assaying of a character satisfactory to the Board shall include the following:
1. Experience in the analysis of ferrous and nonferrous metals, minerals, fabrics and rock or powdered ores.
 2. Experience in all phases of fire analysis for the isolation or quantification of precious metals or minerals or any other substance in them, the experience to include: identification of sample metals, ores, minerals or alloys; pre-weighing of sample preparations; use of assaying weights; grit sizing; dehydration; sampling; crushing; mixing; rolling; coning; truncating; quartering; firing; choice and use of fluxes; button processing; cupellation; weighing; parting; and calculation.
 3. Experience in wet analysis or titration procedures.
 4. Experience in analysis by atomic absorption.
 5. Experience in the use of mineral standards.
 6. Consultation with clients or colleagues in service or work requiring the use of the knowledge of mineral sciences and assaying and the application of this knowledge in assignments involving the evaluation and analysis of metals, minerals and ores.
 7. Editing or writing for publication of articles, books, newsletters or other written materials on assaying-related subjects (maximum six months' credit).
 8. Subprofessional experience as defined in rule R4-30-101 (maximum six months' credit).
- C. An applicant shall successfully complete the assayer-in-training examination administered and provided by the Board.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
 Amended effective December 18, 1991 (Supp. 91-4).
 Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-263. Reserved

R4-30-264. Assayer Registration

An applicant shall successfully complete the professional assayer examination administered and provided by the Board.

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Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended by final rulemaking at 6 A.A.R. 1018, effective
February 25, 2000 (Supp. 00-1). Amended by final
rulemaking at 10 A.A.R. 2798, effective August 7, 2004
(Supp. 04-2).

R4-30-265. Reserved**R4-30-266. Reserved****R4-30-267. Reserved****R4-30-268. Reserved****R4-30-269. Reserved****R4-30-270. Drug Laboratory Site Remediation Firm Registration**

An applicant for drug laboratory site remediation firm registration shall submit an original and one copy of a completed application package that contains the following:

1. Name of business, business address, mailing address if different from business address, and business telephone number;
2. Description of the applicant's services offered to the public;
3. Name and certification number of each on-site supervisor who is authorized and responsible for the services being offered;
4. Legal status of business, such as corporation, partnership, sole proprietorship, or other status;
5. Name and address of the responsible individual in the firm to whom notices and correspondence from the Board should be mailed; and
6. Certification that the information provided to the Board is accurate, true, and complete;
7. Copy of a current license issued by the Registrar of Contractors, the scope of which permits the applicant to perform the activities required of drug laboratory site remediation firms certified pursuant to this Chapter;
8. The applicable fee.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-271. Onsite Supervisor Certification and Renewal

A. An applicant for onsite supervisor certification shall submit an original and one copy of a completed application package containing the following:

1. Name, residence address, mailing address if different from residence address, and telephone number;
2. Date of birth and Social Security number of the applicant;
3. Proof of citizenship or legal residence;
4. State or jurisdiction in which any other professional or occupational certification, registration, or license is held by the applicant, type of certification, registration, or license, number, and year granted;
5. Name of the state or jurisdiction, the type of professional or occupational certification, registration, or license the applicant is seeking, and the status of any professional or occupational certification, registration, or license application pending in any state or jurisdiction;
6. A detailed explanatory statement, regarding:
 - a. Denial of professional or occupational certification, registration, or license by any state or jurisdiction;

- b. Any pending disciplinary action in any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant;
 - c. Any alias or other name used by the applicant;
 - d. Any conviction for a felony or misdemeanor, other than a minor traffic violation; and
 - e. Any disciplinary action taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction.
7. Certification that the information provided to the Board is accurate, true, and complete;
 8. A copy of a current 40-hour HAZWOPER training certificate or a copy of a current eight hour HAZWOPER training refresher certificate and a copy of a 40-hour HAZWOPER training certificate;
 9. Documentation of 12 months or more of onsite experience in hazardous chemical decontamination projects and a copy of a HAZWOPER training certificate that shows the applicant held valid HAZWOPER training certification during the 12 months of experience;
 10. Documentation of current AHERA contractor or supervisor certification or a copy of a current AHERA refresher certificate and a copy of an AHERA contractor or supervisor training certificate;
 11. Documentation of successful completion of a lead training course that meets the requirements of 29 CFR 1926.62(l), effective January 8, 1998, 63 FR 1296, (published by the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 and available electronically through the federal digital system at www.gpo.gov/fdsys/. The provisions of this regulation are incorporated by reference and copies are available at the office of the Board of Technical Registration. This rule does not include any later amendments or editions of the incorporated matter.);
 12. Documentation of successful completion of an eight hour training course approved by the Board that encompasses the following:
 - a. Clandestine drug laboratory site remediation best standards and practices contained in R4-30-305;
 - b. Chemical and physical hazards of a clandestine drug laboratory;
 - c. Typical manufacturing methods for methamphetamine, LSD, and ecstasy;
 - d. Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;
 - e. Potential sharps and biohazards at a clandestine drug laboratory;
 - f. Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and
 - g. Other potential hazards or dangers that can be associated with a clandestine drug laboratory;
 13. Documentation of successful completion of an 8-hour training course approved by the Board that encompasses the following:
 - a. Hazardous conditions and precautionary measures upon initial entry into a clandestine drug laboratory site,
 - b. Assessing residual contamination,
 - c. Preparing the work plans for remediation of a clandestine drug laboratory,
 - d. Assessing structural stability for safe entry into a clandestine drug laboratory site,

- e. Characterizing waste from the remediation of a clandestine drug laboratory, and
 - f. Preparing final reports on the remediation of the clandestine drug laboratory;
14. A signed release authorizing the Board to investigate the applicant's education, experience, and good moral character and repute; and
15. The applicable fee.
- B.** An applicant for renewal of onsite supervisor certification shall submit an application package that contains:
- 1. A completed renewal application form provided by the Board, signed and dated by the applicant that provides the information contained in subsections (A)(1), (2), (6), and (7);
 - 2. A copy of the registrant's current eight-hour HAZWOPER training refresher certificate;
 - 3. A copy of the registrant's current AHERA refresher certificate;
 - 4. Documentation of successful completion of a two-hour refresher training course approved by the Board that encompasses the following:
 - a. Clandestine drug laboratory site remediation best standards and practices contained in R4-30-305,
 - b. Hazardous conditions and precautionary measures upon initial entry into a clandestine drug laboratory site,
 - c. Preparation of the work plan for remediation of a clandestine drug laboratory,
 - d. Assessment of the structural stability for safe entry into a clandestine drug laboratory site,
 - e. Characterizing waste from the remediation of a clandestine drug laboratory, and
 - f. Preparing the final report on the remediation of a clandestine drug laboratory;
 - 5. The applicable fee.
- C.** The Board staff shall review all applications and, if necessary, refer completed applications to the Environmental Remediation Rules and Standards Committee for evaluation. If the application is complete and in the proper form, and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be certified, the Board staff or committee shall recommend that the Board certify the applicant. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for certification.
- Historical Note**
- New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 2111, effective June 2, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 3514, effective July 17, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).
- R4-30-272. Onsite Worker Certification and Renewal**
- A.** An applicant for onsite worker certification shall submit an original and one copy of a completed application package containing the following:
- 1. Name, residence address, mailing address if different from residence address, and telephone number;
 - 2. Date of birth and Social Security number of the applicant;
 - 3. Proof of citizenship or legal residence;
 - 4. State or jurisdiction in which any professional or occupational certification, registration, or license is held by the applicant, type of certification, registration, or license number and year granted;
 - 5. Name of the state or jurisdiction, the type of professional or occupational certification, registration, or license the applicant is seeking, and the status of any professional or occupational application pending in any state or jurisdiction;
 - 6. A detailed explanatory statement regarding:
 - a. Any denial of professional or occupational certification, registration, or license by any state or jurisdiction;
 - b. Any pending disciplinary action in any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant;
 - c. Any alias or other name used by the applicant;
 - d. Any conviction for a felony or misdemeanor, other than a minor traffic violation; and
 - e. Any disciplinary action taken by any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant in any state or jurisdiction;
 - 7. Certification that the information provided to the Board is accurate, true, and complete;
 - 8. Copy of a current 40-hour HAZWOPER training certificate or copy of a current eight-hour HAZWOPER training refresher certificate and a copy of a 40-hour HAZWOPER training certificate;
 - 9. Documentation of successful completion of an eight-hour training course approved by the Board that encompasses the following:
 - a. Clandestine Drug Laboratory Site Remediation Best Standards and Practices contained in R4-30-305;
 - b. Chemical and physical hazards of a clandestine drug laboratory;
 - c. Typical manufacturing methods for methamphetamine, LSD, and ecstasy;
 - d. Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;
 - e. Potential sharps and biohazards at a clandestine drug laboratory;
 - f. Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and
 - g. Other potential hazards or dangers that can be associated with a clandestine drug laboratory;
 - 10. A signed release authorizing the Board to investigate the applicant's education, experience, and good moral character and repute; and
 - 11. The applicable fee.
- B.** An applicant for renewal of onsite worker certification shall submit an application package that contains:
- 1. A completed renewal application form provided by the Board, signed and dated by the applicant that provides the information contained in subsections (A)(1), (2), (6) and (7);
 - 2. A copy of the applicant's current eight-hour HAZWOPER training refresher certificate;
 - 3. The applicable fee.
- C.** The Board staff shall review all applications and, if necessary, refer completed applications to the Environmental Remediation

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tion Rules and Standards Committee for evaluation. If the application is complete and in the proper form, and the Board staff or committee is satisfied that all statements on the application are true and the applicant is eligible in all other respects to be certified, the Board staff or committee shall recommend that the Board certify the applicant. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for certification.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 2111, effective June 2, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 3514, effective July 17, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

R4-30-273. Reserved

R4-30-274. Reserved

R4-30-275. Reserved

R4-30-276. Reserved

R4-30-277. Reserved

R4-30-278. Reserved

R4-30-279. Reserved

R4-30-280. Reserved

R4-30-281. Reserved

R4-30-282. Land Surveyor-in-training Designation

- A.** To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four-year land surveying degree program accredited at the time of graduation by the Accreditation Board for Engineering and Technology (ABET) or an equivalent predecessor organization.
- B.** To qualify for admission to the in-training examination, an applicant who is not a graduate of a four-year ABET-accredited land surveying degree program shall have at least four years of education or experience or both directly related to the practice of land surveying. Experience directly related to the practice of land surveying of a character satisfactory to the Board shall include the following:
1. The measurement of space, water, land or structures located or to be located upon or within them, to determine boundaries, areas or other necessary calculations through the use of any mechanical, physical, electric or electronic equipment or devices commonly used by registered professional land surveyors.
 2. The analysis of measurement data through the use of professional knowledge or education or practical experience in the mathematical and physical sciences and in the principles of land surveying.
 3. The location or relocation, establishment or re-establishment of boundaries, easements, rights-of-way, bench marks or corners.
 4. Consultation with clients to determine the necessity of land surveying services and the determination of the cor-

rect type of services necessary to fulfill the client's needs and objectives.

5. The search of any source of public or private records for the purpose of performing a survey or to determine and, if necessary, to reconcile differences between the surveyor's collected data and such records.
 6. The platting or subdividing of land or the planning and design of parcels of land for development purposes.
 7. The preparation and maintenance of survey records.
 8. Other land surveying activities, analyses or investigations defined in the Act.
 9. The participation in office and field administration, quotation requests, bidding procedures, cost accounting and project closeouts (maximum 12 months' credit).
 10. The editing or writing for publication of articles, books, newsletters or other written materials on land surveying subjects (maximum six months' credit).
 11. Construction staking (maximum 12 months' credit).
 12. Subprofessional experience as defined in R4-30-101 (maximum six months' credit).
- C.** The applicant shall successfully complete the land surveyor-in-training examination designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-283. Reserved

R4-30-284. Land Surveyor Registration

The candidate shall successfully complete the professional land surveyor examination. Part One of the professional examination is designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors. Part Two of the professional examination is designated and provided by the Board.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1).

ARTICLE 3. REGULATORY PROVISIONS**R4-30-301. Rules of Professional Conduct**

All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration or certification, or in response to a subpoena.
2. A registrant shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
3. A registrant shall not commit bribery of a public servant as proscribed in A.R.S. § 13-2602, commit commercial bribery as proscribed in A.R.S. § 13-2605, or violate any federal statute concerning bribery.
4. A registrant shall comply with state, municipal, and county laws, codes, ordinances, and regulations pertaining to the registrant's area of practice.

5. A registrant shall not violate any state or federal criminal statute involving dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, bribery, or breach of fiduciary duty. The Board may take action against a registrant's license or certificate if a violation of the law is reasonably related to a registrant's area of practice.
6. A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
7. A registrant shall not accept an engagement if the duty to a client or the public would conflict with the registrant's personal interest or the interest of another client without making a full written disclosure of all material facts of the conflict to each person who might be related to or affected by the engagement.
8. A registrant shall not accept compensation for services related to the same engagement from more than one party without making a full written disclosure of all material facts to all parties and obtaining the express written consent of all parties involved.
9. A registrant shall make full disclosure to all parties concerning:
 - a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except payments for actual and substantial technical assistance in preparing the proposal; or
 - b. Any monetary, financial, or beneficial interest the registrant holds in a contracting firm or other entity providing goods or services, other than the registrant's professional services, to a project or engagement.
10. A registrant shall not solicit, receive, or accept compensation from material, equipment, or other product or services suppliers for specifying or endorsing their products, goods or services to any client or other person without full written disclosure to all parties.
11. If a registrant's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant shall immediately notify the responsible party appropriate building official, or agency, and the Board of the specific nature of the public threat.
12. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform any other arbitration duties, the registrant shall render decisions impartially and without bias to any party.
13. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Land Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, available at www.azapls.org and from APLS, 3346 East Menadota Drive, Phoenix, AZ. The Board of Technical Registration adopted them on June 15, 2001 and incorporated them into this subsection by reference. This incorporation by reference does not include any later amendments or editions and is available at the office of the Board of Technical Registration.
14. A registrant shall comply with any subpoena issued by the Board or its designated administrative law judge.
15. A registrant shall update the registrant's address and telephone number of record with the Board within 30 days of the date of any change.
16. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee of the registrant.
17. Except as provided below and in subsections (18) and (19), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
 - a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
 - b. The work is exempt under A.R.S. § 32-143.
18. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
19. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services that the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
20. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.
21. A registrant shall not enter into a contract for expert witness services on a contingency fee basis or any other arrangement in a disputed matter where the registrant's fee is directly related to the outcome of the dispute.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
 Amended effective December 18, 1991 (Supp. 91-4).
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1609, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

R4-30-301.01. Home Inspector Rules of Professional Conduct

- A.** To the extent applicable, a certified home inspector shall conduct a home inspection in accordance with the "Standards of Professional Practice" adopted by the Arizona Chapter of the American Society of Home Inspectors, Inc. on January 1, 2002, the provisions of which are incorporated by reference and on file with the Office of the Secretary of State. This rule does not include any later amendments or editions of the incorporated matter. Copies of these standards are available at the office of the Board of Technical Registration.
- B.** A Certified Home Inspector shall not:
 1. Pay or receive, directly or indirectly, in full or in part, a commission or compensation as a referral or finder's fee;
 2. Perform, or offer to perform, for an additional fee, any repairs to a structure that has been inspected by that inspector or the inspector's firm for a period of twenty-four months following the inspection; or

3. Be accompanied by more than four home inspector candidates while conducting any parallel home inspection.

Historical Note

New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

R4-30-302. Electrical Plans

- A. A registrant shall prepare and submit drawings and specifications for a new electrical system or an addition or modification to an existing electrical system provided the service and associated electrical feeders exceeds 600 amperes 120/240 volts, single phase or 225 amperes 120/208 volts, three phase and the fault current exceeds 10,000 amperes.
- B. In all cases a registrant shall design:
 1. Electrical installations in hospitals or other buildings with surgical operating rooms regulated by Article 517 of the National Electrical code (1990 edition) incorporated herein by reference and on file with the Office of the Secretary of State.
 2. Electrical installations in locations classified as hazardous in Article 500 of the National Electrical Code (1990 edition) incorporated herein by reference and on file with the Office of the Secretary of State.
 3. Electrical installations in locations classified as hazardous in Article 500 of the National Electrical Code (1990 edition) with the exception of gasoline dispensing or repair garages.
 4. A registrant shall design an alarm or signaling system that is required for life safety or code compliance.

Historical Note

Adopted effective December 18, 1991 (Supp. 91-4).
Heading amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

R4-30-303. Securing Seals

- A. Each registrant required to use a seal shall secure and use an ink seal 1 1/2 inches in diameter and identical in style, size, and appearance to the sample shown in Appendix A. The upper portion of the annular space between the second and third circles shall bear whichever of the following phrases is applicable to the registrant:
 1. "Registered Architect"; "Registered Professional Engineer" together with the branch of engineering in which registered; "Registered Geologist"; "Registered Landscape Architect"; "Registered Land Surveyor"; or "Registered Assayer."
 2. The inscription "Arizona U.S.A." shall appear at the bottom of the annular space between the second and third circles; the inner circle shall contain the name of the registrant, registration number, and the words "date signed."
- B. The registrant may order the seal through any vendor and shall pay the cost of its manufacture. Immediately upon receipt of the seal and before using the seal for any purpose, the registrant shall file with the Board, for its records, on a form provided by the Board, an imprint of the seal with an original signature superimposed over it and an affidavit regarding the use of the seal. The Board, within 10 working days of receipt of the form from the registrant, shall disapprove any seal that does not meet the exact specifications of subsection (A) and require that the registrant obtain and pay for another seal that

meets those specifications before sealing any work. Engineers registered in more than one branch shall secure and use a seal for each branch of engineering in which registration has been granted.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

R4-30-304. Use of Seals

- A. A registrant shall place a permanently legible imprint of the registrant's seal and signature on the following:
 1. Each sheet of drawings or maps;
 2. Each of the master sheets when reproduced into a single set of finished drawings or maps;
 3. Either the cover, title, index, or table of contents page, first sheet of each set of project specifications;
 4. Either the cover, index page, or first sheet of each addenda or change order to specifications;
 5. Either the cover, index page, or first sheet of bound details when prepared to supplement project drawings or maps;
 6. Either the cover, title, index, or table of contents page, or first sheet of any report, specification, or other professional document prepared by a registrant or the registrant's bona fide employee;
 7. The signature line of any letter or other professional document prepared by a registrant, or the registrant's bona fide employee; and
 8. Shop drawings that require professional services or work as described in the Act. Examples of shop drawings that do not require a seal include drawings that show only:
 - a. Sizing and dimensioning information for fabrication purposes;
 - b. Construction techniques or sequences;
 - c. Components with previous approvals or designed by the registrant of record; or
 - d. Modifications to existing installations that do not affect the original design parameters and do not require additional computations.
- B. A registrant shall apply a label that describes the name of the project and an original imprint of the registrant's seal and signature on all video cassettes that contain copies of professional documents.
- C. In the event that a copy of a professional document is provided to a client, regulatory body, or any other person for any reason by computer disk, tape, CD, or any other electronic form, and the document does not meet the requirements of subsection (D), the registrant shall mark the copy of the professional document: "Electronic copy of final document; sealed original document is with (identify the registrant's name and registration number)."
- D. A registrant shall sign, date, and seal a professional document:
 1. Before the document is submitted to a client, contractor, any regulatory or review body, or any other person, unless the document is marked "preliminary," "draft," or "not for construction" except when the document is work product intended for use by other members of a design team; and
 2. In all cases, if the document is prepared for the purpose of dispute resolution, litigation, arbitration, or mediation.
- E. For purposes of subsection (A), all original documents shall include:

1. An original seal imprint or a computer-generated seal that matches the seal on file at the Board's office;
 2. An original signature that does not obscure either the registrant's printed name or registration number;
 3. The date the document was sealed; and
 4. A notation beneath the seal either written, typed, or electronically generated that provides the day, month, and year of expiration of current registration, as shown in Appendix B.
- F. Methods of transferring a seal other than an original seal imprint or a computer-generated seal are not acceptable.
- G. An electronic signature, as an option to a permanently legible signature, in accordance with A.R.S. Title 41 and Title 44, is acceptable for all professional documents. The registrant shall provide adequate security regarding the use of the seal and signature.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
 Amended effective December 18, 1991 (Supp. 91-4).
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1084, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 282, effective March 8, 2008 (Supp. 08-1).

R4-30-305. Drug Laboratory Site Remediation Best Standards and Practices

- A. Preliminary procedures.
1. The onsite supervisor shall determine the nature and extent of damage and contamination of the residually contaminated portion of the real property.
 2. The onsite supervisor shall request a copy of any document from a law enforcement agency, state agency, or other reporting agency regarding the nature and extent of illegal drug activity, evidence of what materials were removed from the real property, the location from which they were removed, and the area posted by the notice of removal.
 3. The onsite supervisor shall:
 - a. Evaluate all information obtained regarding the nature and extent of damage and contamination,
 - b. Develop procedures to safely enter the residually contaminated portion of the real property in order to conduct a visual assessment,
 - c. Wear the appropriate personal protective equipment for all conditions assessed,
 - d. Visually inspect the residually contaminated portion of the real property, and
 - e. Be assisted by at least one onsite worker during the initial entry into the residually contaminated portion of the real property.
 4. The onsite supervisor shall conduct and document required testing for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the residually contaminated portion of the real property, such as using a LEL/O₂ meter, pH paper, PID, FID, or equivalent equipment.
 5. If the notice of removal posting is no longer present at the time of the initial entry by the drug laboratory site remediation firm, then the entire house, mobile home, recreational vehicle, detached garage or shed, hotel room, motel room or apartment unit shall be considered the residually contaminated portion of the real property.
6. If there was a fire or explosion in the residually contaminated portion of the real property that appears to have compromised the integrity of the structure, the drug laboratory site remediation firm shall obtain a structural assessment of the residually contaminated portion of the real property.
 7. The owner may retain a drug laboratory site remediation firm to demolish, and dispose of the residually contaminated portion of the real property rather than perform the remediation described in subsection (B).
 8. The drug laboratory site remediation firm shall prepare a written work plan that contains:
 - a. Complete identifying information of the real property, and the drug laboratory site remediation firm including but not limited to:
 - i. Street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home or recreational vehicle;
 - ii. Registration number of the drug laboratory site remediation firm, name and certification number of the onsite supervisor and onsite workers that will be performing remediation services on the residually contaminated portion of the real property;
 - b. Copies of the current certification of the onsite supervisor and onsite workers that will be performing remediation services on the residually contaminated portion of the real property;
 - c. Photographs or drawings, and a written description of the residually contaminated portion of the real property that depicts the location and type of any residual contamination;
 - d. A description of the personal protective equipment to be used at the residually contaminated portion of the real property;
 - e. The health and safety procedures that will be followed in performing the remediation of the residually contaminated portion of the real property;
 - f. A list of emergency contacts and telephone numbers;
 - g. The route and location of the nearest hospital with emergency service facilities;
 - h. A detailed summary of the work to be performed by the drug laboratory site remediation firm including:
 - i. Any pre-remediation sampling and testing of non-porous or porous materials;
 - ii. Any demolition work;
 - iii. Any and all materials or articles to be removed or cleaned;
 - iv. All procedures to be employed to remove the residual contamination;
 - v. All procedures to be employed to evaluate plumbing, septic, sewer, and soil;
 - vi. All procedures for decontamination or disposal of contaminated materials or demolition debris;
 - vii. All containment and negative pressure enclosure plans; and
 - viii. Personnel decontamination procedures to be used;
 - i. The shoring plan, if an assessment of the structural integrity was conducted and it was determined that

- shoring was necessary for the safe occupation of the structure during remediation; and
- j. A complete list of the proposed post-decontamination testing of the residually contaminated portion of the real property and the name of each individual conducting the sampling, such as an independent Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer supervising the sampling, and each laboratory performing the analytical testing.
9. The written work plan shall be:
 - a. Approved in writing by the owner of the real property or the owner's agent;
 - b. Submitted to the State Board of Technical Registration; and
 - c. Retained by the drug laboratory site remediation firm for a minimum of three years.
- B. Remediation procedures for the residually contaminated portion of the real property.**
1. All clandestine drug laboratory site remediation firms, onsite supervisors, and onsite workers shall comply with all applicable federal, state, municipal, and local laws, rules, ordinances, and regulations during the remediation or demolition of the residually contaminated portion of the real property.
 2. An onsite supervisor shall be present on the residually contaminated portion of the real property during the performance of remedial or demolition services including any pre-remediation and post-remediation sampling and testing.
 3. The ventilation system shall be turned off at the start of the remediation work and remain off until completion of the remediation work.
 4. The remediation or demolition work shall be conducted in a manner so that no other areas or items are contaminated as a result of the work. An onsite worker shall not store new or cleaned items in any areas requiring remediation.
 5. If the dwelling on the real property is connected to a septic system, then wash water from the remediation work shall not be disposed of in the septic system.
 6. If the dwelling has an attic or crawl space, the onsite supervisor shall assess the attic or crawl space. If the attic or crawl space was not used for the manufacturing of drugs, the storage of drugs or chemicals, or the ventilation of manufacturing areas, and these areas will not be occupied, then the attic or crawl space does not require remediation.
 7. The residually contaminated portion of the real property shall be assessed for asbestos-containing materials prior to demolition. Any Freon-containing appliances, propane tanks, tires, or other hazardous materials shall be removed from the residually contaminated portion of the real property prior to any demolition activities. The preliminary procedures described in subsection (A) shall be followed prior to demolition activities to verify the removal of all chemicals from the residually contaminated portion of the real property and to assist with characterization of the demolition wastes. The procedures for evaluating plumbing, septic, sewer, and soil described in subsection (B)(14) shall be followed prior to demolition activities. Mobile homes, travel trailers, or other recreational vehicles may be transported to the landfill prior to demolition. The demolition work shall be conducted in a manner to prevent visible dust emissions from the work area that may impact persons on adjacent property. The demolition debris shall be properly characterized prior to disposal as required in subsection (B)(15). After demolition, any remaining building components shall be remediated as described in subsection (B).
 8. Onsite workers or onsite supervisors shall conduct the removal of the contamination from the residually contaminated portion of the real property, except for porous materials from areas not highly suggestive of contamination that may be cleaned by a dry cleaning or laundry service.
 9. If pre-remediation sampling and testing are performed, non-porous materials and areas shall be sampled and tested using the personnel and procedures described in subsection (C) prior to any remediation services. If the non-porous materials or areas meet the post-remediation clearance levels described in subsections (C)(2) and (4), then no removal or cleaning of these non-porous materials or areas is required. If pre-remediation sampling and testing are performed, porous materials and areas shall be sampled and tested using the personnel and procedures described in subsection (C) prior to any remediation services. If the porous materials or areas meet the post-remediation clearance levels described in subsections (C)(2) and (4), then no removal or cleaning of these porous materials or areas is required. If pre-remediation sampling and testing are performed to evaluate whether remediation is required, the pre-remediation sampling and testing shall include an evaluation of plumbing, septic, sewer, and soil described in subsection (B)(14).
 10. Procedures for areas highly suggestive of contamination:
 - a. All porous materials, such as carpets, draperies, bedding, fabric covered furniture, drop ceilings, clothing, and related items that were present in the area highly suggestive of contamination at the time of the initial notice of removal (A.R.S. § 12-1000) shall be removed and properly disposed of. All items to be removed and disposed of shall be destroyed to prevent future reuse of the items.
 - b. All porous materials such as carpets, draperies, bedding, fabric covered furniture, clothing, and related items, that were moved into the area highly suggestive of contamination after the time of the initial notice of removal (A.R.S. § 12-1000) shall be removed and properly disposed of, except porous drop ceilings, which shall be HEPA vacuumed and left in place. At the owner's discretion, all or some porous materials with no evidence of staining may be cleaned by HEPA vacuuming and one of the following methods:
 - i. Steam cleaning: Hot water and detergent shall be injected into the porous materials under pressure to agitate and loosen any contamination. The water and detergent solution shall then be extracted from the porous material by a wet vacuum.
 - ii. Chemical dry cleaning: Porous materials that cannot be washed with detergent and water shall be dry cleaned using a liquid solvent dry cleaning solution in a dry cleaning machine for at least 15 minutes.
 - iii. Detergent and water solution: Porous materials shall be washed with detergent and water for at least 15 minutes. The porous materials shall be rinsed with water.
 - iv. If any porous materials are removed from the real property for cleaning, the materials shall be

- HEPA vacuumed, and the cleaning facility shall be notified in writing, by the drug laboratory site remediation firm, that the materials being cleaned are from a clandestine drug laboratory.
- c. All stained materials from the laboratory operations including wall board (sheet rock), wood furniture, wood flooring, and tile flooring shall be removed and properly disposed of, unless the owner requests cleaning and testing to meet the post remediation clearance levels contained in subsections (C)(2) and (4). If cleaned, the materials shall be washed with a detergent and water solution and then thoroughly rinsed. This procedure shall be repeated at least two additional times using new detergent solution and rinse water.
 - d. All non-porous surfaces, such as bathtubs, toilets, mirrors, windows, floors, walls, ceilings, doors, appliances, counter-tops, sinks, and non-fabric furniture may be cleaned to the point of stain removal and left in place or removed and properly disposed of. If cleaned, these surfaces shall be washed with a detergent and water solution and then thoroughly rinsed. This procedure shall be repeated at least two additional times using new detergent solution and rinse water.
 - e. All exposed concrete surfaces shall be thoroughly washed with a detergent and water solution and then thoroughly rinsed, or may be removed and properly disposed of. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water; and
 - f. All appliances shall be removed and properly disposed of, unless the owner requests cleaning and testing to meet the post-remediation clearance levels contained in subsections (C)(2) and (4). If cleaned, the appliances shall be washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water.
11. Procedures for areas not highly suggestive of contamination.
 - a. All porous materials, such as carpets, draperies, bedding, fabric covered furniture, clothing, and related items shall be removed and properly disposed of, except porous drop ceilings, which shall be HEPA vacuumed and left in place. At the owner's discretion, all or some porous materials with no evidence of staining may be cleaned by HEPA vacuuming and one of the following methods:
 - i. Steam cleaning: Hot water and detergent shall be injected into the porous materials under pressure to agitate and loosen any contamination. The water and detergent solution shall then be extracted from the porous material by a wet vacuum.
 - ii. Chemical dry cleaning: Porous materials that cannot be washed with detergent and water shall be dry cleaned using a liquid solvent dry cleaning solution in a dry cleaning machine for at least 15 minutes.
 - iii. Detergent and water solution: Porous materials shall be washed with detergent and water for at least 15 minutes. The porous materials shall be rinsed with water.
 - iv. If any porous materials are removed from the real property for cleaning, the materials shall be HEPA vacuumed, and the cleaning facility shall be notified in writing, by the drug laboratory site remediation firm, that the materials being cleaned are from a clandestine drug laboratory.
 - b. All non-porous surfaces, such as bathtubs, toilets, floors, countertops, sinks, walls, ceilings, mirrors, windows, doors, appliances, and non-fabric furniture, shall be thoroughly HEPA vacuumed and washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using a new detergent solution and rinse water.
 - c. Doors or other openings to areas with no visible contamination shall be cordoned off from all other areas with at least 4-mil plastic sheeting after being cleaned, to avoid recontamination during further remediation of the residually contaminated portion of the real property.
 - d. Spray-on acoustical ceilings shall be left undisturbed, and shall be sampled and tested for asbestos, and for residual contamination to determine whether ceilings meet the post-remediation clearance levels contained in subsections (C)(2) and (4). If the post-remediation clearance levels are exceeded, these materials shall be removed and disposed of according to applicable laws relating to asbestos removal .
 - e. All exposed concrete surfaces shall be thoroughly washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water.
 12. Structural Integrity and Security Procedures. If, as a result of the remediation, the structural integrity or security of the real property is compromised, the drug laboratory site remediation firm shall contact a qualified, registered professional to conduct a structural assessment and recommend corrective action for the real property.
 13. Ventilation Cleaning Procedures.
 - a. The ventilation system shall be turned off at the start of the remediation work and remain off until completion of the remediation work.
 - b. Air registers shall be removed and washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water.
 - c. Temporary filter media shall be attached to air register openings.
 - d. A fan-powered HEPA filter collection machine shall be connected to the ductwork to develop negative air pressure in the ductwork.
 - e. Air lances, mechanical agitators, or rotary brushes shall be inserted into the ducts through the air register openings to loosen all dirt, dust and other loose materials.
 - f. The air handler unit, including the return air housing, coils, each fan, each system, and each drip pan, shall be washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water.
 - g. All porous linings or filters in the ventilation system shall be removed and properly disposed of.

- h. The ventilation system shall be sealed off at all openings with at least 4-mil plastic sheeting to prevent recontamination until the residually contaminated portion of the real property meets the post-remediation clearance levels contained in subsections (C)(2) and (4).
14. Procedures for Plumbing, Septic, Sewer, and Soil.
- a. All plumbing inlets to the septic or sewer system, including but not limited to sinks, floor drains, bathtubs, showers, and toilets, shall be visually assessed for any staining or other visible residual contamination. All plumbing traps shall be assessed for VOC concentrations with a PID or FID, and for mercury vapors, using a mercury vapor analyzer. If VOC concentrations or mercury vapor concentrations exceed the post-remediation clearance levels contained in subsections (C)(2) and (4), the accessible plumbing and traps where the excess levels are found shall be removed and properly disposed of, or shall be cleaned and tested to meet the post-remediation clearance levels contained in R4-30-305(C)(2) and (4).
- b. The onsite supervisor shall determine whether the dwelling is connected to a local sewer system or to an onsite septic system. If the dwelling is connected to an onsite septic system, water from the remediation work shall not be disposed of in the septic system, and a sample of the septic tank liquids shall be obtained and tested for VOC concentrations.
- i. If VOCs are not found in the septic tank sample or are found at concentrations less than AWQS or less than 700 milligrams per liter (mg/l) for acetone, no additional work is required in the septic system area, unless requested by the owner of the real property.
- ii. If VOCs are found in the septic tank at concentrations exceeding the AWQS or exceeding 700 mg/l for acetone, the following shall apply:
- (1) The discharge area, such as the leach field, seepage pit, or evaporation mounds, shall be investigated under the direct supervision of an Arizona-registered geologist or an Arizona-registered engineer;
 - (2) The septic system discharge area shall be investigated for VOCs using EPA Method 8260B or an equivalent test method and, unless there is evidence that mercury or lead was not used in the manufacturing of methamphetamine, LSD or ecstasy at the clandestine drug laboratory, the septic system discharge area shall also be investigated for mercury and lead;
 - (3) The vertical extent of any VOCs, mercury, and lead detected in the soil samples shall be delineated to concentrations at or below laboratory detection limits or to background concentrations, and the horizontal extent of any VOCs, mercury, and lead shall be delineated to concentrations at or below each compound's SRL;
 - (4) If any VOCs, mercury, or lead used by the clandestine drug laboratory migrated down to groundwater level, the extent of groundwater contamination shall be investigated under the direct supervision of an Arizona-registered geologist or an Arizona-registered engineer and the vertical and horizontal extent of the groundwater contamination shall be delineated to concentrations at or below the AWQS or below 700 mg/l for acetone; and
- (5) After complete characterization of a release, the impacted soils shall be remediated to concentrations below the SRL or background concentrations, and any impacted groundwater shall be remediated to concentrations at or below the AWQS or below 700 mg/l for acetone.
- c. The onsite supervisor shall observe the real property for evidence of burn areas, burn or trash pits, debris piles or stained areas. The on-site supervisor shall test any burn areas, burn or trash pits, debris piles or stained areas with applicable testing equipment, such as a LEL/O₂ meter, pH paper, PID, FID, mercury vapor analyzer or equivalent equipment.
- i. If the burn areas, burn or trash pits, debris piles, or stained areas are not part of the residually contaminated portion of the real property, the drug laboratory site remediation firm shall recommend to the owner of the real property that these areas be investigated. If the owner advises the drug laboratory site remediation firm not to investigate these areas, the drug laboratory site remediation firm shall take appropriate action pursuant to R4-30-301(11).
- ii. If the burn areas, burn or trash pits, debris piles or stained areas are part of the residually contaminated portion of the real property, these areas shall be investigated and remediated by the drug laboratory site remediation firm.
- (1) Any wastes remaining from the operation of the clandestine drug laboratory or other wastes impacted by compounds used by the clandestine drug laboratory shall be characterized, removed, and properly disposed of.
 - (2) Any potentially impacted soil or groundwater shall be investigated under the direct supervision of an Arizona-registered geologist or an Arizona-registered engineer.
 - (3) The burn areas, burn or trash pits, debris piles, or stained areas shall be investigated for the VOCs used by the drug laboratory. Unless there is evidence that mercury or lead was not used in the manufacturing of methamphetamine, LSD, or ecstasy at the clandestine drug laboratory, the burn areas, burn or trash pits, debris piles, or stained areas shall be investigated for lead and mercury.
 - (4) The vertical extent of any VOCs, lead, or mercury detected in the soil samples shall be delineated to concentrations below laboratory detection limits or to background concentrations. The horizontal extent of these compounds shall be delineated to concentrations below each compound's SRL.
 - (5) If any of the compounds used by the clandestine drug laboratory migrated down to groundwater level, the extent of groundwater contamination shall be investigated

under the direct supervision of an Arizona-registered geologist or an Arizona-registered engineer. The vertical and horizontal extent of the groundwater contamination shall be delineated to concentrations below the AWQS and below 700 mg/l for acetone.

- (6) After complete characterization of a release, the impacted soils shall be remediated to concentrations below the SRL or background concentrations, and any impacted groundwater shall be remediated to concentrations below the AWQS and below 700 mg/l for acetone.

15. Waste Characterization and Disposal Procedures.

- a. All items removed from the clandestine drug laboratory remediation site, and waste generated during the remediation or demolition work, shall be characterized and properly disposed of. All items to be removed and disposed of shall be destroyed to prevent future reuse of the items.
- b. All suspect asbestos-containing building materials shall be properly sampled and tested for asbestos pursuant to EPA rule prior to disturbance or removal.
- c. All waste shall be characterized by sampling and testing, or the waste shall be considered hazardous waste and disposed of pursuant to applicable law, except the waste shall not be deemed to be household hazardous waste.
- d. The drug laboratory site remediation firm shall comply with all federal, state, municipal, county laws, codes, ordinances and regulations pertaining to waste transportation and disposal.

C. Pre-remediation and Post-remediation Testing Procedures.

- 1. Remediation sampling shall be conducted under the direct supervision of an independent Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist or Arizona-registered engineer. The individual taking the samples and the Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer directing the sampling shall have experience with remediation of hazardous substances, confirmation sampling of remedial projects, and evaluation of health risks and exposures to chemicals. All sampling used to verify that no additional removal or cleaning is required shall be conducted under the direct supervision of a Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer. The drug laboratory site remediation firm and its employees shall not conduct the sampling and testing. All sample locations shall be photographed for documentation purposes, and these photographs shall be included in the final report.
- 2. Sampling and testing shall be conducted for all of the compounds listed below. All areas and materials shall meet the following remediation clearance levels:

| Compound | Remediation Standard |
|-----------------|--|
| Red Phosphorus | Removal of stained material or cleaned pursuant to these standards |
| Iodine Crystals | Removal of stained material or cleaned pursuant to these standards |
| Methamphetamine | 1.5 µg Methamphetamine/100 cm ² |
| VOCs in Air | VOC air monitoring < 1 ppm |

| | |
|------------|------------------------------------|
| Corrosives | Surface pH of 6 to 8 |
| LSD | 0.1 µg LSD/100 cm ² |
| Ecstasy | 0.1 µg Ecstasy/100 cm ² |

- 3. If methamphetamine, ecstasy, or LSD is detected in the pre-remediation sampling and testing of porous materials and surfaces, then the porous materials shall be disposed of or cleaned as described in subsection (B).
- 4. The drug laboratory site remediation firm shall conduct sampling and testing for all of the metals listed below in all cases except where there is evidence that these metals were not used in the manufacturing of methamphetamine, LSD, or ecstasy at the drug laboratory:

| Compound | Remediation Standard |
|----------|-----------------------------------|
| Lead | 4.3 µg Lead/100 cm ² |
| Mercury | 3.0 µg Mercury/m ³ air |

- 5. All sampling and testing shall be conducted in accordance with the following procedures:
 - a. All sample locations shall be photographed, and the photographs shall be included in the final report.
 - b. All sample locations shall also be shown on a floor plan of the residually contaminated portion of the real property, and the floor plan shall be included in the final report.
 - c. All samples shall be obtained from areas representative of the materials or surfaces being tested. All samples shall be obtained, preserved, and handled in accordance with industry standards for the types of samples and analytical testing to be conducted and maintained under chain-of-custody protocol.
 - d. The individual conducting the sampling shall wear a new pair of gloves to obtain each sample.
 - e. All reusable sampling equipment shall be decontaminated prior to sampling.
 - f. All testing equipment shall be equipped and calibrated for the types of compounds to be analyzed.
 - g. Methamphetamine, ecstasy, or LSD sampling and testing of non-porous materials and surfaces:
 - i. Whatman 40 ashless filter paper or an equivalent filter paper shall be used for all wipe sampling. The filter paper shall be wetted with analytical grade methanol or deionized water for the wipe sampling. The filter paper shall be blotted or wiped at least five times in two perpendicular directions within each sampling area. The same filter paper may be used for up to three wipe areas or a new filter paper may be used for each area, and the three filter papers combined for analytical testing.
 - ii. Three 10 cm x 10 cm areas (100 cm²) shall be wipe sampled from each room of the residually contaminated portion of the real property. The three samples shall be obtained from the non-porous floor, one wall, and the ceiling in each room.
 - iii. Three 10 cm x 10 cm areas (100 cm²) shall be wipe sampled from different areas of the ventilation system.
 - iv. If there is a kitchen in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm²) shall be wipe sampled from a combination of the counter top, sink, or stove top, and from the floor in front of the stove top.

- v. If there is a bathroom in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100cm²) shall be wipe sampled from a combination of the counter top, sink, toilet, and any shower or bathtub.
- vi. If there are any cleaned appliances in the residually contaminated portion of the real property, one 10 cm x 10 cm area (100 cm²) shall be wipe sampled from the exposed portion of each appliance. If multiple appliances are present, each wipe sample may be a composite of up to three 100 cm² areas on three separate appliances.
- vii. After sampling, the wipe sample shall be placed in a new clean sample jar and sealed with a teflon-lined lid. The sample jar shall be labeled with at least the site or project identification number, date, time, and actual sample location. The sample jar shall be placed in a cooler with ice until delivered to an analytical laboratory licensed in any state in the United States to perform GC/MS testing. The sample shall be analyzed for methamphetamine, LSD, or ecstasy, depending upon the type of clandestine drug laboratory, using a GC/MS instrument, or an equivalent.
- h. Methamphetamine, ecstasy, and LSD sampling and testing of porous materials and surfaces:
 - i. Microvacuum sampling shall be conducted using a 37 mm microvac cassette equipped with a glass fiber filter and backup pad, a short piece of tygon tubing (1 to 2 inches) with one end cut at a 45 degree angle to be used as the "vacuum hose," and flexible tygon tubing to connect the pump to the filter. The person conducting the sampling shall connect the cassette with tygon tubing to a high volume sampling pump and calibrate the sampling pump, with a primary calibration standard, to a flow rate from 15 to 20 liters per minute.
 - ii. Select sampling areas of 10 cm x 10 cm (100 cm²). In general, visibly soiled, dusty, or heavily used areas are good choices for sampling. Three 10 cm x 10 cm areas (100 cm²) of carpet shall be microvacuum sampled from each room of the residually contaminated portion of the real property.
 - iii. If there are porous furniture, lamp shades, or other fixtures in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm²) of these materials shall be microvacuum sampled from each room where present. If multiple porous furnishings are present, the three sampled areas shall be taken from three separate furnishings.
 - iv. If there are porous wall coverings, curtains, shades, or paintings in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm²) of these materials shall be microvacuum sampled from each room where present. If multiple porous wall coverings are present, the three sampled areas shall be taken from three separate wall coverings.
 - v. If there are clothes, linens, or other porous materials in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm²) of these materials shall be microvacuum sampled from each room where present. If multiple other porous materials are present, the three sampled areas shall be taken from three separate items.
- vi. Perform the first vacuuming, in one direction, from side to side, from top to bottom. Use a slow sweeping motion. During the sampling of softer materials, press the angled tubing nozzle firmly onto the sampling surface to agitate particles. Perform a second vacuuming, in one direction, from top to bottom from side to side across the entire area. Use a slow sweeping motion. During the sampling of softer materials, press the angled tubing nozzle firmly onto the sampling surface to agitate particles. The same filter may be used for up to three vacuum areas, or a new filter may be used for each area, and the three filters combined for analytical testing.
- vii. After sampling, immediately turn off the pump and remove the filter cassette from the inlet and outlet tubing sections, replace the cassette plugs and place the sample into a labeled, resealable plastic bag.
- viii. If additional samples are being collected, remove and discard the short vacuum nozzle tubing and place a clean vacuum nozzle on a new filter cassette to collect additional samples.
- ix. After all sampling has been completed, the pump exterior should be decontaminated (wiped with a 10% bleach solution or an equivalent solution.) The collection tubing should also be discarded.
- x. All sample cassette bags shall be labeled with at least the site or project identification number, date, time, and actual sample location. The samples shall be submitted to an analytical laboratory licensed in any state in the United States to perform GC/MS testing. The samples shall be analyzed for methamphetamine, LSD, and ecstasy, depending on the type of clandestine drug laboratory using a GC/MS instrument or an equivalent.
- i. VOC sampling and testing procedures:
 - i. A PID or FID calibrated to manufacturer's specifications capable of detecting VOCs shall be used for testing. The background concentration of VOCs shall be obtained by testing three exterior areas outside the limits of the residually contaminated portion of the real property and in areas with no known or suspected sources of VOCs. All VOC readings shall be recorded for each sample location.
 - ii. At least three locations in each room of the residually contaminated portion of the real property shall be tested for VOC readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.
 - iii. All accessible plumbing traps shall be tested for VOCs by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.
- j. pH testing procedures:

- i. Surface pH measurements shall be made using deionized water and pH test strips with a visual indication for a pH between six and eight. The pH reading shall be recorded for each sample location.
 - ii. For horizontal surfaces, deionized water shall be applied to the surface and allowed to stand for at least three minutes. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.
 - iii. For vertical surfaces, a Whatman 40 ashless filter paper or equivalent filter paper shall be wetted with deionized water and wiped over a 10 cm x 10 cm area at least five times in two perpendicular directions. The filter paper shall then be placed into a clean sample container and covered with enough deionized water to cover the filter paper. The filter and water shall stand for at least three minutes prior to testing. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.
 - iv. pH testing shall be conducted on at least three locations in each room within the areas with visible contamination and within areas known to store or handle chemicals used for the clandestine drug laboratory in the residually contaminated portion of the real property.
- k. Lead Sampling and Testing Procedures:
- i. Unless there is evidence that lead was not used in the manufacturing of methamphetamine, LSD, or ecstasy at the clandestine drug laboratory, lead sampling shall be conducted as follows:
 - (1) Whatman 40 ashless filter paper or an equivalent filter paper shall be used for wipe sampling. The filter paper shall be wetted with analytical grade 3% nano-grade nitric acid for the wipe sampling. The filter paper shall be blotted or wiped at least five times in two perpendicular directions within each sampling area. The same filter paper may be used for up to three wipe areas or a new filter paper may be used for each area and the three filter papers combined for analytical testing.
 - (2) Three 10 cm x 10 cm areas (100 cm²) shall be sampled in each room within the areas with visible contamination or within areas known to store or handle chemicals used for the clandestine drug laboratory in the residually contaminated portion of the real property, and
 - (3) After sampling, the wipe sample shall be placed in a new clean sample jar and sealed with a teflon-lined lid. The sample jar shall be labeled with at least the site or project identification number, date, time, and actual sample location. The sample jar shall be placed in a cooler with ice until delivered to an Arizona-licensed analytical laboratory.
 - ii. The sample shall be analyzed for lead using EPA Method 6010B or an equivalent.
- l. Mercury Sampling and Testing Procedures:
- i. A mercury vapor analyzer calibrated in accordance with manufacturer's specifications shall be used for evaluating the remediated areas for the presence of mercury. All mercury readings shall be recorded for each sample location.
 - ii. At least three locations in each room within the areas with visible contamination or within areas known to store or handle chemicals used for the clandestine drug laboratory in the residually contaminated portion of the real property shall be tested for mercury vapor readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.
 - iii. All accessible plumbing traps shall be tested for mercury by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.
- m. Septic Tank Sampling and Testing Procedures:
- i. The liquid in the septic tank shall be sampled with a new clean bailer or similar equipment.
 - ii. The liquid shall be decanted or poured with minimal turbulence into three new VOA vials prepared by the laboratory.
 - iii. The VOA vials shall be filled so that there are no air bubbles in the sealed container. If air bubbles are present, the vial must be emptied and refilled.
 - (1) The sample vials shall be labeled with at least the date, time, and sample location.
 - (2) The sample vials shall be placed in a cooler with ice until delivered to an Arizona-licensed analytical laboratory.
 - (3) The sample shall be analyzed for acetone and methanol using EPA Method 8015B or an equivalent method.
- D. Final report.
1. A final report shall be:
 - a. Prepared by the drug laboratory site remediation firm,
 - b. Submitted to the owner of the remediated property and the Board within 30 days after completion of the remediation services, and
 - c. Retained by the firm for a minimum of three years.
 2. The final report shall include the following information and documentation:
 - a. Complete identifying information of the real property, and the drug laboratory site remediation firm, including but not limited to street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home or recreational vehicle, registration number of the drug laboratory site remediation firm, name and certification number of the onsite supervisor, and name and certification numbers of the onsite workers who performed the remediation services on the residually contaminated portion of the real property;
 - b. A summary of any pre-remediation sampling and testing and all post-remediation sampling and testing including the name and certification, registration, or license number of the Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer supervising the sampling and testing;
 - c. A summary of the remediation and demolition services completed on the residually contaminated portion of the real property, with any deviations from

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- the approved work plan, including a list of the rooms, surfaces, materials, and articles cleaned, a list of the materials and articles removed and disposed of, and the procedures used to evaluate the plumbing, septic, sewer, and soil and to document the extent of the remediation or demolition services;
- d. Photographs documenting the remediation services and showing each of the sample locations, and a drawing or sketch of the residually contaminated areas that depict the sample locations;
 - e. A copy of the sampling and testing results for VOCs and mercury, a copy of any asbestos sampling and testing results, a copy of the laboratory test results on all samples, and a copy of the chain-of-custody protocol documents for all samples from the residually contaminated portion of the real property;
 - f. A summary of the waste characterization work, and copies of any waste sampling and testing results and transportation and disposal documents, including but not limited to, bills of lading, weight tickets, and manifests for all materials removed from the real property;
 - g. A summary of the onsite supervisor's observation and testing of the real property for evidence of burn areas, burn or trash pits, debris piles, or stained areas;
 - h. A copy of any reports provided to the drug laboratory site remediation firm including:
 - i. A copy of any report prepared by the Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer, and
 - ii. A signed statement confirming that the sampling was conducted under direct supervision;
 - i. A statement that the residually contaminated portion of the real property has been remediated in accordance with R4-30-305; and
 - j. The total cost of any pre-remediation sampling and testing, as described in subsection (B)(9), the total cost of all post-remediation sampling and testing, as described in subsection (C) and the total cost of the remediation decontamination services as described in subsections (B)(9), (10), (12), (13), and (14);
3. Within 24 hours after the final report described in subsection (D) has been prepared, the drug laboratory site remediation firm shall deliver, or send by certified mail, a copy of the complete and final report to the State Board of Technical Registration. The drug laboratory site remediation firm shall also deliver or send a separate document to all other individuals and entities stating that the residually contaminated portion of the real property has been remediated pursuant to A.R.S. § 12-1000 (E).

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 1911, effective October 7, 2013 (Supp. 13-3).

R4-30-306. Securing and Using Identifying Markers

- A. Registered land surveyors shall obtain at their expense identifying markers such as tags, caps, or embossed nails which shall show the registrant's Arizona Registration Number as issued by the Board, and each registration number shall be prefixed by the letters L.S.
- B. Registered land surveyors shall securely attach an identifying marker to every permanent survey point set when making land boundary surveys.

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).
Amended effective December 18, 1991 (Supp. 91-4).

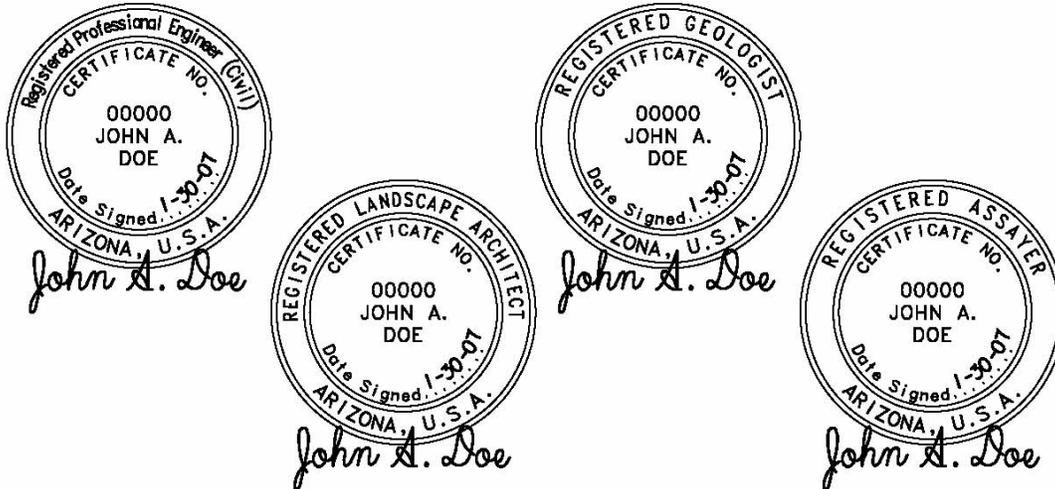
R4-30-307. Repealed**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

Appendix A. Sample Seals

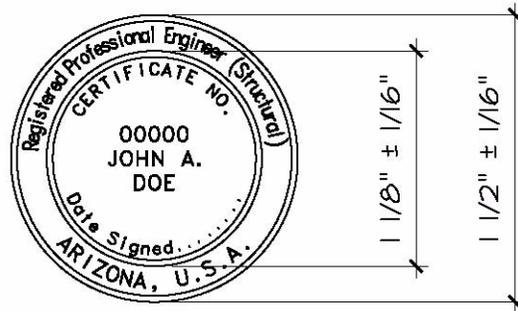
Samples:

Sign your name across lower portion of the seal. Do not cover your name or registration number with your signature.



** ENGINEERS MUST LIST BRANCH – Agriculture, Architectural, Chemical, Civil, Control Systems, Electrical, Environmental, Fire Protection, Geological, Industrial, Mechanical, Mining, Metallurgical, Nuclear, Petroleum, Sanitary, or Structural.

Outer circle should be 1 1/2" ± 1/16"
Inner circle should be 1 1/8" ± 1/16"



Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 282, effective March 8, 2008 (Supp. 08-1).

Appendix B. Sample Expiration Date Notification

Samples:

Type or handwrite the day, month, and year of registration expiration directly below the seal, as shown:



EXPIRES 9-30-07



Expires / /

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). New Appendix made by final rulemaking at 14 A.A.R. 282, effective March 8, 2008 (Supp. 08-1).

Appendix C. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

Appendix D. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

Appendix E. Repealed

Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

Appendix F. Repealed

Historical Note

Adopted effective December 18, 1991 (Supp. 91-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

32-106. Powers and duties

A. The board shall:

1. Adopt rules for the conduct of its meetings and performance of duties imposed on it by law.
2. Adopt an official seal for attestation of certificates of registration and other official papers and documents.
3. Consider and act on or delegate the authority to act on applications for registration or certification.
4. Conduct examinations for in-training and professional registration except for an alarm business, a controlling person or an alarm agent.
5. Hear and act on complaints or charges or direct an administrative law judge to hear and act on complaints and charges.
6. Compel attendance of witnesses, administer oaths and take testimony concerning all matters coming within its jurisdiction. In exercising these powers, the board may issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence it deems relevant to an investigation or hearing.
7. Keep a record of its proceedings.
8. Keep a register that shows the date of each application for registration or certification, the name of the applicant, the practice or branch of practice in which the applicant has applied for registration, if applicable, and the disposition of the application.
9. Do other things necessary to carry out the purposes of this chapter.

B. The board shall specify the proficiency designation in the branch of engineering in which the applicant has designated proficiency on the certificate of registration and renewal card issued to each registered engineer and shall authorize the engineer to use the title of registered professional engineer. The board shall decide what branches of engineering it shall recognize.

C. The board may hold membership in and be represented at national councils or organizations of proficiencies registered under this chapter and may pay the appropriate membership fees. The board may conduct standard examinations on behalf of national councils and may establish fees for those examinations.

D. The board may employ and pay on a fee basis persons, including full-time employees of a state institution, bureau or department, to prepare and grade examinations given to applicants for registration and may fix the fee to be paid for these services. These employees are authorized to prepare, grade and monitor examinations and perform other services the board authorizes, and to receive payment for these services from the technical registration fund. The board may contract with an organization to administer the registration examination, including selecting the test site, scheduling the examination, billing and collecting the fee directly from the applicant and grading the examination if a national council of which the board is a member or a professional association approved by the board does not provide these services. If a national council of which the board is a member or a professional association approved by the board does provide these services, the board shall enter into an agreement with the national council or professional association to administer the registration examination.

E. The board may rent necessary office space and pay the cost of this office space from the technical registration fund.

F. The board may adopt rules establishing rules of professional conduct for registrants.

G. The board may require evidence it deems necessary to establish the continuing competency of registrants as a condition of renewal of licenses.

H. Subject to title 41, chapter 4, article 4, the board may employ persons as it deems necessary.

I. The board shall issue or may authorize the executive director to issue a certificate or renewal certificate to each alarm business and each controlling person and a certification or renewal certification card to each alarm agent if the qualifications prescribed by this chapter are met.

32-106.02. Authority to investigate; civil penalties

A. The board may initiate a hearing pursuant to title 41, chapter 6, article 10 on receipt of a complaint that a person who is not exempt from this chapter and is not registered or certified under this chapter is practicing, offering to practice or by implication purporting to be qualified to practice any board regulated profession or occupation. The board shall give notice of the hearing by mailing a copy of the complaint to the person's last known address by certified mail return receipt requested.

B. If after the hearing the board determines that based on the evidence the person committed a violation under section 32-145, it, in addition to any other sanction, action or remedy, shall issue an order that imposes a civil penalty of no more than two thousand dollars per violation.

C. In determining the amount of the civil penalty it imposes, the board shall consider:

1. The seriousness of the violation.
2. The economic benefit to the violator that was generated by the violator's commission of the violation.
3. The violator's history of violations.
4. Any other considerations the board deems appropriate.

D. Except as provided in section 41-1092.08, subsection H, a person may seek judicial review of a final administrative decision made or order issued pursuant to this section pursuant to title 12, chapter 7, article 6.

E. If a person fails to pay a civil penalty that the board imposes within thirty days after the board issues the order or if the order is stayed pending appeal within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence a civil action to recover the penalty.

F. An action to enforce an order that was issued under this section may be combined with a petition for injunction under section 32-106.01.

G. The board shall deposit, pursuant to sections 35-146 and 35-147, all civil penalties collected under this section in the state general fund.

32-111. Home inspector rules and standards committee

A. The home inspector rules and standards committee of the state board of technical registration is established and consists of:

1. Three home inspectors, one of whom is a resident of a county with a population of four hundred thousand persons or less, appointed by the board from a list of names any home inspector organization provides if the home inspector organization meets all of the following criteria:

(a) Has at least forty members who are actively engaged in the practice of home inspection in this state.

(b) Holds regular elections.

(c) Publishes bylaws.

(d) Maintains a code of ethics.

2. Two members of the board of technical registration, including:

(a) An architect member or an engineer member of the board who is appointed by the chairman.

(b) The public member.

B. The board may make appointments of home inspectors to the committee from the lists provided pursuant to subsection A, paragraph 1 of this section or from others having the necessary qualifications.

C. The board-appointed members serve staggered three-year terms. These members shall be home inspectors, shall each have at least five years of experience as a home inspector and shall have passed the examination prescribed in section 32-122.02. The board by a majority vote may remove any member for misconduct, incapacity or neglect of duty and may appoint a new member to complete a term.

D. The committee is responsible for drafting and recommending to the board:

1. Criteria for home inspector certification.

2. Standards for home inspection reports.

3. Standards for written examinations.

4. Standards for educational programs, including course of study, programs and continuing education.

5. Rules defining conduct.

6. Recommendations for types of financial assurances as required in section 32-122.02.

7. Other rules and standards related to the practice of home inspectors.

E. The committee may participate in the investigation and review of home inspector complaints as provided by the board.

F. Members of the home inspector rules and standards committee are eligible to receive compensation pursuant to title 38, chapter 4, article 1.

32-121. Certificate or registration required for practice

Except as otherwise provided in this section, a person or firm desiring to practice any board-regulated profession or occupation shall first secure a certificate or registration and shall comply with all the conditions prescribed in this chapter. An alarm business or an alarm agent may install alarms if all of the following apply:

1. The alarm business has submitted an application for certification pursuant to section 32-122.05 or is a licensed contractor pursuant to chapter 10 of this title.
2. Each controlling person has submitted an application and proof of a valid fingerprint clearance card to the board pursuant to section 32-122.05.
3. The alarm agent has submitted an application and applied for a fingerprint clearance card pursuant to section 32-122.06.

32-122. Qualifications for in-training registration

(L16, Ch. 352, sec. 9 & Ch. 371, sec. 11)

A. An applicant for in-training registration as an architect, engineer, geologist or landscape architect shall:

1. Be of good moral character and repute.
2. Be a graduate of a school approved by the board or have four years or more, or if an applicant for in-training registration as an architect, five years or more, of education or experience, or both, in work in the profession in which registration is sought that meets standards specified by the board in its rules.
3. Unless exempt under section 32-126, subsection D, pass the in-training examination in the profession in which registration is sought.

B. An applicant for in-training registration as a land surveyor shall:

1. Be a graduate of a school and curriculum approved by the board, or have four years or more of education or experience, or both, in work in the profession in which registration is sought that meets standards specified by the board in its rules.
2. Unless exempt under section 32-126, subsection D, pass the in-training examination in the profession in which registration is sought.

C. An applicant for in-training registration as a home inspector-in-training shall meet the requirements of section 32-122.02, subsection A, paragraphs 1 through 7.

32-122. Qualifications for in-training designation

(L16, Ch. 167, sec. 5)

A. An applicant for in-training designation as an engineer, geologist or land surveyor shall:

1. Be of good moral character and repute.
2. Be a graduate of a school approved by the board or have four years or more of education or experience, or both, in work in the profession in which registration is sought that meets standards specified by the board in its rules.
3. Unless exempt under section 32-126, subsection D, pass the in-training examination in the profession in which registration is sought.

B. An applicant for in-training designation as an assayer shall:

1. Be of good moral character and repute.
2. Be a graduate of a school and curriculum approved by the board or have four years or more of education or experience, or both, in work in the profession in which registration is sought that meets standards specified by the board in its rules.
3. Unless exempt under section 32-126, subsection D, pass the in-training examination in the profession in which registration is sought.

32-122.01. Qualifications for professional registration

A. An applicant for professional registration as an architect, engineer, geologist or landscape architect shall:

1. Be of good moral character and repute.
2. Be actively engaged in education or experience, or both, in the profession for which registration is sought for at least eight years.
3. Unless exempt under section 32-126, pass the applicable in-training and professional examinations in the profession in which registration is sought.

B. An applicant for professional registration as a land surveyor shall:

1. Be of good moral character and repute.
2. Be actively engaged in education or experience, or both, in the profession for which registration is sought for at least six years.
3. Unless exempt under section 32-126, pass the in-training and professional examinations in the profession in which registration is sought.

C. In computing the period of active engagement required under this section:

1. Each year of study that is satisfactorily completed in an architectural, engineering, geological or landscape architectural school approved by the board is equivalent to one year of active engagement up to a maximum of five years. One year or more of teaching architectural, engineering, geological or landscape architectural subjects in a school approved by the board is equivalent to one year of active engagement.
2. Each year of study satisfactorily completed in a land surveying curriculum and school approved by the board is considered equivalent to one year of active engagement up to a maximum of four years. One year or more of teaching land surveying or other courses approved by the board as pertinent to the profession in which registration is sought in a school approved by the board is equivalent to one year of active engagement.

D. Except as provided in subsection E of this section, experience credited by the board under this section and sections 32-101, 32-122 and 32-126 must be attained under the direct supervision of a professional who is satisfactory to the board and registered in this state, another state or a foreign country in the profession in which the applicant is seeking registration, except that up to one year's experience may be attained under the direct supervision of a professional who is satisfactory to the board and registered in another profession regulated under this chapter in this state, another state or a foreign country.

E. By a two-thirds majority vote, the board may allow an applicant except for an architect applicant to meet the requirements of subsection D of this section by crediting comparable experience satisfactory to the board that the applicant attained without direct supervision of a registered professional.

32-122.02. Certification of home inspectors; insurance

A. An applicant for certification as a home inspector shall:

1. Be at least eighteen years of age.
2. Be of good moral character and repute.
3. Have passed within two years preceding application a written examination that is approved by the board and that meets the competency standards recommended by the home inspector rules and standards committee and adopted by the board.
4. Have passed a course of study that meets the standards recommended by the home inspector rules and standards committee and approved by the board.
5. Pay a fee as determined by the board and shall submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. Any documents and information relating to the state and federal criminal records check required by this section are not public records.
6. Not have had a certificate denied or revoked pursuant to this chapter within one year immediately preceding the application.
7. Have received an absolute discharge from sentence at least five years before the application if the person has been convicted of one or more felonies, provided the board determines the applicant is of good moral character and repute.
8. Provide evidence of the applicant's ability to obtain financial assurance as provided by subsection B of this section.

B. Within sixty days after certification and before any fee-based home inspection is performed, a home inspector certified pursuant to this chapter shall file one of the following financial assurances pursuant to rules recommended by the home inspector rules and standards committee and adopted by the board:

1. Errors and omissions insurance for negligent acts committed in the course of a home inspection in an amount of two hundred thousand dollars in the aggregate and one hundred thousand dollars per occurrence.
2. A bond that is retroactive to the certification date in the amount of twenty-five thousand dollars or proof that minimum net assets have a value of at least twenty-five thousand dollars.

C. If a home inspector loses or otherwise fails to maintain a required financial assurance, the certification shall be automatically suspended and shall be reinstated if a financial assurance is obtained within ninety days. If a financial assurance is not obtained within ninety days, the certification shall be automatically revoked.

D. A home inspector is subject to this chapter and rules adopted pursuant to this chapter.

32-122.05. Certification of alarm businesses and controlling persons; applications; fingerprinting; fee; renewal

A. The board shall issue certificates to alarm businesses and controlling persons. An alarm business may not operate until the alarm business and each of its controlling persons submit applications and receive certification from the board. A separate certificate is required for each business name under which an alarm business conducts business or advertises, except that one certificate may be used for two businesses with the same ownership. To obtain an alarm business certificate, each controlling person of the alarm business shall provide proof to the board of having a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1. All alarm business certificates and controlling person certificates issued pursuant to this article are valid for three years from the date of issuance.

B. An application for an alarm business certificate and for a controlling person certificate shall include:

1. The name, business address, mailing address and telephone number of the alarm business. If the applicant is a corporation, general or limited partnership, limited liability company or other legal entity, the applicant shall state the name of the alarm business exactly as shown in its articles of incorporation, charter, certificate of limited partnership, articles of organization or other organizational documents, as applicable, together with the state and date of incorporation and the name, residence address and date of birth of each controlling person. If one or more of the partners, members or shareholders of the applicant is a corporation or other legal entity, the provisions of this subsection relating to information required of a corporation apply.

2. If the alarm business is a corporation, general or limited partnership, limited liability company or other legal entity, designation of one of its designated controlling persons to have full authority, act as the alarm business's contact with the board and be responsible for the alarm business's compliance with this chapter. Each designated controlling person shall complete and sign all application forms required of an individual alarm agent applicant under this article. The alarm business shall also provide a copy of the corporation, partnership or limited liability company formation documents to the board.

3. The name of the alarm business and each controlling person, any alias or other name used or by which the alarm business or any controlling person has been previously known and the current residence and business addresses, telephone numbers, including fax numbers, and e-mail addresses of each alarm business and each controlling person.

4. The names and addresses of the alarm agents who are employed by the alarm business.

5. Proof that the person submitting the application and each controlling person are at least eighteen years of age as indicated on a current driver license or other picture identification document that is issued by a governmental agency.

6. Two current two-inch by two-inch photographs of each controlling person.

7. Information as to whether the applicant or any controlling person, or the business on behalf of which the certificate is being applied for, has ever been refused or denied any similar registration, certificate, license or permit or has had any similar license or permit revoked, canceled or suspended and the reason or reasons for the revocation, cancellation or suspension.

8. Whether the person submitting the application or any controlling person has been convicted of a felony or misdemeanor.

C. In addition to the application requirements prescribed in subsection B of this section, an applicant for an alarm business certificate and an applicant for a controlling person certificate shall pay a fee as determined by the board.

D. An applicant for an initial alarm business certificate or an initial controlling person certificate or an applicant for a renewal of an alarm business certificate or a controlling person certificate shall notify the board, in writing, of any change in the information contained in the certificate application or renewal application, including the names of controlling persons or alarm agents that have left the applicant's employment. The applicant shall notify the board within fifteen calendar days after the occurrence of the change.

E. An alarm business and each controlling person shall file an application for a certificate renewal with the board no later than fourteen days before the expiration of the certificate that is currently in effect. If a certificate expires without the alarm business or controlling persons having submitted a timely application for renewal, the alarm business may not operate until the holder of the expired certificate files a new application for an initial certificate.

32-122.06. Certification of alarm agents; fee; fingerprinting; temporary certification; renewal

A. Each alarm agent shall apply for an alarm agent certification and a renewal certification card from the board. The board shall issue or deny an alarm agent certification card or a renewal certification card within ten business days after receiving an administratively complete application that includes an explanation of any criminal or disciplinary history. All alarm agent certificates issued pursuant to this article are valid for three years from the date of issuance.

B. To obtain an alarm agent certificate, a person shall submit an application to the board, pay a fee as determined by the board and provide to the board evidence of having a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1. On receipt of the application and on the third anniversary of the initial certification for as long as the person is an alarm agent, the board shall verify with the department of public safety the status of the alarm agent's fingerprint clearance card. This subsection does not apply if the alarm agent is also the controlling person and has complied with section 32-122.05. An alarm agent certificate remains valid only if the person maintains a valid fingerprint clearance card.

C. A person shall apply for an alarm agent certificate within five working days after being employed by an alarm business. A person may not work as an alarm agent until the application is processed and approved unless the person is under the direct supervision of a certified alarm agent or unless the alarm business employing an alarm agent who is applying for an initial alarm agent certificate certifies that the alarm business has determined through a privately administered background check by a nationally recognized database company that the applicant has not been convicted of a crime that would prevent the applicant from receiving a fingerprint clearance card. The alarm business employing the alarm agent shall provide a copy of the background check to the board on request. A copy of the application showing that the application has been filed with the board and that a background check has been conducted is valid as a sixty-day temporary certification under this subsection. The sixty-day temporary certification may be extended for a period not to exceed an additional thirty days if the applicant shows good cause to the board. When the applicant receives a fingerprint clearance card, the applicant shall provide a copy of the fingerprint clearance card to the board within ten days. If the board determines that a person is working as an alarm agent without a valid certification or temporary certification, the board shall notify the alarm business. A person is subject to disciplinary action and penalties pursuant to this chapter.

D. An alarm agent shall physically possess the agent's alarm agent certification card when performing or authorizing the performance of any task pursuant to this chapter.

E. An alarm agent certificate card becomes the personal property of the person to whom it is issued. The person shall retain possession of the card.

F. If an alarm agent's employment with an alarm business is terminated, the alarm agent shall notify the board in writing within fifteen days after the termination.

32-124. Schedule of fees; exemption

A. The board shall establish a schedule of fees for the following:

1. Examinations.
2. Applications.
3. Renewals.
4. Board publications.
5. Computer printouts of names of registrants.
6. Photocopies.
7. Copies of audiotapes, videotapes, computer discs or other media used for recording sounds, images or information.
8. Replacement certificates of registration.
9. Review of examinations.
10. Regrading of examinations.
11. Returned checks.

B. The board is exempt from the requirements of title 41, chapter 6 in establishing a fee schedule for the fees in subsection A, paragraphs 1, 2, 3, 9 and 10.

32-125. Seals for registrants

- A. The board shall adopt and prescribe seals for use by registrants who are required by the board to use seals. Each seal shall bear the name of the registrant and shall state the profession in which the registrant is permitted to practice and, in the case of engineering, the branch or branches of engineering in which the registrant has demonstrated proficiency, and other data the board deems pertinent.
- B. Plans, specifications, plats or reports prepared by a registrant or a registrant's bona fide employee shall be issued under the registrant's seal if the board requires the registrant to use a seal.
- C. It is unlawful for a registrant whose certificate has expired or has been revoked or suspended to use the seal.
- D. It is unlawful for any nonregistrant to cause or permit the illegal use of a registrant's seal, signature or stamp on any document prepared by the nonregistrant.
- E. If the board requires a registrant to use a seal, the registrant is responsible for all documents that the registrant signs, stamps or seals, including those documents prepared by the registrant's bona fide employee.

32-126. Exemptions from examination requirement

A. The board shall waive the examination requirement for an applicant, other than an applicant for professional registration as a land surveyor, who satisfies any one of the following:

1. Holds a valid certificate of registration in good standing issued by another state or foreign country which has or had requirements for registration substantially identical to those of this state.
2. Holds a certificate of qualification in good standing issued by a national bureau of registration or certification recognized by the board.
3. Has been actively engaged in another state or foreign country as a professional registrant in the profession in which registration is sought for at least ten years and holds a valid certificate of registration in good standing issued by that state or country.

B. A registered professional engineer who holds a proficiency designation in one branch of engineering in this state and seeks an additional or different proficiency designation shall submit evidence to the board of either:

1. Four years of experience acceptable to the board as a registered professional engineer practicing in that branch of engineering in which the person seeks the proficiency designation.
2. Successful completion of the professional examination in the branch of engineering in which the applicant seeks the proficiency designation.

C. An applicant for professional registration as a land surveyor who satisfies any one of the requirements of subsection A shall pass the part of the professional land surveyor examination relating to surveying methods and legal principles in this state prescribed by the board in its rules.

D. The board shall exempt an applicant from the in-training examination if the applicant is a graduate of a school and curriculum approved by the board and has been actively engaged in experience in the profession for which registration is sought for at least twelve years after graduation.

32-127. Renewal of certification or registration; penalty fee; cancellation; inactive status; renewal fees; home inspector exam requirement

A. The board shall establish a system for renewing certification or registration.

B. Except as provided in section 32-4301, certificates of registration or certification are invalid after their expiration date unless renewed by payment of the required renewal fee. If the renewal fee is not paid prior to the expiration date, it shall be accompanied by a penalty fee equal to one-sixth of the renewal fee for each year or fraction of a year of delinquency.

C. The board shall cancel a certificate of registration or certification if the registration or certification has remained invalid for at least one renewal period. Before the board may issue a valid registration or certification:

1. If the registration or certification has been invalid for less than five years or has been invalid for at least five years but the person has practiced as a licensed, certified or registered professional in that profession in another jurisdiction for the five years immediately before the date of the person's application with the board:

(a) The person shall apply as a new candidate and pay the application fee.

(b) The person is not required to take and pass the applicable professional examination.

2. If the registration or certification has been invalid for at least five years and the person has not practiced as a licensed, certified or registered professional in that profession in any other jurisdiction for the five years immediately before the date of the person's application with the board, the person shall apply as a new candidate, pay the application fee and take and pass the professional examination.

D. A registrant shall not practice, offer to practice or advertise if the certificate of registration or the certification is inactive or invalid.

E. A registrant who retires from the active practice of any board-regulated profession or occupation or who is not currently practicing that board-regulated profession or occupation in this state may request that the board place the registrant's certificate of registration or certification on inactive status. The registrant shall submit the request in writing to the board.

F. If the board has invalidated, pursuant to subsection B of this section, the certificate of registration of a registrant who seeks to place the certificate of registration on inactive status, the registrant shall submit all penalty fees that are due with the registrant's application for inactive status.

G. A registrant shall not place the registrant's certificate of registration on inactive status if the person's certificate of registration has been canceled by the board pursuant to subsection C of this section.

H. A registrant who holds an inactive certificate of registration may apply to the board to reactivate the certificate of registration. The board shall reactivate an inactive certificate of registration if the registrant submits a completed application on a form prescribed by the board and meets the qualifications for professional registration set forth in section 32-122.01. A registrant who seeks reactivation of the registrant's certificate of registration and who has not been engaged in the profession in which the registrant seeks reactivation for the five years immediately preceding the date of the application for reactivation shall take the applicable professional examination.

I. The board shall establish the renewal fee for each certificate or registration issued pursuant to this chapter.

J. Notwithstanding subsection C of this section, a home inspector who has had a certification canceled pursuant to subsection C of this section shall apply as a new candidate and pay the application fee. If the applicant has not taken and passed the board-approved national examination within the two years immediately preceding the date of application, the applicant shall take and pass the examination for certification.

32-128. Disciplinary action; letter of concern; judicial review

A. The board may take the following disciplinary actions, in combination or alternatively:

1. Revocation of a certification or registration.
2. Suspension of a certification or registration for a period of not more than three years.
3. Imposition of an administrative penalty of not more than two thousand dollars for each violation of this chapter or rules adopted pursuant to this chapter.
4. Imposition of restrictions on the scope of the registrant's practice.
5. Imposition of peer review and professional education requirements.
6. Imposition of probation requirements that are best adapted to protect the public safety, health and welfare and that may include a requirement for restitution payments to professional services clients or to other persons suffering economic loss resulting from violations of this chapter or rules adopted pursuant to this chapter.
7. Issuance of a letter of reprimand informing a person regulated under this chapter of a violation of this chapter or rules adopted by the board.

B. The board may issue a letter of concern if the board believes there is insufficient evidence to support disciplinary action against the registrant or home inspector but sufficient evidence for the board to notify the registrant or home inspector of the board's concern. A letter of concern is a public document.

C. The board may take disciplinary action against the holder of a certificate or registration under this chapter who is charged with the commission of any of the following acts:

1. Fraud or misrepresentation in obtaining a certificate of qualification, whether in the application or qualification examination.
2. Gross negligence, incompetence, bribery or other misconduct in the practice of the profession.
3. Aiding or abetting an unregistered or uncertified person to evade this chapter or knowingly combining or conspiring with an unregistered or uncertified person, or allowing one's registration or certification to be used by an unregistered or uncertified person or acting as agent, partner, associate or otherwise of an unregistered or uncertified person, with intent to evade this chapter.
4. Violation of this chapter or board rules.
5. Failing to pay a collaborating registered professional within seven calendar days after the registrant receives payment from a client unless specified otherwise contractually between the prime professional and the collaborating registered professional. For the purposes of this paragraph, "collaborating registered professional" means a registered professional with whom the prime professional has a contract to perform professional services.

D. The board may make investigations, employ investigators and expert witnesses, appoint members of advisory committees and conduct hearings to determine whether a disciplinary action should be taken against the holder of a certificate or registration under this chapter.

E. An investigation may be initiated on receipt of an oral or written complaint. The board, on its own motion, may direct the executive director to file a verified complaint charging a person with a violation of this chapter or board rules and shall give notice of the hearing pursuant to title 41, chapter 6, article 10. The executive director shall then serve on the accused, by either personal service or certified mail, a copy of the complaint together with notice setting forth the charge or charges to be heard and the time and place of the hearing, which shall not be less than thirty days after the

service or mailing of notice.

F. A person who has been notified of charges pending against the person shall file with the board an answer in writing to the charges not more than thirty days after service of the complaint and notice of hearing. If a person fails to answer in writing, it is deemed an admission by the person of the act or acts charged in the complaint and notice of hearing. The board may then take disciplinary action pursuant to this chapter without a hearing.

G. A disciplinary action may be informally settled by the board and the accused either before or after initiation of hearing proceedings.

H. On its determination that any person has violated this chapter or a rule adopted pursuant to this chapter, the board may assess the person with its reasonable costs and expenses, including attorney fees, incurred in conducting the investigation and administrative hearing. All monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the technical registration fund established by section 32-109 and shall only be used by the board to defray its expenses in connection with investigation related training, disciplinary investigations and hearings. Notwithstanding section 35-143.01, these monies may be spent without legislative appropriation.

I. The board shall immediately notify the clerk of the board of supervisors of each county in the state of the suspension or revocation of a certificate or of the reissuance of a suspended or revoked certificate.

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

32-129. Confidentiality

A. Examination material, file records of examination grading and performance, transcripts of educational institutions, letters of inquiry and reference concerning applicants and board inquiry forms concerning applicants are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2.

B. Investigation files of any investigation are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2 until the matter is final, a hearing notice is issued pursuant to title 41, chapter 6, article 10 or the matter is settled by consent order. However, the registrant shall be informed of and have access to the complaint and investigative assessments and the public may obtain information that an investigation is being conducted and of its general nature.

C. Informal conferences held by advisory committees are confidential and are not open to the public. All information, including any minutes or reports created or obtained pursuant to an informal conference, is confidential until the matter is final, a hearing notice is issued pursuant to title 41, chapter 6, article 10 or the matter is settled by consent order. The board may discuss matters that are being reviewed by an advisory committee in open session but may not introduce confidential documents into public board records.

32-144. Exemptions and limitations; definition

A. Professions and occupations regulated by the board may be practiced without compliance with the requirements of this chapter by:

1. An officer or employee of the United States, practicing as such.
2. An employee of a registrant or of a person exempt from registration, if such employment does not involve direct responsibility for design, inspection or supervision.
3. A nonregistrant who designs, alters or adds to either of the following:
 - (a) A detached single family dwelling.
 - (b) An individual unit in a multifamily dwelling if the walls that are designed, altered or added in the unit are not bearing walls, shear walls or firewalls, which shall be determined by a registrant following an evaluation of the walls to be designed, altered or added.
4. A nonregistrant who designs a one or two story building or structure in which the square footage of the floor area measured to the outside surface of the exterior walls does not exceed three thousand square feet, that is not intended for occupancy by more than twenty persons on a continuous basis and in which the maximum span of any structural member does not exceed twenty feet unless a greater span is achieved by the use of wood or steel roof or floor trusses or lintels approved by an engineer registered by the board.
5. A nonregistrant who designs additions or alterations to a one or two story building or structure subject to the limitations set forth in paragraph 4 of this subsection. A nonregistrant may exceed the maximum three thousand square foot limitation set forth in paragraph 4 of this subsection for a one-time single addition not exceeding one thousand five hundred square feet as measured to the outside surface of the exterior walls and designed for the purpose of storage of chattels.
6. A nonregistrant who designs a water or wastewater treatment plant, or extensions, additions, modifications or revisions, or extensions to water distribution or collection systems, if the total cost of such construction does not exceed twelve thousand five hundred dollars.
7. A nonregistrant who designs buildings or structures to be erected on property owned or leased by the nonregistrant or by a person, firm or corporation, including a utility, telephone, mining or railroad company, which employs the nonregistrant on a full-time basis, if the buildings or structures are intended solely for the use of the owner or lessee of the property, are not ordinarily occupied by more than twenty people, are not for sale to, rental to or use by the public and conform to the building code adopted by the city, town or county in which the building is to be erected or altered.
8. A nonregistrant who provides horticultural consultations or prepares planting plans for plant installations.

B. A registrant who performs any of the activities described in subsection A, paragraphs 3 through 8 of this section is subject to the requirements of this chapter.

C. The requirements of this chapter shall not apply to work done by any communications common carrier or its affiliates or any public service corporation or manufacturing industry or by full-time employees of any of them, provided such work is in connection with or incidental to the products, systems or nonengineering services of such communications common carrier or its affiliates or public service corporation or manufacturing industry, and provided that the engineering service is not offered directly to the public.

D. An individual shall not perform home inspections unless the individual is certified as a home inspector pursuant to this chapter, except that nothing in this chapter prevents:

1. A person who is licensed, certified or registered pursuant to this chapter or another chapter in this title from acting

within the scope of the person's license, certification or registration.

2. A person who is employed by a governmental entity from inspecting residential structures if the inspection is within official duties and responsibilities.

3. A person from performing a home inspection if the inspection will be used solely by a bank, savings and loan association or credit union to monitor progress on the construction of a residential structure, unless otherwise required by federal law or regulation.

4. A person who is employed as a property manager for a residential structure and whose official duties and responsibilities include inspecting the residential structure from performing a home inspection on the structure if the person does not receive separate compensation for the inspection work.

E. No person including a person described in subsection D of this section may use any letterhead, advertisement, communication or other device to represent that the person is a home inspector unless the person is certified as a home inspector pursuant to this chapter.

F. A trained geologist may engage in a geological practice without being registered under this chapter. A trained geologist may not engage in a geological practice if any of the following applies:

1. The trained geologist has been convicted of a felony in this state or any other state.

2. The trained geologist has been registered or licensed in this state or any other state and has had the registration or license suspended or revoked by this state or the other state.

3. The trained geologist has been prohibited from engaging in a geological practice in this state or any other state due to any private, civil or professional complaint related to an ethical or technical violation while engaged in the practice of geology.

4. The trained geologist fails to disclose to a person employing or hiring the trained geologist:

(a) Any disciplinary action taken against the trained geologist in this state or any other state due to any private, civil or professional complaint that is related to an ethical or technical violation while engaged in the practice of geology.

(b) That the trained geologist is not a registered geologist pursuant to this title.

5. The trained geologist is required to be registered by another law in this state or by federal law.

6. State or federal law conditions the issuance of a license or permit, including permits issued under title 27, 37, 45 or 49, on the issuance of a report that is sealed by a registered geologist.

G. "Trained geologist" means a person who has both:

1. Earned a geology degree from an accredited educational institution.

2. Participated in geological work experience outside of an educational institution for at least four years.

DEPARTMENT OF HEALTH SERVICES (R-18-0602)
Title 9, Chapter 8, Article 1, Food and Drink

Amend: R9-8-102

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: June 5, 2018

AGENDA ITEM: E-3

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

FROM: Council Staff

DATE: May 22, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (R-18-0602)
Title 9, Chapter 8, Article 1, Food and Drink

Amend: R9-8-102

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Department of Health Services (Department), seeks to amend one rule, related to food, recreational, and institutional sanitation, in A.A.C. Title 9, Chapter 8, Article 1.

The Department is engaging in this rulemaking to comply with statutory changes to A.R.S. § 36-136. In 2016, the statute was revised to remove the requirement that a noncommercial social event, such as a potluck, take place at a workplace in order to be exempt from Article 1 regarding food and drink safety. See Laws 2016, Ch. 54, § 1. In addition, the statutory change required the Department to adopt rules that provide an exemption from the requirements in Article 1 for food and drink that is a "whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption." Finally, in 2013, the statute was revised to exempt all locations that sell only commercially prepackaged food or drink that is not potentially hazardous from Article 1 governing food and drink. See Laws 2013, Ch. 6, § 1.

The Department received an exception from the moratorium on September 1, 2016.

Proposed Action

In addition to clarifying changes made throughout the rule, statutory references are being updated. Subsections (B)(9) through (11) are added to expressly exempt substance abuse transitional facilities, behavioral health respite homes, and adult behavioral health therapeutic homes from Article 1. Lastly, subsection (B)(14) is added to exempt fruits and vegetables grown at a school from Article 1.

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 rule, including A.R.S. § 36-136(G), under which the Department “may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.”

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 Department is adopting a rule that will align with statutory mandates to exempt certain stakeholders from food establishment licensing requirements. Generally, the economic impact is generated by the statute, not the rule. This rulemaking clarifies and aligns the Department’s rule with state statute.

In Fiscal Year 2017, there were 34,821 licensed food establishments in Arizona. The activities of the Department and county sanitarians included:

- 86,426 food safety-related inspections,
- 8,792 pre-operational inspections of new food establishments,
- 8,897 complaint investigations,
- 8,870 inspections of temporary food operations,
- 834 enforcement actions or compliance proceedings of food establishments.

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?

Yes. The Department concludes that this rulemaking is required by state statute. No alternatives are available. Regardless, this rulemaking reduces regulatory burden on sundry stakeholders. The benefits outweigh the risks.

5. What are the economic impacts on stakeholders?

The key stakeholders are the Department, county agencies acting as regulatory authorities, public schools, exempt businesses, licensed food establishments, and the organizers of noncommercial social events outside of a workplace.

The Department will benefit from this rulemaking because it clarifies the applicability of the Department’s rules. The Department anticipates that this additional clarity will reduce the administrative burden of enforcing these rules.

The Department delegates the authority for food establishment regulation to county agencies. These agencies will benefit from the additional clarity of the rule's applicability in the same manner as the Department listed above.

Public schools with school gardens will benefit from this rulemaking because it clarifies that produce grown in a school garden is exempt from the Department's rules. The Department notes that encouraging the cultivation of fresh produce may promote healthier food choices over the lifetimes of students.

Exempt businesses will benefit from this rulemaking because it clarifies which businesses are exempt. In the last five-year-review report, the Department identified inconsistencies in their references and citations in this rule. This rulemaking addresses these issues and will make it easier for businesses to determine if they are exempt from these rules.

The Department states that licensed food establishments may experience a loss of revenue because organizers of noncommercial social events may choose to provide their own food and drink instead of purchasing food and drink from licensed food establishments. From an economic perspective, any loss in revenue would be caused by consumer choices, not the rules.

The organizers of noncommercial social events outside of a workplace will benefit from this rulemaking because it clarifies that these events are exempt from the rules. These stakeholders may now choose to prepare food and drink themselves or hire a licensed food establishment. This rulemaking increases consumer choice for these stakeholders.

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

Yes. The Department indicates that it did not receive any public comments on the proposed rule.

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

No. Only non-substantive clarifying changes have been 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 Department indicates that there are no federal laws that directly correspond to the rule.

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 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?

Yes. The Department indicates it did not review or rely on any study for this rulemaking.

11. Conclusion

If approved, this rulemaking will become effective immediately upon filing with the Secretary of State. The Department requests this immediate effective date under A.R.S. § 41-1032(A)(4) and (A)(5) as the rule provides a greater benefit to the public and is less burdensome than the current rule. Council staff recommends approval of the rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

March 23, 2018

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 8, Article 1 Department of Health Services – Food, Recreation, and Institutional Sanitation (regular rulemaking)

Dear Ms. Colyer:

Enclosed is the administrative rule 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 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:

- The close of record:
The close of record was February 15, 2018. Submission of the rule is within the 120 days allowed for final rulemaking.
- Procedures followed:
As required by the Administrative Procedure Act, a Notice of Rulemaking Docket Opening was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on December 23, 2016. A Notice of Proposed Rulemaking was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on January 12, 2018. The Department held one oral proceeding on February 14, 2018. The Department received no written comments or oral comments.
- Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking does not relate to a five-year-review report.
- Whether the rule contains a new fee and, if it does, citation of the statute expressly authorizing the new fee:
The rulemaking does not contain a new fee.

5. Whether the rule contains a fee increase:
The rulemaking does not contain a fee increase.

6. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032:
The Arizona Department of Health Services (Department) requests an immediate effective date for the new rule under A.R.S. § 41-1032 (A)(4) and (5). By clarifying the types of businesses and food and drink that are exempt from the requirements in 9 A.A.C, 8, Article 1, the rule is less burdensome than current rule; provides a greater benefit to the public; and has no public impact on the public health and safety and does not affect public involvement and public participation process.

7. A list of all items enclosed:
 - a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;
 - b. 2018 Economic, Small Business, and Consumer Impact Statement, and
 - c. A copy of the general and specific statutes authorizing the rule.

The Department is requesting that the rules be heard at the Council meeting on May 1, 2018.

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.

I certify that the Department, as the preparer of the economic, small business, and consumer impact statement, has notified the Joint Legislative Budget Committee that no new full-time employees are necessary to implement and enforce the rules.

Sincerely,



Robert Lane
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

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

Since the rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 8, Article 1, were last revised, several statutory changes have been made to Arizona Revised Statutes (A.R.S.) § 36-136 that affect these rules. Laws 2016, Ch. 54, § 1 requires the Department to adopt rules that provide an exemption from the requirements in 9 A.A.C. 8, Article 1 for food and drink that is served at a noncommercial social event, such as a potluck. This new statutory change eliminates the requirement that food or drink served at a noncommercial event, such as a potluck, has to take place at a workplace for the serving of the food and drink to be exempt from food establishment licensing/permit requirements. Laws 2016, Ch. 243, § 1 requires the Department to adopt rules that provide an exemption from the requirements in 9 A.A.C. 8, Article 1 for food and drink that is a "whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption." Lastly, Laws 2013, Ch. 6, § 1 removes the requirement of exemption for commercially prepackaged food or drink that is not potentially hazardous to be displayed in an area of less than ten linear feet. The Department lists facilities and food sources that are exempt from complying with the requirements for food establishments in 9 A.A.C. 8, Article 1 in R9-8-102. The Department received an exception from the Governor's rulemaking moratorium, established by Executive Order 2016-03, and is proposing to amend this rule to implement these statutory changes and to clarify cross-references. The proposed amendments will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public

may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

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

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

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

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

As used in this summary, annual costs/revenues are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Costs are listed as significant when meaningful or important, but not readily subject to quantification. Stakeholders who may be affected by the rulemaking include the Department, county agencies acting as regulatory authorities, public schools, exempt businesses, organizers of noncommercial social events outside of a workplace, and students at public schools.

This rulemaking clarifies the types of businesses that are exempt from the requirements in 9 A.A.C. 8, Article 1, as well as clarifies the types of food and drink that are exempt consistent with A.R.S. § 36-136(I)(4). This clarity makes the Department's enforcement of the rule easier and reduces the number of questions received about the current inconsistency of the rule with statute. Therefore, the Department expects to receive a significant benefit from the changes made as part of the rulemaking, but may incur minimal costs providing technical assistance to persons affected by the rulemaking. The clarifications made to the rule related to the types of businesses that are exempt from the requirements in 9 A.A.C. 8, Article 1, may provide a significant benefit to those businesses.

The Department delegates the authority for regulating food establishments within their jurisdictions to the county regulatory authorities. Therefore, the clarity of the new rule should also make the jobs of the county sanitarians easier. The Department expects a county to receive a significant benefit from the changes made as part of the rulemaking and possibly incur a minimal cost for providing further education about the new rule requirements to its sanitarians.

The Department anticipates that the clarity of the new rule in addressing the exception for the use of fruits and vegetables grown in a school garden may provide a significant benefit to a public

school for having the ability to encourage students to develop social skills and increase preference for healthy fruits and vegetables grown in a school garden. A public school, as well as the student of the public school may receive a significant benefit from a student's satisfaction and sense of accomplishment in eating fruits and vegetables grown in the school garden.

The Department expects the changes made in the rule that clarify the types of businesses that are exempt, including updated citations, will most likely provide a significant benefit to exempt businesses. The new rule makes clear that food or drink served at a noncommercial social event not occurring at a workplace is also exempt from the requirements in 9 A.A.C. 8, Article 1. If an organizer of a noncommercial social event not occurring at a workplace knows of the exception due to the rule change and understands that attendees have the ability to make food themselves, instead of purchasing it from a licensed food establishment, the rule change may provide up to a substantial benefit to the organizer of the noncommercial social event. However, those licensed food establishments, who would have provided the food, may experience a significant decrease in income. Overall, the Department believes that the benefits outweigh any potential costs associated with this rulemaking.

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

Between the proposed rulemaking and the final 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. Any agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rules 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 issuance of 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:

There are no federal rules applicable to the subject of the rule.

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

No such analysis was submitted.

13. Incorporations by reference and their location in the rules:

Not applicable

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

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION
ARTICLE 1: FOOD AND DRINK

Section

R9-8-102. Applicability

ARTICLE 1. FOOD AND DRINK

R9-8-102. Applicability

- A. Except as provided in subsection (B), this Article applies to any FOOD ESTABLISHMENT.
- B. This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:
1. The beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
 2. Group homes, as defined in A.R.S. ~~Title 36, Chapter 5.1, Article 1~~ § 36-551;
 3. Child care group homes, as defined in A.R.S. ~~Title 36, Chapter 7.1, Article 4~~ § 36-897 and licensed under 9 A.A.C. 3;
 4. Residential group care facilities, as defined in ~~6 A.A.C. 5, Article 74~~, A.A.C. R6-5-7401 that have 20 or fewer clients;
 5. Assisted living homes, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 7 8;
 6. Adult day health care ~~services~~ facilities, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 7 ~~11~~, that ~~have~~ are authorized by the Department to provide services to 15 or fewer clients participants;
 7. Behavioral health ~~service agencies~~ residential facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. ~~20~~ 10, Article 7, that are authorized by the Department to provide residential or partial care services for to 10 or fewer clients residents;
 8. Hospice inpatient facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 8 ~~6~~, that are authorized by the Department to provide services for ~~have~~ 20 or fewer patients;
 9. Substance abuse transitional facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 14, that are authorized by the Department to provide services to 10 or fewer participants;
 10. Behavioral health respite homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 16;
 11. Adult behavioral health therapeutic homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 18;
 - ~~9.12.~~ Food or drink that is:
 - a. Served at a noncommercial social event ~~that takes place at a workplace~~, such as a

potluck;

- b. Prepared at a cooking school if:
 - i. The cooking school is conducted in the kitchen of an owner-occupied home,
 - ii. Only one meal per day is prepared and served by students of the cooking school,
 - iii. The meal prepared at the cooking school is served to not more than 15 students of the cooking school, and
 - iv. The students of the cooking school are provided with written notice that the food is prepared in a kitchen that is not regulated or inspected by a REGULATORY AUTHORITY;
- 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 onsite for immediate consumption; or
- f. Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous ~~and that is displayed in an area of less than 10 linear feet;~~
~~and~~

~~10.13.~~ Baked or confectionary goods that are:

- a. Not potentially hazardous;
- b. Prepared in the kitchen of a private home for commercial purposes by or under the supervision of an individual who has obtained a food handler's card, if issued by the county in which the individual resides, and is registered with the Department, as required in A.R.S. § ~~36-136(H)(4)(g)~~ 36-136(I)(4)(g); and
- c. Labeled with:
 - i. The name, address, and telephone number of the individual registered with the Department;
 - ii. A list of the ingredients in the baked or confectionary goods;
 - iii. A statement that the baked or confectionary goods are prepared in a private home; and

iv. If applicable, a statement that the baked or confectionary goods are prepared in a facility for individuals with developmental disabilities; and

14. Fruits and vegetables grown in a garden at a public school, as defined in A.R.S. § 15-101, that are washed and cut on-site for immediate consumption.

C. A kitchen in a private home in which baked or confectionary goods are prepared that meets the requirements in A.R.S. § ~~36-136(H)(4)(g)~~ 36-136(I)(4)(g) and ~~(H)(13)~~ (I)(13) and subsection ~~(B)(10)~~ (B)(13) is an approved source of baked or confectionary goods for retail sale.

TITLE 9. HEALTH SERVICES

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION**

ARTICLE 1. FOOD AND DRINK

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 8: FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION
ARTICLE 1. FOOD AND DRINK

1. An identification of the rulemaking:

Since the rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 8, Article 1, were last revised, several statutory changes have been made to Arizona Revised Statutes (A.R.S.) § 36-136 that affect these rules. Laws 2016, Ch. 54, § 1 requires the Department to adopt rules that provide an exemption from the requirements in 9 A.A.C. 8, Article 1 for food and drink that is served at a noncommercial social event, such as a potluck. This new statutory change eliminates the requirement that food or drink served at a noncommercial event, such as a potluck, has to take place at a workplace for the serving of the food and drink to be exempt from food establishment licensing/permit requirements. Laws 2016, Ch. 243, § 1 requires the Department to adopt rules that provide an exemption from the requirements in 9 A.A.C. 8, Article 1 for food and drink that is a “whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.” Lastly, Laws 2013, Ch. 6, § 1 removes the requirement of exemption for commercially prepackaged food or drink that is not potentially hazardous to be displayed in an area of less than ten linear feet. The Department lists facilities and food sources that are exempt from complying with the requirements for food establishments in 9 A.A.C. 8, Article 1 in R9-8-102 and is amending this rule to implement these statutory changes and to clarify cross-references.

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

- a. The Department
- b. County agencies acting as regulatory authorities
- c. Public schools
- d. Exempt businesses
- e. Licensed food establishments
- f. Organizers of noncommercial social events outside of a workplace

Students at public schools

3. Cost/benefit analysis:

This analysis covers costs and benefits associated with the rule changes and no new FTEs will be required due to this rulemaking. The annual cost and revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000 in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

| Description of Affected Groups | Description of Effect | Increased Cost/ Decreased Revenue | Decreased Cost/ Increased Revenue |
|--|---|--------------------------------------|--------------------------------------|
| A. State and Local Government Agencies | | | |
| Department | Clarity of the new rule | Minimal | Significant |
| County agencies acting as regulatory authorities | Clarity of the new rule Decrease number of regulated businesses to inspect | None-to-minimal None | Significant None-to-moderate |
| Public schools | Clarity of the new rule Ability to serve students fruits and vegetables grown in a school garden | None None | Significant Minimal/Significant |
| B. Privately Owned Businesses | | | |
| Exempt businesses | Clarity of the new rule | None | Significant |
| Licensed food establishments | Clarity of the new rule | Significant | None |
| C. Consumers | | | |
| Organizers of noncommercial social events outside of a workplace | Having the ability to make food themselves, instead of purchasing food from a licensed food establishment | None | None-to-substantial |
| Students at public schools | Being served fruits and vegetables grown in their school's garden | None | Significant |

The Department

The Department and, through delegation agreements with Arizona’s counties, the county's regulatory authorities 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, as required by A.R.S. § 36-136(I)(4). Food

establishments, unless exempt under A.R.S. § 36-136(I)(4), are required to meet specified standards and obtain licenses from the Department or permits from the county regulatory agencies in order to operate. The sanitarians in the Department and the county regulatory agencies use the rules in 9 A.A.C. 8, Article 1, in conjunction with county codes and ordinances, while conducting inspections of licensed food establishments to ensure they meet the standards.

In fiscal 2017, there were 34,821 licensed food establishments in Arizona, at which state and county sanitarians conducted 86,426 food safety-related inspections (routine and re-inspections). The frequency of inspections depends on the complexity of the food service operations, with those food establishments conducting more complex operations being inspected more frequently. In addition, the 173 sanitarians and 9 sanitarian aides conducted 8,792 pre-operational inspections of new food establishments, 8,897 complaint investigations, and 8,870 inspections of temporary food operations. These inspections resulted in 834 enforcement actions or compliance proceedings at food establishments.

This rulemaking clarifies the types of businesses that are exempt from the requirements in 9 A.A.C. 8, Article 1, as well as clarifies the types of food and drink that are exempt consistent with A.R.S. § 36-136(I)(4). The Department believes that the clarity of the new rule will make the Department's administration of the rule easier and is expected to reduce the number of questions received about the inconsistency between current rule and other state rules and statutes. Additionally, the Department expects to incur a minimal cost for providing technical assistance to persons affected by the rulemaking. However, the Department believes it will receive a significant benefit from having an updated rule that expands exemption for non-commercial event, adds an exemption of school gardens, and updates information and citations for health care institutions.

County agencies acting as regulatory authorities

As mentioned above, the Department delegates the authority for regulating food establishments within their jurisdictions to the county regulatory authorities. Therefore, the clarity of the new rule should also make the jobs of the county sanitarians easier. The Department expects a county to receive a significant benefit from the changes made as part of the rulemaking. Since county regulatory authorities should also have been enforcing the rule consistent with statute, as required by A.R.S. § 36-136(N), (O), and (P), there should be no decrease in permit fees received by the county regulatory authorities as a result of the rulemaking. However, a county regulatory authority may conduct an inspection of a facility to ensure compliance with statute and may need to provide further education about the new rule requirements to its sanitarians, which may entail a minimal cost. If the rule changes reduce the number of inspections performed by sanitarians of a county

regulatory authority, the Department believes that a county regulatory authority may receive up to a moderate decrease in costs associated with these inspections.

Public schools

The Department has certified 30 school gardens located in eight counties. The Department anticipates that the clarity of the new rule in addressing the exception for the use of fruits and vegetables grown in a school garden may provide a significant benefit to a public school for having the ability to encourage students to try and increase their preference for healthy fruits and vegetables. Additionally, students, who participate in a school gardens, may also receive a significant benefit when experiencing the satisfaction of being able to eat the fresh-healthy fruits and vegetables that the student helped grow. A significant benefit could occur for other public schools if the rule change encouraged public schools that do not have a school garden to establish one.

Exempt businesses

Many of the citations and references in the current rule are incorrect or less specific than they should be to provide a reader with enough information to determine who are exempt under the rule. Some of these inconsistencies were described in the five-year-review report approved by the Governor's Regulatory Review Council on May 5, 2016. For example, the definition of "assisted living home" is in A.R.S. § 36-401, not in 9 A.A.C. 10, Article 7. The term "adult day health care services" is not defined, but "adult day health care facility" and "adult day health services" are both defined in A.R.S. § 36-401. Due to the recent rulemakings for 9 A.A.C. 10 and 9 A.A.C. 20, the citations for "behavioral health service agencies" and "hospice inpatient facilities" are also incorrect. While the definitions of "group home," "child care group home," and "residential group care facility" are contained within the cited Articles, a reference to the specific statute make the rule clearer. The Department anticipates that these businesses may receive a significant benefit from the changes made as part of the rulemaking.

Licensed food establishments

The new rule exempts organizers of noncommercial social events from having to comply with requirements in 9 A.A.C. 8, Article 1. With the organizers of a number of noncommercial social events expected to provide their own food and drink, the Department believes licensed food establishments, who previously provided food and drink for these noncommercial social events, will most likely experience a decrease in revenue. Since the Department does not collect information regarding noncommercial social events and is uncertain of the number of noncommercial social events that are provided food and drink by licensed food

establishments, the Department believes the decrease in revenue for licensed food establishments may be significant.

Organizers of noncommercial social events outside of a workplace

The new rule makes clear that food or drink served at a noncommercial social event not occurring at a workplace is also exempt from the requirements in 9 A.A.C. 8, Article 1. The Department considers an 'organizer of a noncommercial social event ' private persons and consumers. This clarification to make the rule consistent with statute may increase the likelihood that an organizer of a noncommercial social event not occurring at a workplace would know about the exception. If an organizer of a noncommercial social event not occurring at a workplace knows of the exception due to the rule change and understands that attendees have the ability to make food themselves, instead of purchasing food from a licensed food establishment, the rule change may provide up to a substantial benefit to the organizer of the noncommercial social event. Organizer of a noncommercial social event may also receive a nominal benefit when having a noncommercial social event occur without interruption for a county food inspector.

Students at public schools

A student, who participates in planting and caring for a school garden, may receive an significant benefit by strengthening the student's social skills, including responsibility, communications, teamwork, ownership, and leadership. Also, a student may experience an increased sense of accomplishment when providing other students and school staff with fresh-healthy fruits and vegetables for their immediate consumption. Other students that do not participate in a school garden may receive a moderate benefit for having access to additional fruits and vegetables cut onsite and offered for immediate consumption and may also gain a nutritional benefit from eating the fruits and vegetables. The Department anticipates that students at a public school that have a school garden may receive a significant benefit and do not incur any costs from the statutory change and subsequent rule change.

4. A general description of the probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the rulemaking:

Public and private employment in the State of Arizona is not expected to be affected due to the changes required in the rule.

5. A statement of the probable impact of the rules on small business:

a. An identification of the small business subject to the rules:

Small businesses include exempt businesses identified in A.A.C. R9-8-102(B).

b. The administrative and other costs required for compliance with the rules:

A summary of the administrative effects of the rulemaking is given in the cost/benefit analysis in paragraph (3).

c. A description of the methods that the agency may use to reduce the impact on small businesses:

The Department knows of no other methods to further reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

A summary of the administrative effects of the rulemaking is given in the cost/benefit analysis in paragraph (3).

6. A statement of the probable effect on state revenues:

The Department does not expect the rules to have an effect on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

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

Not applicable.

R9-8-102. Applicability

- A.** Except as provided in subsection (B), this Article applies to any FOOD ESTABLISHMENT.
- B.** This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:
1. The beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
 2. Group homes, as defined in A.R.S. Title 36, Chapter 5.1, Article 1;
 3. Child care group homes, as defined in A.R.S. Title 36, Chapter 7.1, Article 4;
 4. Residential group care facilities, as defined in 6 A.A.C. 5, Article 74, that have 20 or fewer clients;
 5. Assisted living homes, as defined in 9 A.A.C. 10, Article 7;
 6. Adult day health care services, as defined in 9 A.A.C. 10, Article 7, that have 15 or fewer clients;
 7. Behavioral health service agencies, licensed under 9 A.A.C. 20, that provide residential or partial care services for 10 or fewer clients;
 8. Hospice inpatient facilities, licensed under 9 A.A.C. 10, Article 8, that have 20 or fewer patients.
 9. Food or drink that is:
 - a. Served at a noncommercial social event that takes place at a workplace, such as a potluck;
 - b. Prepared at a cooking school if:
 - i. The cooking school is conducted in the kitchen of an owner-occupied home,
 - ii. Only one meal per day is prepared and served by students of the cooking school,
 - iii. The meal prepared at the cooking school is served to not more than 15 students of the cooking school, and
 - iv. The students of the cooking school are provided with written notice that the food is prepared in a kitchen that is not regulated or inspected by a REGULATORY AUTHORITY;
 - 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 onsite for immediate consumption; or
 - f. Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous and that is displayed in an area of less than 10 linear feet; and
 10. Baked or confectionary goods that are:
 - a. Not potentially hazardous;
 - b. Prepared in the kitchen of a private home for commercial purposes by or under the supervision of an individual who has obtained a food handler's card, if issued by the county in which the individual resides, and is registered with the Department, as required in A.R.S. § 36-136(H)(4)(g); and
 - c. Labeled with:
 - i. The name, address, and telephone number of the individual registered with the Department;
 - ii. A list of the ingredients in the baked or confectionary goods;
 - iii. A statement that the baked or confectionary goods are prepared in a private home; and
 - iv. If applicable, a statement that the baked or confectionary goods are prepared in a facility for individuals with developmental disabilities.
- C.** A kitchen in a private home in which baked or confectionary goods are prepared that meets the requirements in A.R.S. § 36-136(H)(4)(g) and (H)(13) and subsection (B)(10) is an approved source of baked or confectionary goods for retail sale.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 317, effective March 14, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 2768, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 17 A.A.R. 2608, effective February 4, 2012 (Supp. 11-4).

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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.

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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

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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

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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.

9 A.A.C. 8, Article 1 Food and Drink

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.

DEPARTMENT OF ECONOMIC SECURITY (R-18-0603)

Title 6, Chapter 6, Article 3, Eligibility for Developmental Disabilities Services; Article 5, Admission/Redetermination/ Termination

Amend: R6-6-302; R6-6-303

New Section: R6-6-301; R6-6-304; R6-6-305; R6-6-306; R6-6-307; R6-6-308; R6-6-309

Renumber: R6-6-302; R6-6-303

Repeal: R6-6-303; Article 5; R6-6-501; R6-6-502; R6-6-503; R6-6-504; R6-6-505

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: June 5, 2018

AGENDA ITEM: E-4

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

FROM: Council Staff

DATE: May 22, 2018

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (R-18-0603)
Title 6, Chapter 6, Article 3, Eligibility for Developmental Disabilities Services;
Article 5, Admission/Redetermination/ Termination

Amend: R6-6-302; R6-6-303

New Section: R6-6-301; R6-6-304; R6-6-305; R6-6-306; R6-6-307; R6-6-308;
R6-6-309

Renumber: R6-6-302; R6-6-303

Repeal: R6-6-303; Article 5; R6-6-501; R6-6-502; R6-6-503; R6-6-504;
R6-6-505

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Department of Economic Security (Department), creates seven new rules, repeals six existing rules, amends two rules, and renumbers two rules in A.A.C. Title 6, Chapter 6, Article 3, related to the Division of Developmental Disabilities.

The Department indicates that it is engaging in this rulemaking to add, amend, and repeal rules to conform to current Department practices, and to make the rules more clear, concise, and understandable. The Department received an exception from the moratorium on May 16, 2016.

Proposed Action

- Section 301 - *Definitions*: This new rule provides definitions applicable to Article 3.
- Section 302 (formerly 301) - *Eligibility for Services*: The rule is largely rewritten, please review pages 29-31 of the Notice of Final Rulemaking.
- Section 303 - *Eligibility Review*: The rule is repealed.
- Section 303 (formerly 302) - *Guidelines for Determining Developmental Disabilities*: The rule is largely rewritten, please review pages 32-40 of the Notice of Final Rulemaking.

- Section 304 - *Eligibility under Arizona Long-term Care System (ALTCS)*: This new rule requires the Department to refer an individual with a developmental disability who may be eligible for the ALTCS to the Arizona Health Care Cost Containment System (AHCCCS) to determine ALTCS eligibility. Subsection (B) states that the Department shall not provide services, other than emergency services as provided in the rules, to an individual who has been referred for ALTCS eligibility determination until that determination has been completed. Subsection (C) provides that applicants who are determined eligible for the developmental disabilities program (program) and are enrolled in the program, but knowingly refuse to cooperate in the ALTCS eligibility process, are not eligible for services pursuant to A.R.S. § 36-559.
- Section 305 - *Admission to Program*: This new rule states: “When the Department determines an individual to be eligible and enrolls the individual in the program, the Support Coordinator, with the Planning Team, shall complete a Planning Document to document any necessary supports and services.”
- Section 306 - *Emergency Services*: This new rule states: “In an emergency, the Department may provide services without a Planning Document to an individual who has been enrolled in the program. The Planning Team shall complete a Planning Document for emergency services within 10 days of the enrollment.”
- Section 307 - *Eligibility Redeterminations for the Program*: This new rule allows the Department to redetermine eligibility for the program as a result of periodic evaluations in accordance with A.R.S. § 36-565, or at any time when authorized by the Division’s Assistant Director or designee.
- Section 308 - *Member Responsibilities*: This new rule requires members to:
 - Inform the Support Coordinator of any change in personal information;
 - Participate in the development of the Planning Document and signify agreement or disagreement by signing the Planning Document;
 - Uphold all local, state, and federal laws and regulations; and
 - Cooperate and comply with the ALTCS redetermination process.
- Section 309 - *Termination of Eligibility for the Program*: This new rule provides grounds under which the Department, after a 35-day written notice period, may terminate eligibility for the program.
- Section 501 - *Admission*: The rule is repealed.
- Section 502 - *Emergency Admission to Services*: The rule is repealed.
- Section 503 - *Redeterminations*: The rule is repealed.
- Section 504 - *Termination of Services*: The rule is repealed.
- Section 505 - *Continuation of Services*: The rule is repealed.

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, including A.R.S. § 36-554(C)(6), under which the Department may “[m]ake and amend rules from time to time as deemed necessary for the proper administration of programs and services for the treatment of persons with developmental disabilities, for the admission of persons with

developmental disabilities to the programs and services and to carry out the purposes of this chapter [A.R.S. Title 36, Chapter 5.1, Developmental Disabilities].”

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 Department expects there will be minimal impact on all persons involved in the rulemaking and application process. The purpose of the rulemaking is to add, amend, and repeal rules to conform to current practice and terminology. Most importantly, the rulemaking will make the rules more clear, concise, and understandable. The rulemaking does not impose any obligation on the individual or responsible person to accept or participate in services without informed consent.

In Fiscal Year (FY) 2017, the Department had 40,138 members enrolled in the Division services. The average number of days it took to determine eligibility in June of FY 2017 was 16.3 days. The average number of days it took to determine eligibility year-to-date in FY 2018 was 16 days. The Department’s anticipation for determining eligibility for FY 2018 is fewer than 20 days.

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 Department has determined that there is no less intrusive or less costly method of achieving the objectives of the rulemaking.

5. What are the economic impacts on stakeholders?

Stakeholders are individuals who are applicants to the Division, Division members, and other responsible persons who voluntarily seek services through the Division. Consumers who apply to the Division will benefit from clear and updated information on administrative reviews. The members of the public will benefit as the eligibility and admission process for services is more clear, concise, and understandable.

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

Yes. The Department indicates that it received 35 public comments on the proposed rules. The text of those comments, along with the Department’s responses, can be found on pages 7-22 of the Notice of Final Rulemaking. Council staff believes that the Department 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. Only non-substantive clarifying changes have been 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 Department indicates that no federal laws directly correspond to the rules.

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 Department indicates it did not review or rely on any study for this rulemaking.

11. Conclusion

If approved, this rulemaking will become effective 60 days after filing with the Secretary of State. As the rulemaking generally meets the requirements of A.R.S. §§ 41-1052 and 41-1055, Council staff recommends approval of the rulemaking.



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Traylor
Director

APR 04 2018

Ms. Nicole Ong Colyer, Chairperson
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Colyer,

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

1. Close of Record Date: The rulemaking record closed on December 10, 2017, following the public comment period. This rulemaking package is being submitted within the 120 days provided by A.R.S. § 41-1024(B). There was no oral proceeding request and none was held.
2. General and Specific Statutes Authorizing the Rules; Definitions of Terms Contained in Statutes or Other Rules: General statute: A.R.S. §§ 36-554 and 41-1954(A)(3). Specific statute: A.R.S. § 36-552. No definition is used from statutes or other rules for the making of these rules.
3. Relation of the Rulemaking to a Five-year Review Report: This rulemaking is in response to a Five-year Review Report approved by the Council on December 1, 2015.
4. New Fee or Fee Increase: This rulemaking does not establish a new fee or increase an existing fee.
5. Effective Date: The Arizona Department of Economic Security (Department) is requesting an effective date 60 days from filing with the Secretary of State under A.R.S. § 41-1032(A).
6. Material Incorporated by Reference: No material is incorporated by reference in this rulemaking.
7. Certification Regarding Studies: The Department certifies that the preamble accurately discloses that no study relevant to the rules was reviewed and either relied on or not relied on in the Department's evaluation of or justification of the rule.
8. Joint Legislative Budget Committee (JLBC) Certification: The Department was not required to make a certification to JLBC because the rule does not require any new full-time employees.
9. List of Documents Enclosed:
 - a. Cover letter;
 - b. Notice of Final Rulemaking including preamble, table of contents for the rulemaking, and rule text;
 - c. Economic Impact Statement;
 - d. Current Rules;
 - e. Statutes; and
 - f. Governor's Office Approval.

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If you have any questions, please contact Christian Eide, Rules Analyst, Division of Business and Finance, at (602) 542-9199 or ceide@azdes.gov.

Sincerely,



Michael Trailor
Director

Enclosures: Notice of Final Rulemaking
Economic Impact Statement
Arizona Administrative Code, Title 6, Chapter 6, Articles 3 and 5
Arizona Revised Statutes §§ 36-554, 36-552, and 41-1954
Electronic Email of May 16, 2016

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY

DEVELOPMENTAL DISABILITIES

PREAMBLE

| 1. | <u>Article, Part or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|-----------|---|---------------------------------|
| | Article 3 | Amend |
| | R6-6-301 | ReNUMBER |
| | R6-6-301 | New Section |
| | R6-6-302 | ReNUMBER |
| | R6-6-302 | Amend |
| | R6-6-303 | Repeal |
| | R6-6-303 | ReNUMBER |
| | R6-6-303 | Amend |
| | R6-6-304 | New Section |
| | R6-6-305 | New Section |
| | R6-6-306 | New Section |
| | R6-6-307 | New Section |
| | R6-6-308 | New Section |
| | R6-6-309 | New Section |
| | Article 5 | Repeal |

| | |
|----------|--------|
| R6-5-501 | Repeal |
| R6-6-502 | Repeal |
| R6-6-503 | Repeal |
| R6-6-504 | Repeal |
| R6-6-505 | Repeal |

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

Authorizing statute: A.R.S. §§ 36-554 and 41-1954(A)(3)

Implementing statute: A.R.S. § 36-552

3. The effective date of the rule:

In accordance with A.R.S. § 41-1032, the rules will become effective 60 days after filing with the Office of Secretary of State.

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 Rulemaking Docket Opening: 23 A.A.R. 3167, November 10, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 3159, November 10, 2017

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

Name: Christian J. Eide

Address: Department of Economic Security

P.O. Box 6123, Mail Drop 1292

Phoenix, AZ 85005

or

Department of Economic Security

1789 W. Jefferson, Mail Drop 1292

Phoenix, AZ 85007

Telephone: (602) 542-9199

Fax: (602) 542-6000

E-mail: ceide@azdes.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:

Article 3 contains rules on Eligibility for the Division of Developmental Disabilities, including provisions regarding Eligibility for Services, Guidelines for Determining Developmental Disabilities, and Eligibility Review. Article 5 contains rules on Admission/Redetermination/Termination including provisions regarding Admission, Emergency Admission to Services, Redetermination, Termination of Services, and Continuation of Services.

The Department last amended this Article in 1993. A Five-year Review Report on Chapter 6 was approved by the Governor's Regulatory Review Council on December 1, 2015. The purpose of this rulemaking is to add, amend, and repeal rules to conform to current Department practices, and to make the rules more clear, concise, and understandable.

- The Department is adding a new Definitions Section to help in understanding the terms used within the Article.
- The Department is changing Section heading of the Eligibility for Services Section to Eligibility for Program, and amending this Section to conform to the Department's current procedure to determine eligibility.
- The Department is changing Section heading of the Guidelines for Determining Developmental Disabilities Section to Requirements for Determining

Developmental Disabilities, and amending this Section to conform to current Department practices.

- The Department is repealing Eligibility Review Section. This Section was moved to subsection G in Eligibility for Program Section because determinations for review are within the purview of eligibility.
- The Department is repealing all of Article 5, but Sections 501 through 504 within Article 5 will be added to Article 3 as new Sections with changes that align with current Department practices.
- The Department is adding the following additional new Sections to provide more comprehensive information relevant to current requirements: Eligibility under Arizona Long-Term Care System, Admission to Program, Emergency Services, Eligibility Redeterminations for the Program, Member Responsibilities, and Termination of Eligibility for the Program.
- The Department is repealing Continuation of Services Section in Article 5 because it does not reflect current Department practice.

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 Department did not review or rely on any study relevant to the rules.

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

Not applicable

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

The economic impact of the rulemaking is expected to be minimal (less than \$1,000) for all persons involved in the rulemaking and application processes.

Consumers: The persons directly impacted by this rulemaking are individuals who are applicants to the Division of Developmental Disabilities (Division) and other responsible persons who voluntarily seek services through the Division. The rulemaking does not impose any obligation on the individual or responsible person to accept or participate in services without informed consent. Consumers who apply to the Division will benefit from a clear and updated eligibility and admission process.

Small Business: There are no negative impacts on small businesses.

The Department and members of the public will benefit from the revision of Article 3 because the proposed rulemaking will make the eligibility and admission process for the program more clear, concise, and understandable.

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

- Added under the age of six years to the lead-in sentence of R6-6-302(G).
- Added “For a child under the age of six years,” added “licensed” in front of physician, added “licensed psychologist,” and unstruck “informed clinical opinion” and struck out “evaluation” in R6-6-302(G)(3).
- Added “ii. Relevant comments in medical or behavioral records” in R6-6-303(C)(5)(c).
- Minor grammatical changes were also made.

The Department does not believe these are substantive changes under A.R.S. § 41-1025.

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

| | COMMENT FROM COMMENTOR | DEPARTMENT RESPONSE |
|-----------|---|--|
| | Comments were not edited | |
| 1. | <p>Robin Blitz, MD</p> <p>A. 1. I applaud and support the division's proposal to add "pediatricians specially trained in the diagnosis of autism" as eligible to be able to make a DDD acceptable diagnosis of autism. - I would like to propose that DDD also recognize specially trained Developmental Pediatric Certified Nurse Practitioners as well. The Society of Developmental-Behavioral Pediatrics recognizes these specially trained and certified nurse practitioners and is, in fact, working towards a sub-board certification fo NPs in this area.</p> <p>A. 4. I am concerned about the eligibility for a diagnosis of Cognitive / Intellectual disability. It states that only licensed psychologists can make this diagnosis. Many school psychologists are not licensed and they are most often the professionals who test children and make the majority of this diagnosis. School psychologists are required to test children for intellectual disability at no cost to parents. If DES requires that only licenses psychologists make this diagnosis, then many children, whose parents may not be able to afford to pay a licensed psychologist to confirm the school psychologist's diagnosis, would not be eligible for DDD services.</p> | <p>The Department declines to include Nurse Practitioners. Only one state permits Nurse Practitioners to make this diagnosis. The Department explored adopting this approach and has determined that it is impractical to implement at this time as there is no public registry of individuals with a qualifying specialty or sub-specialty. The Department may revisit this issue when there is more specific certification and training developed for Nurse Practitioners.</p> |

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| | <p>Also, many children may get a psychiatric diagnosis prior to testing by a psychologist for Intellectual disability. Some of these children may get a diagnosis of ADHD for instance before psychoeducational testing is done. In schools, the school psychologist usually does not test the child for ID until that child is 6 or 7 years old. The child may have had an earlier diagnosis of ADHD, anxiety disorder, disruptive behavior disorder, oppositional defiant disorder, or others. The mental health diagnosis may, in fact, not be correct, as a child with ID may appear oppositional, for instance, when in fact the child cannot comply due to his / her ID. I do not agree with this eligibility criteria that the dx of ID has to come first prior to a co-existing or incorrect mental health diagnosis.</p> | <p>The scope of a school psychologist is different from a licensed psychologist. The purpose of educational evaluations is for academic placement and accommodations, and is not diagnostic in nature. The special education category of intellectual disability is not necessarily equivalent to a diagnosis of DSM-5 Intellectual Disability.</p> |
| <p>2.</p> | <p>Terry Matteo, PhD. Clinical Child Psychologist</p> <p>The issue has to do with the department's proposed requirement to make ineligible any individual who has a dual diagnosis (both a Mental Health Disorder and a Developmental Disorder) if the presence of a developmental disorder cannot be proven to be present before the mental health disorder diagnosis.</p> <p><u><i>see: R6-303 4b: To be eligible for the program, in the presence of co-existing mental illness, an individual's cognitive/intellectual disability shall precede the onset of the mental illness.</i></u></p> <p>Timing of a diagnosis is problematic in many ways, particularly when autism overlaps with many mental health disorders (ADHD, Anxiety, OCD) and could possibly be missed all together or misdiagnosed as ADHD in young male children with well-developed language. With Intellectual Disabilities - it is inappropriate to diagnose an intellectual/cognitive disability before 5 or 6 years old; so it would be impossible to prove that an intellectual disability was present if a mental health disorder became apparent in a 5 or 6 year old (e.g., ADHD, anxiety, bipolar, etc).</p> <p>I would suggest that the department not make timing of a diagnosis a factor in an eligibility determination when there is the presence of co-existing mental illness - if an individual meets criteria for an intellectual disability (or autism) at any age... that in itself should be the qualifying factor (because timing of diagnosis is dependent on external factors - the systems of care making the diagnosis, the tools available for younger children, and the fact that intelligence does not become stable until children are in elementary school). (as well as the issues raised above with autism overlapping with several mental illnesses and may be missed in early childhood).</p> | <p>It is the Department's intent to identify individuals who are eligible based on their standardized intellectual and adaptive testing and exclude from eligibility individuals whose intellectual disability is not developmental in nature and may be a consequence of mental illness.</p> |
| <p>3.</p> | <p>Nilam P Khurana, MD FAAP</p> <p>I would like to send my support for the proposed changes allowing Pediatricians with specific training to diagnose Autism Spectrum Disorder for DDD.</p> | <p>The Department appreciates the comment.</p> |

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| | <p>We have an obscenely low number of providers that can diagnose Autism Spectrum Disorder in this state. Additionally, patients covered by AHCCCS have an even lower number of options for providers.</p> <p>I was privileged to be trained by Dr Robin Blitz when she began training general pediatricians to appropriately diagnose and treat patients with Autism. Since then, I have been able to provide this expanded service to my patients starting at a young age. And this in turn has proven to improve their outcome significantly. Many of these children are entering Early Intervention Programs, school programs with their local school district and getting services through DDD And ALTCs. And many kids have been progressing so well early on, that they are graduating out of service needs due to early access to care..</p> <p>This being said, despite the training provided by Dr Blitz's endless hours of effort, our diagnoses have been incomplete without her having to put more hours in, simply to re-evaluate each patient. Again, she is doing this during her non patient hours as a service to our community. Once we have diagnosed a patient in the manner in which she has trained us, she has to see every patient again in order to receive DDD approval. Then all of these patients have been able to get approval through DDD. Eliminating this inefficient waste of resources will improve access to more patients, reduce unnecessary medical spending and allow further early access to care.</p> <p>I whole heartedly support DDD approval in allowing specially trained pediatricians to diagnose Autism Spectrum Disorder.</p> <p>I appreciate all of your time and effort in helping us make this change to help our children have early access to care.</p> | |
| 4. | <p>Jasmin Payes Healing Hearts</p> <p>hello my name is jasmin Payes im emailing you regarding the amedment that is trying to be passed regarding approvign DDD allowing pediatricians to diagnos autism. I agree. I think it should be passed. It will benefit the patients. help them get the need and assistance much quick. it will be one less step to take. and parents really confy in our pediatricians here at healing hearts. my vote is yess!</p> | The Department appreciates the comment. |
| 5. | <p>Ashley E. Fitton</p> <p>yes, I want to approve. It will help our autism patients with getting dx faster and not given the run around. making it easier for them and their families. one less step to go through.</p> | The Department appreciates the comment. |

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| <p>6.</p> | <p>Nimisha Sciascia (Patel)</p> <p>I would like to support the state's proposal in expanding the approved clinicians that can diagnose Autism for DDD.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be approved to diagnose. This will continue to improve the concept of a patient centered medical home and increase availability of resources for our children.</p> | <p>The Department appreciates the comment.</p> |
| <p>7.</p> | <p>Cristian Flores Torres, MA Healing Hearts Pediatrics</p> <p>Hello Anthony my name is Cristian F. im a MA at Healing Hearts Pediatrics. I think that is a great idea to let pediatricians to dx Autism. In my personal belief its much easier for parents and patients if their pediatrician is able to do this. For this reason parents don't have to be in a waiting list for any therapy that is needed. Also more information and resources will be more availbe for parents. I have worked with Autism patients one on one in motor skills ect... I belief if more information is availbe and being able to diagnose at early age it will make a difference. Thank you for your time.</p> | <p>The Department appreciates the comment.</p> |
| <p>8.</p> | <p>Elizabeth Collett</p> <p>Hello, my name is Elizabeth Collett. My pediatrician told me about this effort to allow pediatricians to diagnose autism and I would like to voice my support.</p> <p>My pediatrician, Dr. Nilam Khurana, was able to recognize the signs of autism in my son when he was only 15 months old. I am a first time mom with no knowledge or experience of typical development, and had she not referred us for early intervention, my son would not be the high functioning four-year-old he is.</p> <p>We were fortunate to have all the pieces fall perfectly into place and my son was diagnosed and getting therapies just before he turned 2. From what I have heard, this is not the case for many parents. My son is currently in the special ed preschool and thriving, but I've heard from two other parents about the headache they are going through, just trying to find a doctor to see so they can get an appointment to get their child evaluated.</p> <p>I find that Dr. Khurana has been a great resource, particularly because she has a complete medical and developmental picture of my son. For instance, when she asked about my son's sleep habits, she immediately knew to check his iron levels, because kids with autism are notoriously picky eaters. Sure enough, his iron levels were low, and now he takes an iron supplement and sleeps great. It's wonderful to have one doctor who has that complete picture.</p> <p>I apologize for sending such a long email, but I do hope you will see the advantages that can be had with allowing these trained professionals to help reach more families and more children.</p> | <p>The Department appreciates the comment.</p> |

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| <p>9.</p> | <p>Stuart Goodman Arizona State Association of Physician Assistants</p> <p>On behalf of the Arizona State Association of Physician Assistants (ASAPA), I am submitting comments in reference to the proposed rule, R17-219, specifically relating to the provisions pertaining to licensed clinicians determining eligibility for the Division of Developmental Disabilities.</p> <p>As you are aware, the proposed amended Section R6-6-303.A references the clinicians that shall make the possible diagnoses (autism, cerebral palsy, epilepsy, and cognitive/intellectual disability) accepted for eligibility determination - physician assistants (PAs) have not been identified as one of those clinicians. Accordingly, ASAPA would like to officially express our interests in having PAs explicitly included as a clinician qualified to make the diagnosis for conditions accepted for eligibility determination, provided that the ability to make such diagnoses falls within the individual PA's scope of practice.</p> <p>PAs practice medicine in every medical and surgical specialty and setting, including psychiatry, neurology, rehabilitation medicine and pediatrics. PAs manage the full scope of patient care including, but not limited to, diagnosing and treating illnesses, ordering and interpreting tests, coordinating care, counseling on preventive healthcare, and prescribing medication. PAs practice medicine collaboratively in teams with physicians and other healthcare professionals, and each PA's scope of practice is determined by their education and experience, state law, employer and facility policies and the needs of the patients at the practice. PAs function as leaders of teams in patient-centered medical homes. It is common for PAs to serve as the lead on care coordination teams seeing patients in all settings without a physician present. PAs were identified, along with physicians and nurse practitioners, as one of the primary care medical providers identified in the Affordable Care Act. Additionally, in many rural and underserved areas, a PA may be the only provider, with PA-physician collaboration, for hundreds of miles. For all of the above reasons it is vital that PAs be included in the proposed rules addressing the clinicians that make diagnoses that determine eligibility.</p> <p>Based on the above, ASAPA is concerned that, by not explicitly including PAs as one of the clinicians that can make diagnoses that determine eligibility, there may be unnecessary barriers encountered by otherwise eligible individuals.</p> <p>If it is determined that the PA's diagnosis is not accepted in determining eligibility this will result in increased cost and time on the part of the patient and their family as they seek re-evaluation by another provider. In medically underserved areas, this may be a significant burden if the patient should travel large distances to receive specialty care. Additionally, there are PA primary care providers that are competent in and qualified for making the diagnoses that are utilized for eligibility determination. The absence of PA inclusion in</p> | <p>The Department declines to include Physician Assistants. Physician Assistants practice under the license of a physician and are not independent practitioners. Only independent licensed professionals can diagnose for the purpose of Department eligibility.</p> |
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| | <p>the proposed rules may inadvertently result in patients having to establish care with a new provider in order to receive their diagnosis from a clinician identified in the rules. This results in inefficient healthcare that is not cost effective.</p> <p>ASAPA would also like to acknowledge that persons with developmental disabilities are often medically underserved within the healthcare system. For reasons out of their own control, they may experience multiple barriers to accessing healthcare - there is a lack of providers skilled and comfortable in treating patients with developmental disabilities, there may be transportation challenges in accessing medical facilities, and the patient may have difficulty connecting with and trusting medical providers. The rules regarding who can make a diagnosis that determines eligibility should not negatively impact this already vulnerable population that already encounters far too many barriers when seeking medical care.</p> <p>As the definitive and authoritative representative for PAs in Arizona, ASAPA is committed to not only supporting PA practice in Arizona, but also advocating for the delivery of quality healthcare services within the state of Arizona. Including PAs in the proposed rules regarding developmental disabilities is a positive move toward implementing rules that will not impede with high-value, highly accessible, cost-effective, and efficient healthcare for some of our most vulnerable Arizonans. If you require any further information or additional clarification, please do not hesitate to contact me. Thank you, in advance, for your consideration.</p> | |
| <p>10.</p> | <p>Dr. Hixon Former DDD clinical director</p> <p>I fully agree with Dr. Matteo's position on this important matter.</p> | <p>Please see the Department's response to Comment 2.</p> |
| <p>11.</p> | <p>Nila Pittam</p> <p>I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | <p>The Department appreciates the comment.</p> |
| <p>12.</p> | <p>Robert L. P. Klaehn, M.D. Board Certified in Adult and Child Psychiatry; Distinguished Fellow, American Academy of Child and Adolescent Psychiatry; Formerly, Medical Director, Arizona Division of Developmental Disabilities</p> <p>R6-6-309. Termination of Eligibility for the Program A. Pursuant to A.R.S. § 36-566(A) and (B), the Department may terminate eligibility following a 35-day written notice to the member or the responsible person when: 1. The Department</p> | <p>The re-application process permits the member to choose to continue with services after the member reaches the</p> |

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| | <p>determines that the member no longer meets the conditions of eligibility for services; 2. <i>The member reaches the age of 18, unless an application for eligibility has been filed with the Department</i>; or 3. The member fails to comply with R6-6-308. B. The 35-day written notice shall include the proposed termination date and information regarding the opportunity for administrative review under Article 18 of this Chapter. C. The Department shall terminate the member’s eligibility for the program when the member or responsible person provides a written request for withdrawal from the program.</p> <p>The change from re-determination to re-application at age 18 will be a major inconvenience for families. I do not believe that this change serves the adolescents with Developmental Disabilities and their families. It will also create a huge administrative burden for the Division if everyone must re-apply at age 18. I would strongly recommend restoring the previous wording requiring a re-determination of eligibility at age 18. If termination of eligibility at 18 was not intended, then the italicized wording above is very misleading.</p> | <p>age of 18. This is current practice and does not reflect any change. The Department will maintain the term “re-determination” in the rule.</p> |
| <p>13.</p> | <p>Christopher Nicholls, PhD., ABPP, ADPdN Board Certified Clinical/Neuropsychologist, The Nicholls Group</p> <p>In reviewing the above information I have noticed the following statement:</p> <p>A.4b: "To be eligible for the program, in the presence of co-existing mental illness, an individual’s cognitive/intellectual disability shall precede the onset of the mental illness"</p> <p>I would like to point out that this condition presumes an order effect that may not be present. The Diagnostic Manual - Intellectual Disability 2 specifically states that there exists a complex 1 relationship between Intellectual Disability (ID) and such considerations as severe psychosocial deprivation, severe and persistent psychiatric diagnoses, progressive neurodevelopmental disorder, epilepsy and extensive brain damage. In other words, ID may result from these conditions and not precede them. Publishing the referenced guidelines would therefore be inconsistent with scientific knowledge, and would place individuals and families in a position of conflict between research-driven findings and political decision-making.</p> <p>It is my strong recommendation that the Department of Economic Security adhere to the definitions of ID promulgated by the World Health Organization, 2 The American Association of Intellectual and Developmental Disabilities,3 and the American Psychiatric Association,4 all of whom state that intellectual disability is a disorder with onset during the developmental period, but does not require that it precedes other conditions. Indeed, the DSM5 specifically states that “When intellectual disability results from a loss of previously acquired cognitive skills...” (p.38); indicating that ID can result from other other conditions and may not precede these conditions.</p> <p>Thank you for your attention to my request/comment. If I might provide additional information please do not hesitate to contact me.</p> | <p>It is the Department’s intent to identify individuals who are eligible based on their standardized intellectual and adaptive testing and exclude from eligibility individuals whose intellectual disability is not developmental in nature and may be a consequence of mental illness. In cases of severe psychosocial deprivation, progressive neurodevelopmental disorder, and extensive brain damage, the Department will consider eligibility dependent on standardized intellectual and adaptive testing prior to the age of 18. Epilepsy may be a separate eligibility category of developmental disability.</p> |

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| <p>14.</p> | <p>Clifford Gross, MD FAAP Pediatrician, Mountain Park Health Center – Maryvale Clinic</p> <p>As a participant in Dr. Robin Blitz’s Early Access to Care – Arizona program, I am very happy that DDD is considering a statute change to allow pediatricians such as myself with special training in autism to be able to make this diagnosis for state DDD services. Every single person who participated in EAC-AZ did so due to their desire to provide better services in Arizona to these children and their families. This will make things so much better for so many families in our state! My colleagues and I have spent a lot of personal time, outside of our busy work schedules, learning about autism and working on this very important program so we can better serve our patients with autism and developmental disabilities. The need for diagnosis and medical home care for children with autism is tremendous, and I am grateful to have the support of DDD in recognizing this effort to better serve those who need it!</p> <p>Sincerely, Clifford Gross, MD FAAP Early Access to Care – Arizona trained pediatrician with expertise in autism</p> | <p>The Department appreciates the comment.</p> |
| <p>15.</p> | <p>Sydney Rice, MD, MS Developmental Pediatrics; Associate Professor of Pediatrics; Director, University of Arizona LEND</p> <p>I am a developmental pediatrician at Banner/UA in Tucson.</p> <p>I would like to submit my comments on proposed rule changes for Title 6, DES Chapter 6:</p> <p>A. 1. I propose that pediatric nurse practitioners who are specially trained also be allowed to diagnose children with autism. This is in concert with the national trend in the American Academy of Pediatrics where the expertise of these practitioners who focus only on autism is recognized. I would prefer a diagnosis from a specially trained developmental nurse practitioner over most pediatricians because these nurse practitioners see children with autism every day.</p> <p>A. 4.a. Does "licensed psychologist" include a school psychologist? In section C. 1.b and c., the information in an IEP is taken into consideration for functional limitations. I suggest that we also use the school psychologist diagnostic evaluation for admission into the DDD system. Many families struggle to pay for a clinical psychological evaluation because most insurance companies see this as under the purview of the educational system.</p> <p>A. 4.b. Children with intellectual disability frequently don’t get a full diagnosis of intellectual disability until about second grade. Before that, they often have a “developmental delay” diagnosis. If they receive an ADHD or anxiety diagnosis at 5 years and then ID diagnosis at age 7 years, are they disqualified from DDD? Many psychiatric conditions are co-morbid with intellectual disability and having a psychiatric diagnosis should not preclude these individuals from receiving DDD services. I would completely remove restriction regarding psychiatric illness for this diagnosis.</p> | <p>The Department declines to include Nurse Practitioners. Only one state permits Nurse Practitioners to make this diagnosis. The Department explored adopting this approach and has determined that it is impractical to implement at this time as there is no public registry of individuals with a qualifying specialty or sub-specialty. The Department may revisit this issue when there is more specific certification and training developed for Nurse Practitioners.</p> <p>The scope of a school psychologist is different from a licensed psychologist The purpose of educational evaluations is for academic placement and accommodations, and is not diagnostic in nature. The special education category of intellectual disability is not necessarily equivalent to a diagnosis of DSM-5 Intellectual Disability.</p> <p>This person would still be eligible for Division services having met the Division's requirements. The diagnosis of intellectual disability does not have to be made prior to the age of 18, however, there must be standardized testing of intellectual and adaptive behavior prior to age 18 that is consistent with a diagnosis of intellectual disability.</p> |

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| | Thank you for considering these comments. | |
| 16. | <p>Shannon Cosner Northland Rural Therapy Associates</p> <p>I think allowing pediatricians to diagnosis Autistic clients would be very beneficial especially for the rural communities in Arizona that do not have developmental pediatricians.</p> | The Department appreciates the comment. |
| 17. | <p>Philip Barry, PhD., ABN Licensed Psychologist, Southern Desert Medical Center</p> <p>I am writing as a licensed psychologist and board-certified neuropsychologist to express my concern for the proposed rule change of <i>R6-6-303 Requirements for determining developmental disabilities</i> <i>A. 4. Cognitive/Intellectual Disability</i> <i>b. To be eligible for the program, in the presence of co-existing mental illness, an individual's cognitive/intellectual disability shall precede the onset of the mental illness.</i></p> <p>This wording suggests to me that a child who has been evaluated, diagnosed and/or treated for mental illness, from Attention-Deficit Hyperactivity Disorder to Bipolar Disorder, at any point in his/her life, and subsequently acquires significant cognitive impairment, e.g., from traumatic brain injury or meningitis, that otherwise would qualify him/her for services through the developmental disabilities program, would now be ineligible for DD services.</p> <p>I believe this decision would be harmful to the child and deprive him/her of the specialized services available to disabled children through DES-DD. I strongly recommend that this clause not be changed, and that children in need of DD services because of qualifying cognitive/ intellectual disabilities continue to have access to DES-DD services.</p> | As long as the diagnosis occurs prior to the age of 18, the child would be eligible. The Division will clarify this language. "To be eligible for the program, in the presence of co-existing mental illness, an individual's cognitive/intellectual disability shall not be the result of the onset of mental illness" |
| 18. | <p>Yesenia Castellano</p> <p>I would like to support the State's Proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | The Department appreciates the comment. |
| 19. | <p>Bohdan ('Bo') N. Hrecznyj, MD Children's Medical Director, Health Choice Integrated Care, LLC</p> <p>As a board certified and fellowship trained Child and Adolescent Psychiatrist with specialty training in ASD, I would like to take this opportunity to comment on the upcoming proposed rulemaking in reference to the</p> | The Department does not endorse any particular method of testing for the purpose of diagnosing Autism Spectrum Disorders. However, the diagnostic evaluation must be comprehensive as defined by the Department's policies. |

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| | <p>Department of Developmental Disabilities' eligibility requirements regarding Autism Spectrum Disorders.</p> <p>As such, I strongly believe that the eligibility determination should be a two tiered approach.</p> <p><u>Two-Stage Approach to Developmentally Appropriate Evaluations:</u></p> <p>In the first stage of assessment, a pediatrician screens for developmental delays and autism with the use of specific screening checklists including the CHAT (and M-CHAT for toddlers), the STAT for two year olds, and the SCQ for children four years of age and older. For identifying school age children with high functioning autism, the ASSQ, A.S.A.S. and CAST screening tools may be used. The Pediatrician, a Pediatric Nurse Practitioner or Physician Assistant will usually order a lead level, genetic testing, and a hearing test. It is especially important that at this stage DDD considers eligibility so that services can be initiated as soon as possible. Evidence suggests that early interventions produce better outcomes.</p> <p>In the second stage of assessment, a more comprehensive analysis determines the level of functioning. This stage of assessment typically includes a multi-disciplinary team of clinicians and includes a neurological assessment along with cognitive and language testing. The tests usually include the ADI-R, ADOS-G, and CARS. Information from the second stage of assessment would then be used in the second level of DDD determination of eligibility for services.</p> <p>Individuals on the autism spectrum may come for evaluations at any age. General Psychiatrists, Psychiatric Nurse Practitioners, and Physician Assistants with specialty training in ASD are qualified to diagnose ASD. This would be the first stage of assessment for adults. Additional functional assessments would then trigger a second level of determination for the intensity and extent of services needed.</p> | |
| 20. | <p>Teresa Bertsch, MD Chief Medical Officer, Health Choice Integrated Care, LLC</p> <p>As the Chief Medical Officer of HCIC, the Regional Behavioral Health Authority for northern Arizona, since 1992 and as a Board Certified Psychiatrist, I would like to recommend the following changes to R6-6-303 Requirements for Determining Developmental Disabilities.</p> <p>Section A.1:</p> <ul style="list-style-type: none"> •I agree with expanding to allow the diagnosis to be completed by a neurologist and developmental pediatrician. •I disagree that a developmental pediatrician needs to be qualified as having "expertise in diagnosing autism" as that is part of the developmental pediatrician's training. •I think a psychiatric nurse practitioner who either has "expertise in diagnosing autism" or has "completed specialized training approved by the Department" or has "advanced training as part of their Nursing Scope of Practice" should be allowed to diagnose autism for DD. PNPs can receive additional training as part of their child training. HCIC has PNPs with advance training in children's disorders as part of their Nursing Scope of Practice and who specialize in | <p>Already in Department policies and now included in the rule.</p> <p>The expertise in diagnosing autism refers to any of the licensed practitioners diagnosing for the purpose of DD eligibility.</p> <p>The Department declines to include Nurse Practitioners. Only one state permits Nurse Practitioners to make this diagnosis. The Department explored adopting this approach and has determined that it is impractical to implement at this time as there is no public registry of individuals with a qualifying specialty or sub-specialty. The Department may revisit this issue when there is more</p> |

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| | <p>seeing children. In addition, many psychiatric nurse practitioners are now getting their PhDs, which makes them have more advanced training than psychologists, neurologists and pediatricians in diagnosing autism if their focus has been on children.</p> <p>Section C.1.c</p> <ul style="list-style-type: none"> •Include relevant comments in a "psychiatric" evaluation as psychological and psychoeducational evaluations may only have been available if an individual attended school. <p>Section C.2.a</p> <ul style="list-style-type: none"> •Include relevant comments in a "psychiatric" evaluation as psychological and psychoeducational evaluations may only have been available if an individual attended school. <p>Section C.5, c.ii</p> <ul style="list-style-type: none"> •Include relevant comments in a “psychiatric” evaluation as psychological and psychoeducational evaluations may only have been available if an individual attended school. Section C.6, c.i •Include relevant comments in a “psychiatric” evaluation as psychological and psychoeducational evaluations may only have been available if an individual attended school. <p>Other areas where there has been significant difficulty with DD determination, is that many people think that the DDD rules determine who can make an autism diagnosis in the state for any type of service, not DD eligibility. I propose you change [IN RED CAPS] this header to:</p> <ul style="list-style-type: none"> •R6-6-303 Requirements for Determining DIVISION ELIGIBILITY FOR Developmental Disabilities <p>Another area of difficulty is there does not seem to be a standard time within which DDD makes a decision. This makes it difficult on families and providers. The RHBAs have to refer to a person for an SMI Eligibility Determination within 7 days of identification/request and the state’s contractor for SMI Determinations has to make the decision within 3 days. DDD doesn’t collect its own information so a complete packet should be available to the reviewer.</p> <ul style="list-style-type: none"> •I suggest the time to make a decision be 30 days. | <p>specific certification and training developed for Nurse Practitioners.</p> <p>Psychiatric is included under C(1)(A).</p> <p>Psychiatric evaluations do not typically include testing of receptive and expressive language.</p> <p>The Department will add subsection (ii). medical or behavioral records.</p> <p>Psycho-educational evaluations are accepted as the majority of children attend school. Also acceptable are psychological evaluations, which would be conducted outside of the school setting.</p> <p>The Division proposes title change to "Requirements for determining eligibility for the Division of Developmental Disabilities".</p> <p>The Division agrees that a time-line for eligibility determination is needed and will address this in Division policy.</p> |
| 21. | <p>Sara Gibson, MD Psychiatrist, Medical Director, Little Colorado Behavioral Health Centers</p> <p>Thank you for the opportunity to comment on the Proposed DDD Rulemaking.</p> <p>I propose that the authority to diagnose Autism be expanded to Nurse Practitioners and to Pediatricians who have completed specialty training approved by the department. Psychiatric</p> | |

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| | <p>Nurse Practitioners practice independently in Arizona and are providing excellent care, covering rural areas that are traditionally underserved. They are better trained in psychiatric care than general physicians. Pediatricians are technically able to provide the Autism diagnosis but are often denied as they are not Developmental Pediatricians.</p> <p>In rural Arizona, we have a severe and acute shortage of both Psychiatrists and Developmental Pediatricians, resulting in a delay in diagnosis and service provision to those with Autism and their families, a highly vulnerable population.</p> <p>In addition, the required "Functional limitations" I find quite difficult to apply to children, especially the very young who are the most likely to benefit from early diagnosis and treatment. Re-defining functional limitations with young children in mind would benefit those who need this determination the most.</p> | <p>The Department declines to include Nurse Practitioners. Only one state permits Nurse Practitioners to make this diagnosis. The Department explored adopting this approach and has determined that it is impractical to implement at this time as there is no public registry of individuals with a qualifying specialty or sub-specialty. The Department may revisit this issue when there is more specific certification and training developed for Nurse Practitioners.</p> |
| 22. | <p>Elizabeth Homans McKenna, MD Co-owner, Healing Hearts Pediatrics, PLC</p> <p>I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | <p>The Department appreciates the comment.</p> |
| 23. | <p>Natalie Larson, PNP</p> <p>I would like to express my support for the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | <p>The Department appreciates the comment.</p> |
| 24. | <p>Charles L Roller, MD Healing Hearts Pediatrics</p> <p>I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians. A Pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | <p>The Department appreciates the comment.</p> |
| 25. | <p>Mohit Khurana</p> | <p>The Department appreciates the comment.</p> |

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| | <p>I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | |
| 26. | <p>Ajay Amin</p> <p>I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | The Department appreciates the comment. |
| 27. | <p>Paco Patel</p> <p>I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | The Department appreciates the comment. |
| 28. | <p>Dawn Bird</p> <p>I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | The Department appreciates the comment. |
| 29. | <p>Richard Heck</p> <p>I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | The Department appreciates the comment. |

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| <p>30.</p> | <p>Ryan McClellan, MD PL-3 Phoenix Children’s Hospital/Maricopa Medical Center Pediatric Residency Program</p> <p>I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained Pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | <p>The Department appreciates the comment.</p> |
| <p>31.</p> | <p>Jeanna Tapia, PA-C</p> <p>I am a physician assistant working in pediatrics. I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | <p>The Department appreciates the comment.</p> |
| <p>32.</p> | <p>Matthew Devlin, Assistant Director Arizona Health Care Cost Containment System</p> <p>The Arizona Health Care Cost Containment System Administration (AHCCCS) serves as the State's Medicaid Agency pursuant to Title XIX of the Social Security Act and also administers a variety of health care-related programs, including KidsCare, Arizona's version of the State Children's Health Insurance Program (SCHIP) authorized by Title XXI of the Social Security Act. In addition, the AHCCCS Administration assumed responsibility for serving individuals with Serious Mental Illness effective January 2016.</p> <p>Effective July 2016, the responsibilities of ADHS/BHS for serving individuals with Serious Mental Illness were transitioned to the AHCCCS Administration. The Arizona Long Term Care (ALTCS) Program is a Title XIX program, serving approximately 60,000 members. ALTCS members are age 65 years or older, have a physical disability, or have a developmental disability and whose level of care meet criteria for care in an institutional setting. More than 50% of ALTCS eligible members are individuals with a developmental disability. As of November 2017, AHCCCS, directly or through contracts, is responsible for the provision of health care coverage for approximately 1.9 million Arizonans. Most persons who are determined eligible receive coverage through managed care organizations that contract with the AHCCCS Administration.</p> <p>AHCCCS is responsible for the provision of services to its members and for that reason submits the following comments and suggestions to the Department of Economic Security's Notice of Proposed Rulemaking affecting a number of</p> | |

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| <p>regulations in the Arizona Administrative Code Title 6, Chapter 6, Article 3.</p> <p><u>R6-6-302</u></p> <p>Under the proposed changes to R6-6-302, in (D) it is unclear when in the Department will be making the final determination of eligibility. Since this is a clinical diagnosis it should be performed by the Medical Director.</p> <p>Additionally, in section (E) there are no specifics pertaining to why an individual's eligibility may be reviewed and what actions may result from this review. Therefore, AHCCCS recommends that additional language be added to the proposed rule to specify the circumstances when eligibility will be reviewed.</p> <p>It is also unclear that (G)(3) pertains to only children under the age of six and what credentials DDD will accept for eligibility determination of children under age six regarding "an individual trained in early childhood development," and AHCCCS requests further clarity on both of these section of the regulation.</p> <p><u>R6-6-303</u></p> <p>Under the proposed changes to R6-6-303, section (A)(l) lists a number of provider types, all of whom will need to be licensed. However, the section currently reads as though only psychologists would need to be licensed. AHCCCS requests that the licensing requirement be moved to apply to all of the provider types. Additionally, the specific guidelines established by the American Psychiatric Association (AP A) are not referenced. Since the AP A publishes many guidelines it is requested that the specific version be incorporated by reference. AHCCCS also recommends DDD include Nurse Practitioners (NPs) who have expertise in diagnosing autism to the provider list in this section, in order to align with how the healthcare delivery system operates in Arizona. In Arizona, NPs are licensed independent practitioners, who practice within the scope of their licensure, specialty certification, training/qualifications and competencies; they are held accountable to this standard by their regulatory board.</p> <p>In section (A)(4) of R6-6-303, the APA publishes many guidelines, therefore, AHCCCS requests that the rule specify that the guidelines are the current version of the diagnostic criteria published by the APA. AHCCCS also recommends eliminating the requirement in (B). "To be eligible for the program, in the presence of co-existing mental illness, an individual's cognitive/intellectual disability shall precede the onset of the mental illness." It is estimated that individuals with intellectual disability are two to four times more likely than those in the general population to experience mental illness. Individuals with less significant cognitive impairment may be diagnosed with other conditions that frequently appear in childhood (such as Attention Deficit Hyperactivity Disorder -ADHD) prior to determining the individual has an intellectual disability. Accordingly, AHCCCS recommends eliminating the requirement that cognitive/intellectual disability precede the onset of mental illness.</p> <p>Under the proposed changes in (A)(4)(c) since eligibility is based on a clinical diagnosis, the DDD Medical Director should be making this determination.</p> | <p>R6-6-302(D): The Department makes the final determination of eligibility, it does not make clinical diagnosis.</p> <p>Statute provides the required timeframe for review. The Department believes it does not require any additional parameters in this rule.</p> <p>The Department agrees and has added language to provide further clarity. The Department has added language in (G) to address children under the age of six years.</p> <p>The Department agrees with the comment but clarification is contained within Department policy.</p> <p>The Department declines to include Nurse Practitioners. Only one state permits Nurse Practitioners to make this diagnosis. The Department explored adopting this approach and has determined that it is impractical to implement at this time as there is no public registry of individuals with a qualifying specialty or sub-specialty. The Department may revisit this issue when there is more specific certification and training developed for Nurse Practitioners.</p> <p>It is the Department's intent to identify individuals who are eligible based on their standardized intellectual and adaptive testing and exclude from eligibility individuals whose intellectual disability is a not developmental in nature and may be a consequence of mental illness.</p> |
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| | <p>If you need any further information regarding these comments, please contact Nicole Fries, Office of Administrative Legal Services at (602) 417-4795.</p> | <p>The Department makes the final determination of eligibility, it does not make clinical diagnosis.</p> |
| 33. | <p>Barb Deppisch</p> <p>I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | <p>The Department appreciates the comment.</p> |
| 34. | <p>Raquel Balderas, Medical Director West Yavapai Guidance Clinic</p> <p>Good morning. I agree with the DDD rule that is currently proposed because I do not think that most nurse practitioners have the adequate training in the psychiatric field to address and diagnose this population. In my experience as a medical director for over 6 years I found the most NP (nurse practitioners) or PA (Physician Assistant) are not even adequately prepared to work with adult SMI, crisis, medically complex patients and definitely not children. It takes many years to become experienced not just in diagnosis but medication management, therapy, parent guidelines, communication and social skills that these children need. I have also trained many new grads who are Nurse Practitioners and PA and I know how much support and education they need just become competent and confident with an average adult patient. The learning curve is steep and schools are “cheapening” their curriculum so that these grads are faced with high anxiety after graduation and limited experience when it comes to children. Thank you for keeping your standards high for the most vulnerable children in Arizona.</p> | <p>The Department appreciates the comment.</p> |
| 35. | <p>Sukanya Chandra-Sharma, D.O., Child-Adolescent Psychiatrist, Desert Garden Montessori</p> <p>I would like to support the state's proposal in expanding the approved clinicians from whom DDD will accept a diagnosis of Autism to include specifically trained pediatricians.</p> <p>A pediatrician who has been specifically trained to diagnose Autism should be able to provide the needs for a child with Autism from the beginning and throughout their childhood. This ruling will support the continued effort towards a patient centered medical home and increase availability of resources for all of our children.</p> | <p>The Department appreciates the comment.</p> |

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

No other matters are prescribed.

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:

This rule does 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:

Not applicable

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

No analysis was submitted.

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

None

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

Not applicable

- 15. The full text of the rules follows:**

TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY

DEVELOPMENTAL DISABILITIES

ARTICLE 3. ELIGIBILITY FOR DEVELOPMENTAL DISABILITIES SERVICES

PROGRAM

| | |
|---------------------------------------|---|
| <u>R6-6-301.</u> | <u>Definitions</u> |
| R6-6-301. <u>R6-6-302.</u> | <u>Eligibility for Services Program</u> |
| R6-6-302. <u>R6-6-303.</u> | <u>Guidelines Requirements for Determining Eligibility for the</u> <u>Division of Developmental Disabilities</u> |
| R6-6-303. | <u>Eligibility Review Repealed</u> |
| <u>R6-6-304.</u> | <u>Eligibility under Arizona Long-term Care System</u> |
| <u>R6-6-305.</u> | <u>Admission to Program</u> |
| <u>R6-6-306.</u> | <u>Emergency Services</u> |
| <u>R6-6-307.</u> | <u>Eligibility Redeterminations for the Program</u> |
| <u>R6-6-308.</u> | <u>Member Responsibilities</u> |
| <u>R6-6-309.</u> | <u>Termination of Eligibility for the Program</u> |

ARTICLE 5. ADMISSION/REDETERMINATION/TERMINATION REPEALED

| | |
|----------------------|---|
| R6-5-501. | <u>Admission Repealed</u> |
| R6-6-502. | <u>Emergency Admission to Services Repealed</u> |
| R6-6-503. | <u>Redeterminations Repealed</u> |
| R6-6-504. | <u>Termination of Services Repealed</u> |

R6-6-505.

Continuation of Services Repealed

**ARTICLE 3. ELIGIBILITY FOR DEVELOPMENTAL DISABILITIES SERVICES
PROGRAM**

R6-6-301. Definitions

In addition to the definitions in Article 1 of this Chapter, the following definitions apply to this

Article:

1. “ALTCS” means Arizona Long-Term Care System under the Arizona Health Care Cost Containment System (AHCCCS).
2. “Autism” means the same as in A.R.S. § 36-551.
3. “Cerebral palsy” means the same as in A.R.S. § 36-551.
4. “Cognitive disability” means a condition that involves subaverage general intellectual functioning, that exists concurrently with deficits in adaptive behavior manifested before the age of eighteen and that is sometimes referred to as intellectual disability.
5. “Department” means the Arizona Department of Economic Security.
6. “Division” means the Division of Developmental Disabilities within the Department.
7. “Epilepsy” means the same as in A.R.S. § 36-551.
8. “Guardian” means the same as in A.R.S. § 36-551.
9. “Individualized education program (IEP)” means a written statement, as defined in 20 U.S.C. 1401 and 1412, for providing special education and related services to a child with a disability.

10. “Lawful Presence” means that an individual is a citizen or permanent legal resident of the United States or that the individual’s presence in the United States is otherwise authorized under federal law.
11. “Member” means an individual enrolled with the Division.
12. “Personal information” means facts regarding an individual that may include:
 - a. Address,
 - b. Phone number,
 - c. Changes in physical or behavioral health status, or
 - d. Other health care insurance coverage.
13. “Planning Document” means the same as “Individual program plan” defined in A.R.S. § 36-551, and incorporates:
 - a. The Individual Support Plan (ISP), which serves the same purpose as the individual program plan, the placement evaluation, and the individualized service program plan used in A.R.S. § 36-557;
 - b. The Individual Family Service Plan (IFSP); or
 - c. The Person Centered Plan.
14. “Planning Team” means a placement evaluation team referenced in A.R.S. § 36-560(G)(1), and includes:
 - a. The member;
 - b. The responsible person, if applicable;
 - c. The Support Coordinator;
 - d. Other Department staff, as necessary; and

- e. Any service provider selected by the member, responsible person, or the Department.
15. “Program” means the developmental disabilities program as outlined in A.R.S. § 36-558.
16. “Resident” means an individual who physically resides within the State of Arizona with the intent to remain, except in the case of minors whose residency is deemed to be the same as that of the guardian.
17. “Responsible person” means the same as in A.R.S. § 36-551.
18. “Services” means child, adult, residential, and resource services provided by the Department, as listed in A.R.S. § 36-558(C).
19. “Support Coordinator” means a “case manager” as defined in A.R.S. § 36-551.

R6-6-301. R6-6-302. Eligibility for Services Program

- A. In order to be eligible for ~~Developmental Disabilities services, a person must be~~ the program, an individual shall:
1. Demonstrate lawful presence in the United States;
 2. Be a resident of the state of Arizona; and
 3. ~~must be developmentally disabled~~ Have a developmental disability as determined in accordance with defined in A.R.S. § 36-551 and within the guidelines stated in R6-6-302. this Article; and
 4. Complete the application process.

- B.** Notwithstanding the provisions of subsection (A), the requirement of state residency does not apply to federal programs ~~which~~ that are not subject to residency rules.
- C.** As a condition of eligibility, applicants ~~are required to~~ shall assign rights to insurance benefits ~~in accordance with R6-6-1303~~ under this Chapter.
- D.** ~~Final~~ The Department shall make the final determination of eligibility ~~will be the~~ decision of the Division.
- E.** The Division's Assistant Director or designee may review a member's eligibility at any time.
- E. F.** Even though ~~a person~~ an individual may have at one time ~~fully meet~~ met the guidelines requirements contained herein in this Article, effective ~~services~~ interventions may later reduce substantial functional limitations to the extent that ~~they are~~ the individual no longer ~~substantial~~ meets the eligibility requirements. When, ~~in the opinion of the~~ Division Department, after a review pursuant to ~~R6-6-1801 et seq.~~ Article 18 of this Chapter, determines that it is necessary for a client member to receive continued services to maintain skills or to prevent regression, the ~~client will~~ member shall remain eligible for ~~services~~ the program.
- F. G.** ~~Eligibility for infants is determined~~ The Department shall determine eligibility for children under the age of six years as follows:
1. A child under the age of six years may be eligible for ~~services~~ the program if there is a strongly demonstrated potential that the child is or will ~~become~~ developmentally disabled be diagnosed with a developmental disability as determined by developmentally appropriate ~~tests~~ evaluations.

2. To be eligible for ~~Division services~~ the program, a child ~~from age 0-6~~ under the age of six years shall:
 - a. Have a diagnosis of cerebral palsy, epilepsy, autism, or ~~mental retardation~~ cognitive/intellectual disability; or
 - b. Be at risk for ~~becoming developmentally disabled~~ being diagnosed with a developmental disability based on:
 - i. ~~an~~ An identified delay in one or more areas of development, or
 - ii. ~~if there is a~~ The likelihood that without services the child will ~~become developmentally delayed or disabled~~; or be diagnosed with a developmental delay or disability.
 - c. Have demonstrated a significant developmental delay as determined in one or more areas of development as measured on a culturally appropriate and recognized developmental assessment tool. Eligibility is exclusive of cultural or environmental factors.

~~2. 3.~~ ~~Developmental delay shall be determined by~~ For a child under the age of six years, a licensed physician, licensed psychologist, or person an individual formally trained in early childhood development who evaluates the child through the use of culturally appropriate and recognized developmental tools and informed clinical opinion shall determine the developmental delay or disability.

H. To be eligible for the program, an individual, age six and older shall:

1. Have a diagnosis of cerebral palsy, epilepsy, autism, or cognitive/intellectual disability; and

2. Have functional limitations in three or more areas of major life activities as described in R6-6-303(C).

I. If the Department determines an individual to be ineligible for the program, the Department shall send the applicant a written notice of ineligibility by registered mail with return receipt requested. The notice shall include information regarding the opportunity for administrative review.

R6-6-302. R6-6-303. Guidelines Requirements for Determining Eligibility for the Division of Developmental Disabilities

A. For the purpose of eligibility determination, the Department shall accept the diagnoses of ~~Autism~~ autism, cerebral palsy, epilepsy, and ~~mental retardation~~ are determined cognitive/intellectual disability as follows:

1. Autism, --by a licensed psychiatrist or psychologist whose expertise in diagnosing autism is determined by the Division. A psychiatrist, neurologist, licensed psychologist, or developmental pediatrician who has expertise in diagnosing autism shall make an autism diagnosis. A pediatrician who has completed specialized training approved by the Department in the diagnosis of autism may also make an autism diagnosis. The psychiatrist, neurologist, licensed psychologist, developmental pediatrician, or pediatrician with specialized training shall submit a diagnostic report regarding the individual documenting the presence of diagnostic criteria for autism, including the presence of the required

number of symptoms of autism based on current guidelines established by the American Psychiatric Association.

2. Cerebral palsy. ~~by a~~ A licensed physician with expertise in diagnosing neurological disorders, such as a neurologist, or specialist in rehabilitation medicine, shall diagnose cerebral palsy. The physician shall submit a report to the Department documenting the diagnosis of cerebral palsy and include available medical records supporting the diagnosis.
3. Epilepsy. ~~by a licensed~~ A physician; specializing in neurology shall diagnose epilepsy.
 - a. The physician specializing in neurology shall submit a report to the Department documenting the active diagnosis of epilepsy and include the following:
 - i. Electroencephalogram (EEG) report;
 - ii. A description of the nature and frequency of the seizures, including current anti-seizure medication; and
 - iii. Confirmation of the ongoing nature of the disorder.
 - b. If the records of a neurological evaluation cannot be obtained or a diagnosis is not made by a physician specializing in neurology, the Division Medical Director shall review the available medical records to confirm a diagnosis of epilepsy.
4. ~~Mental retardation -- by a qualified person who performs psychological evaluations utilizing tests which are culturally appropriate and valid.~~

Cognitive/Intellectual Disability.

- a. A licensed psychologist trained to perform psychological evaluations utilizing standardized, culturally appropriate, and psychometrically sound measures shall diagnose cognitive/intellectual disability by considering the following:
 - i. Other mental disorders identified in current guidelines established by the American Psychiatric Association, including schizophrenia, bipolar disorder, attention deficit hyperactivity disorder, and substance abuse;
 - ii. Significant disorders related to language or language differences;
 - iii. Physical factors, including sensory impairments, motor impairments, acute illness, chronic illness, and chronic pain;
 - iv. Testing performed during an acute inpatient hospitalization;
 - v. Educational or environmental deprivation; and
 - vi. Psychosocial factors.
- b. To be eligible for the program, in the presence of co-existing mental illness, an individual's cognitive/intellectual disability shall not be the result of the onset of mental illness.
- c. If an existing psychological evaluation cannot be obtained, or an initial psychological evaluation cannot be completed, the Division's Assistant Director or designee shall review the available records to confirm eligibility.

B. An individual, who acquires an impairment or condition after age six as a result of illness or traumatic brain injury, is not eligible in the absence of a qualifying diagnosis.

B. C. The Department shall determine ~~Substantial~~ substantial functional limitations ~~must be determined~~ in three or more areas of the major life activities as documented in records provided to the Department. These limitations are defined as follows:

1. Self-care, -- Self-care means the performance of personal activities that sustain the health and hygiene of the individual appropriate to the individual's age and culture. This includes bathing, toileting, tooth brushing, dressing, and grooming. A functional limitation regarding self-care occurs when ~~a person~~ an individual requires significant assistance ~~in performing~~ with eating, hygiene, grooming, or health care skills or when the time required for ~~a person~~ an individual to ~~perform~~ complete these ~~skills~~ tasks is so extraordinary excessive as to ~~impair~~ impede the ability to retain employment, attend school, or to conduct other activities of daily living. Documentation of substantial functional limitations for self-care may include recent:

 - a. Medical or behavioral records;
 - b. Individualized education program (IEP) that addresses limitations of self-care goals and objectives;
 - c. Relevant comments in a psychological or psychoeducational evaluation;
 - d. Relevant scores on the ALTCS assessment, Preadmission Screening (PAS) tool;
 - e. Relevant scores on the Vineland Adaptive Behavior Scales; or

- f. Other structured standardized tests of adaptive functioning.
2. Receptive and expressive language. -- Receptive and expressive language means the process of understanding and participating in conversations in the individual's primary language, and expressing needs and ideas that can be understood by another individual who may not know the individual. A functional limitation regarding receptive and expressive language occurs when a person an individual is unable to communicate with others, or is unable to communicate effectively without the aid of a mechanical device, a third person, or a person with special skills, or without a mechanical device. Documentation of substantial functional limitations for receptive and expressive language may include recent:
- a. Psychological, psychoeducational, or speech evaluation records;
 - b. Individualized education program (IEP) references of severe communication deficits;
 - c. Use of sign language, a communication board, or an electronic communication device; or
 - d. Relevant scores on the ALTCS assessment, Preadmission Screening (PAS) tool.
3. Learning. -- Learning means the ability to acquire, retain, and apply information and skills. A functional limitation regarding learning occurs when a person's an individual's cognitive factors, or other factors; related to the acquisition and processing of new information (such as attentional factors, acquisition strategies, storage, and retrieval) are impaired to the extent that the person individual is

unable to participate in age-appropriate learning activities without utilization of additional resources. Documentation of limitations for learning may include verification of placement in a special education program.

4. Mobility, -- Mobility means the skill necessary to move safely and efficiently from one location to another within the individual's residence, neighborhood, and community. A functional limitation regarding mobility occurs when a person's an individual's fine or gross motor skills are impaired to the extent that the assistance of another person individual or mechanical device is required to move from place to place or when the effort required to move from place to place is so extraordinary excessive as to impair impede ability to retain employment and conduct other activities of daily living. Documentation of limitations for mobility may include:
 - a. Relevant scores on the ALTCS assessment, Preadmission Screening (PAS) tool; or
 - b. Medical or educational records indicating the need to regularly use a wheelchair, walker, crutches, or other assistive devices, or to be physically supported by another person when ambulating.

5. Self-direction, --
 - a. Self-direction means the ability to manage one's life, including:
 - i. Setting goals,
 - ii. Making and implementing plans to achieve those goals,

- iii. Making decisions and understanding the consequences of those decisions.
 - iv. Managing personal finances.
 - v. Recognizing the need for medical assistance.
 - vi. Behaving in a way that does not cause injury to self or others, and
 - vii. Recognizing and avoiding safety hazards.
- b. A functional limitation regarding self-direction occurs when a person an individual requires assistance in managing personal finances, protecting self-interest, or making independent decisions which that may affect well-being. For children under the age of 18, the Department shall compare the child's abilities in this area with age and developmentally appropriate abilities based on the current guidelines of Centers for Disease Control and Prevention and American Academy of Pediatrics.
- c. Documentation of limitations for self-direction may include:
- i. Court records appointing a legal guardian or conservator.
 - ii. Relevant comments in medical or behavioral records.
 - iii. Relevant comments in psychoeducational or psychological evaluation.
 - iv. Relevant objectives in the individualized education program (IEP),
or
 - v. Relevant scores on the ALTCS assessment, Preadmission Screening (PAS) tool.

6. Capacity for independent living. --
- a. Capacity for independent living means the performance of necessary daily activities in one's own residence and community, including:
- i. Completing household chores;
 - ii. Preparing simple meals;
 - iii. Operating household equipment such as washing machines, vacuums, and microwaves;
 - iv. Using public transportation; and
 - iv. Shopping for food, clothing, and other essentials.
- b. A functional limitation regarding the capacity for independent living occurs when, for a person's own an individual needs supervision or assistance for the individual's safety or well-being, supervision, or assistance is needed on at least on a daily basis in the performance of health maintenance and housekeeping. For children under the age of 18, the Department shall compare the child's abilities in this area with age and developmentally appropriate abilities based on the current guidelines of Centers for Disease Control and Prevention and American Academy of Pediatrics, including:
- i. Age of the child,
 - ii. Culture,
 - iii. Language,
 - iv. Length of time to complete task,

- v. Level and type of supervision or assistance needed.
- vi. Quality of task performance.
- vii. Effort expended to complete the task performance.
- viii. Consistency and frequency of task performance, and
- ix. Impact of other health conditions.

c. Documentation of limitations for the capacity for independent living may include:

- i. Relevant comments in a psychoeducational or psychological evaluation.
- ii. Related objectives on the individualized education program (IEP),
or
- iii. Relevant comments in medical records.

7. Economic self-sufficiency. -- Economic Self-Sufficiency means when a person an individual is unable to perform the tasks necessary for regular employment or is limited in productive capacity to the extent that earned annual income, after extraordinary expenses occasioned by the disability, is below the poverty level. For children under the age of 18, the Department shall compare the child's abilities in this area with age and developmentally appropriate abilities based on the current guidelines of Centers for Disease Control and Prevention and American Academy of Pediatrics. Documentation of limitations for economic self-sufficiency may include:

- a. The receipt of Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) benefits, or
- b. Eligibility for Vocational Rehabilitation Services.

R6-6-303. Eligibility Review Repealed

Determinations of eligibility are subject to review at any time by the Assistant Director or designee.

R6-6-304. Eligibility under Arizona Long-term Care System

A. The Department shall refer an individual with a developmental disability who may be eligible for the ALTCS to the Arizona Health Care Cost Containment System Administration (AHCCCS) to determine eligibility under ALTCS.

B. The Department shall not provide services, other than emergency services as provided in this Chapter, to an individual who has been referred for ALTCS eligibility determination until that determination has been completed.

C. Applicants who are determined eligible and enrolled in the program, but knowingly refuse to cooperate in the ALTCS eligibility process, are not eligible for services pursuant to A.R.S. § 36-559.

R6-6-305. Admission to Program

When the Department determines an individual to be eligible and enrolls the individual in the program, the Support Coordinator, with the Planning Team, shall complete a Planning Document to document any necessary supports and services.

R6-6-306. Emergency Services

In an emergency, the Department may provide services without a Planning Document to an individual who has been enrolled in the program. The Planning Team shall complete a Planning Document for emergency services within 10 days of the enrollment.

R6-6-307. Eligibility Redeterminations for the Program

The Department may redetermine eligibility for the program:

1. As a result of periodic evaluations in accordance with A.R.S. § 36-565; or
2. At any time, as authorized by the Division's Assistant Director or designee.

R6-6-308. Member Responsibilities

Members shall:

1. Inform the Support Coordinator of any change in personal information;
2. Participate in the development of the Planning Document and signify agreement or disagreement by signing the Planning Document;
3. Uphold all local, state, and federal laws and regulations; and
4. Cooperate and comply with the ALTCS redetermination process.

R6-6-309. Termination of Eligibility for the Program

- A.** Pursuant to A.R.S. § 36-566(A) and (B), the Department may terminate eligibility following a 35-day written notice period to the member or the responsible person when:
1. The Department determines that the member no longer meets the conditions of eligibility for services;
 2. The member reaches the age of 18, unless an application for eligibility has been filed with the Department; or
 3. The member fails to comply with R6-6-308.
- B.** The 35-day written notice shall include the proposed termination date and information regarding the opportunity for administrative review under Article 18 of this Chapter.
- C.** The Department shall terminate the member's eligibility for the program if the member or responsible person provides a written request for withdrawal from the program.

ARTICLE 5. ADMISSION/REDETERMINATION/TERMINATION REPEALED

R6-6-501. Admission Repealed

- A.** ~~If determined eligible pursuant to A.R.S. § 36-559 and R6-6-301 et seq., the person for whom services are requested shall be considered by the ISPP team for assignment to services and thereby become a client.~~
- B.** ~~If the person for whom services are requested is determined ineligible, the Division shall send the applicant written notice of ineligibility by registered mail, return receipt requested.~~

R6-6-502. ~~Emergency Admission to Services~~ Repealed

~~In an emergency, the Division may provide services for a limited period of time, pursuant to A.R.S. § 36-560(L) et seq., without the performance of an ISPP. However, for services to continue, a completed application for regular admission shall be filed and an ISPP conducted within 30 days of the emergency admission date in compliance with this Article.~~

R6-6-503. ~~Redeterminations~~ Repealed

- ~~A. The Division may redetermine a client’s eligibility as a result of periodic evaluations in accordance with R6-6-604.~~
- ~~B. The Division may redetermine a client’s eligibility at any time as may be authorized by the Assistant Director or designee.~~
- ~~C. The Division may redetermine a client’s financial status, for purposes of client contribution to cost of care, as a result of:
 - ~~1. Scheduled periodic financial redeterminations.~~
 - ~~2. Changes in the financial situation of the client and/or the parents of a client under age 18. The responsible person shall report to the Division any changes in financial situation which may affect the amount of contribution to cost of care within ten days of change.~~
 - ~~3. Financial redeterminations conducted at the responsible person’s request.~~~~

R6-6-504. ~~Termination of Services~~ Repealed

~~A. Pursuant to A.R.S. § 36-566(A) and (B), the Division shall terminate services to a client following 30 days' written notice to the responsible person of the proposed termination and of the opportunity for administrative review through A.R.S. § 36-563 and R6-6-1801 et seq.:~~

- ~~1. Upon the Division's receipt of a written request from the responsible person for withdrawal from services;~~
- ~~2. When the Division determines that the client no longer meets the conditions of eligibility for services;~~
- ~~3. When the client reaches the age of 18 unless an application for continuation of services has been filed pursuant to R6-6-505;~~
- ~~4. When the responsible person refuses to cooperate or comply with the ISPP.~~

~~B. Notwithstanding R6-6-504(A), the Division shall not terminate services to a child with developmental disabilities assigned to the Department by the juvenile court except pursuant to court order.~~

R6-6-505: Continuation of Services Repealed

~~Pursuant to A.R.S. § 36-566(C), following the Division's timely written and oral notice to the responsible person of termination, the responsible person may file a written application for the continuation of services in the same manner provided in R6-6-401.~~

Economic, Small Business, and Consumer Impact Statement

Title 6. Economic Security

Chapter 6. Department of Economic Security - Developmental Disabilities

Article 3. Eligibility for Developmental Disabilities Services

Article 5. Admission/Redetermination/Termination

1. Identification of the rulemaking:

Arizona Department of Economic Security (Department), Division of Developmental Disabilities (Division), is amending Title 6, Chapter 6, Articles 3 and 5, Eligibility for Developmental Disabilities Services and Admission/Redetermination/Termination to add, amend, and repeal rules to conform to current practice and terminology, and to make the rules more clear, concise, and understandable. Specifically:

- The Department is adding a new Definitions Section to help in understanding the terms used within the Article.
- The Department is changing the Section heading of the Eligibility for Services Section to Eligibility for Program, and amending this Section to conform to the Department's current procedure to determine eligibility.
- The Department is changing the Section heading of the Guidelines for Determining Developmental Disabilities Section to Requirements for Determining Developmental Disabilities, and amending this Section to conform to current Department practices.

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

The Department anticipates that this rulemaking will have a minimal (less than \$1,000) economic impact on the implementing agency, small businesses, and consumers. The Department currently administers the, eligibility for developmental disabilities services under Article 3 and admission, redetermination and termination under Article 5. The purpose of this rulemaking is to add, amend, and repeal rules to conform to current practice and terminology and most importantly to make the rules more clear, concise, and understandable. Therefore, the Department does not anticipate that the changes to the rule will have more than a minimal economic impact.

In Fiscal Year (FY) 2017, the Department had 40,138 members enrolled in the Division services. The average number of days it took to determine eligibility in June of FY 2017 was 16.3 days. The average number of days it took to determine eligibility year-to-date in FY 2018 was 16 days. The Department's anticipation for determining eligibility for FY 2018 is fewer than 20 days.

The Department anticipates a 5 to 8 percent increase in the number of applications for Division services during the current Fiscal Year. Currently, the Division's member growth rate is 4.8% per year.

Currently the Healthcare Services Unit of the Division that implements Articles 3 and 5 has 21 full time employees who are necessary to implement and enforce the eligibility process. The Department anticipates that the administrative and other costs associated with the implementation and enforcement of the eligibility process will increase by the same percentage as the projected increase in the number of applications for services. As indicated previously, the rule changes will add clarity in describing current practice, thus the rule changes themselves will have minimal economic impact. There is no anticipation of the need for an increase in employees because of this rulemaking.

The Department and members of the public will benefit from the revision of Articles 3 and 5 because the proposed rulemaking will make the eligibility and admission process for the program more clear, concise, and understandable.

4. Cost-benefit analysis:

a. Costs and benefits to state agencies directly affected by the rulemaking:

There is no additional cost to the Department or other state agencies anticipated by this rulemaking.

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

This program has no economic impact on political subdivisions; therefore, there is no cost or benefits to political subdivisions by this rulemaking.

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

Not applicable

5. Impact on private and public employment:

This rulemaking is not expected to impact public and private employment.

6. Impact on small businesses:

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

This rulemaking does not impact small businesses.

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

There are no administrative or other costs required to comply with this rulemaking.

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

i. Establish less costly or less stringent compliance or reporting requirements:

Not applicable

ii. Establish less costly schedules or less stringent deadlines for compliance:

Not applicable

iii. Consolidate or simplify compliance or reporting requirements:

Not applicable

iv. Establish separate performance standards:

Not applicable

v. Exempt small businesses from any or all requirements:

Not applicable

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

The persons directly impacted by this rulemaking are individuals who are applicants to the Division, Division members, and other responsible persons who voluntarily seek services through the Division. The rulemaking does not impose any obligation on the individual or responsible person to accept or participate in services without informed consent. Consumers who apply to the Division will benefit from clear and updated information on administrative reviews. The members of the public will benefit from this rulemaking because it will make the eligibility and admission process for services more clear, concise, and understandable.

8. Probable effects on state revenues:

None

9. Less intrusive or less costly alternative methods considered:

There is no less intrusive or less costly method of achieving the objectives of the rulemaking.

a. **Monetizing of the costs and benefits for each option:**

Not applicable

b. **Rationale for not using non-selected alternatives:**

Not applicable

10. **Description of any data on which the rule is based:**

Not applicable

ARTICLE 3. ELIGIBILITY FOR DEVELOPMENTAL DISABILITIES SERVICES

R6-6-301. Eligibility for Services

- A. In order to be eligible for Developmental Disabilities services, a person must be a resident of the state of Arizona and must be developmentally disabled as determined in accordance with A.R.S. § 36-551 and within the guidelines stated in R6-6-302.
- B. Notwithstanding the provisions of subsection (A), the requirement of state residency does not apply to federal programs which are not subject to residency rules.
- C. As a condition of eligibility, applicants are required to assign rights to insurance benefits in accordance with R6-6-1303.
- D. Final determination of eligibility will be the decision of the Division.
- E. Even though a person may at one time fully meet the guidelines contained herein, effective services may later reduce functional limitations to the extent that they are no longer substantial. When, in the opinion of the Division, after a review pursuant to R6-6-1801 et seq., it is necessary for a client to receive continued services to maintain skills or to prevent regression, the client will remain eligible for services.
- F. Eligibility for infants is determined as follows:
 1. A child under the age of six years may be eligible for services if there is a strongly demonstrated potential that the child is or will become developmentally disabled as determined by appropriate tests. To be eligible for Division services, a child from age 0-6 shall:
 - a. Have a diagnosis of cerebral palsy, epilepsy, autism, or mental retardation;
 - b. Be at risk for becoming developmentally disabled based on an identified delay in one or more areas of development or if there is a likelihood that without services the child will become developmentally delayed or disabled; or
 - c. Have demonstrated a significant developmental delay as determined in one or more areas of development as measured on a culturally appropriate and recognized developmental assessment tool. Eligibility is exclusive of cultural or environmental factors.
 2. Developmental delay shall be determined by a physician or person formally trained in early childhood development who evaluates the child through the use of culturally appropriate and recognized developmental tools and informed clinical opinion.

Historical Note

Adopted effective October 31, 1978 (Supp. 78-5). Former Section R6-6-301 repealed, new Section R6-6-301 adopted effective March 30, 1983 (Supp. 83-2). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

R6-6-302. Guidelines for Determining Developmental Disabilities

- A. Autism, cerebral palsy, epilepsy, and mental retardation are determined as follows:
1. Autism -- by a licensed psychiatrist or psychologist whose expertise in diagnosing autism is determined by the Division.
 2. Cerebral palsy -- by a licensed physician.
 3. Epilepsy -- by a licensed physician.
 4. Mental retardation -- by a qualified person who performs psychological evaluations utilizing tests which are culturally appropriate and valid.
- B. Substantial functional limitations must be determined in three or more areas of the major life activities. These limitations are defined as follows:
1. Self-care -- when a person requires significant assistance in performing eating, hygiene, grooming, or health care skills or when the time required for a person to perform these skills is so extraordinary as to impair the ability to retain employment or to conduct other activities of daily living.
 2. Receptive and expressive language -- when a person is unable to communicate with others, or is unable to communicate effectively without the aid of a third person, a person with special skills, or without a mechanical device.
 3. Learning -- when a person's cognitive factors, or other factors, related to the acquisition and processing of new information (such as attentional factors, acquisition strategies, storage, and retrieval) are impaired to the extent that the person is unable to participate in age-appropriate learning activities without utilization of additional resources.
 4. Mobility -- when a person's fine or gross motor skills are impaired to the extent that the assistance of another person or mechanical device is required to move from place to place or when the effort required to move from place to place is so extraordinary as to impair ability to retain employment and conduct other activities of daily living.
 5. Self-direction -- when a person requires assistance in managing personal finances, protecting self-interest, or making independent decisions which may affect well-being.
 6. Capacity for independent living -- when, for a person's own safety or well-being, supervision, or assistance is needed at least on a daily basis in the performance of health maintenance and housekeeping.
 7. Economic self-sufficiency -- when a person is unable to perform the tasks necessary for regular employment or is limited in productive capacity to the extent that earned annual income, after extraordinary expenses occasioned by the disability, is below the poverty level.

Historical Note

Adopted effective October 31, 1978 (Supp. 78-5). Former Section R6-6-302 repealed, new Section R6-6-302 adopted effective March 30, 1983 (Supp. 83-2). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

R6-6-303. Eligibility Review

Determinations of eligibility are subject to review at any time by the Assistant Director or designee.

Historical Note

Adopted effective October 31, 1978 (Supp. 78-5). Repealed effective March 30, 1983 (Supp. 83-2). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

ARTICLE 5. ADMISSION/REDETERMINATION/ TERMINATION

R6-6-501. Admission

- A. If determined eligible pursuant to A.R.S. § 36-559 and R6-6-301 et seq., the person for whom services are requested shall be considered by the ISPP team for assignment to services and thereby become a client.
- B. If the person for whom services are requested is determined ineligible, the Division shall send the applicant written notice of ineligibility by registered mail, return receipt requested.

Historical Note

Repealed effective February 2, 1989 (Supp. 89-1). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

R6-6-502. Emergency Admission to Services

In an emergency, the Division may provide services for a limited period of time, pursuant to A.R.S. § 36-560(L) et seq., without the performance of an ISPP. However, for services to continue, a completed application for regular admission shall be filed and an ISPP conducted within 30 days of the emergency admission date in compliance with this Article.

Historical Note

Repealed effective February 2, 1989 (Supp. 89-1). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

R6-6-503. Redeterminations

- A. The Division may redetermine a client's eligibility as a result of periodic evaluations in accordance with R6-6-604.
- B. The Division may redetermine a client's eligibility at any time as may be authorized by the Assistant Director or designee.
- C. The Division may redetermine a client's financial status, for purposes of client contribution to cost of care, as a result of:
 - 1. Scheduled periodic financial redeterminations.
 - 2. Changes in the financial situation of the client and/or the parents of a client under age 18. The responsible person shall report to the Division any changes in financial situation which may affect the amount of contribution to cost of care within ten days of change.
 - 3. Financial redeterminations conducted at the responsible person's request.

Historical Note

Repealed effective February 2, 1989 (Supp. 89-1). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

R6-6-504. Termination of Services

- A. Pursuant to A.R.S. § 36-566(A) and (B), the Division shall terminate services to a client following 30 days' written notice to the responsible person of the proposed termination and of the opportunity for administrative review through A.R.S. § 36-563 and R6-6-1801 et seq.:
 - 1. Upon the Division's receipt of a written request from the responsible person for withdrawal from services;
 - 2. When the Division determines that the client no longer meets the conditions of eligibility for services;
 - 3. When the client reaches the age of 18 unless an application for continuation of services has been filed pursuant to R6-6-505;
 - 4. When the responsible person refuses to cooperate or comply with the ISPP.
- B. Notwithstanding R6-6-504(A), the Division shall not terminate services to a child with developmental disabilities assigned to the Department by the juvenile court except pursuant to court order.

Historical Note

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

R6-6-505. Continuation of Services

Pursuant to A.R.S. § 36-566(C), following the Division's timely written and oral notice to the responsible person of termination, the responsible person may file a written application for the continuation of services in the same manner provided in R6-6-401.

Historical Note

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

36-552. Developmental disabilities function; expenditure limitation

A. The department shall function as the developmental disabilities authority for the state of Arizona.

B. No provisions of this chapter shall be construed to give the department control of lawful activities of other governmental agencies or of activities of the universities or colleges of this state in the field of developmental disabilities, unless by specific contract or agreement therefor.

C. Subject to annual legislative appropriation and other available funding, the department shall provide a wide variety of developmental disability programs and services throughout the state in response to the wide range of developmental disability conditions, the capabilities of persons with developmental disabilities and the presence of other disabling conditions for persons with developmental disabilities.

D. The department may contract with other state agencies and with private agencies to provide the developmental disabilities program or service.

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

36-554. Powers and duties of director

A. The director shall:

1. Be responsible for developing and annually revising a statewide plan and initiating statewide programs and services for persons with developmental disabilities in locations where the programs and services are necessary, which shall include:

(a) Child services, which may include infant stimulation, developmental training for pre-school children and special education at Arizona training program facilities for school-age, children with developmental disabilities residing at Arizona training program facilities who do not attend public school.

(b) Adult services, in coordination with the vocational rehabilitation services of the department, which may include but not be limited to job training and training and adjustment services, job development and placement, sheltered employment and other nonvocational day activity services for adults.

(c) Residential services, including various community residential settings, Arizona training program facilities and state operated service centers which provide varying levels of supervision

in accordance with the developmental disability levels of the persons placed at such settings, facilities or centers. The department shall contract with private profit or nonprofit agencies to provide appropriate residential settings for persons with developmental disabilities which provide for regular assistance and supervision of such persons and which provide varied developmental disability programs and services on or near the community residential setting.

(d) Resource services, which may include comprehensive evaluation services, information and referral services and outpatient rehabilitation and social development services. The department in providing developmental disability programs and services shall whenever practicable utilize qualified private contractors. In selecting private contractors, the department shall utilize those contractors which can clearly demonstrate an ability to perform such contract in accordance with standards and specifications adopted by the department.

2. Establish standards, provide technical assistance, and supervise all developmental disability programs and services operated by or supported by the department.

3. Coordinate the planning and implementation of developmental disability programs and activities, institutional and community, of all state agencies, provided this shall not be construed as depriving other state agencies of jurisdiction over, or the right to plan for, control, and operate programs that pertain to developmental disability programs but that fall within the primary jurisdiction of such other state agencies.

4. Periodically assess the effectiveness of the quality assurance system as required by 42 Code of Federal Regulations section 434.34 as it pertains to developmental disabilities programs.

5. License community residential settings pursuant to this chapter.

6. Develop rules establishing a procedure for handling complaints about community residential settings.

7. Inform in writing every parent or guardian of a client with a developmental disability residing at or transferring to a community residential setting of the complaint handling procedure.

8. As new community residential settings are developed over a period of time, reduce the clientele at Arizona training program facilities to those persons with developmental disabilities who are required to be in Arizona training program facilities because the community lacks an appropriate community residential setting that meets their individual needs or whose parents or legal guardians want them in an Arizona training program facility.

9. In conjunction with the division, individuals with developmental disabilities and their families, advocates, community members and service providers, develop, enhance and support environments that enable individuals with developmental disabilities to achieve and maintain physical well-being, personal and professional satisfaction, participation as family and community members and safety from abuse and exploitation.

10. Do all other things reasonably necessary and proper to carry out the duties and the provisions of this chapter.

11. Adopt rules regarding procurement procedures similar to those found in title 41, chapter 23.

B. Programs and services offered pursuant to subsection A, paragraph 1 of this section shall be provided in cooperation with public and private resources that can best meet the needs of persons with developmental disabilities and that are located in the community and in proximity to the persons being served.

C. The director may:

1. Establish nonresidential outpatient programs for placement, evaluation, care, treatment and training of persons with developmental disabilities residing in the community who are not eligible for public school programs, and who do not have access to other state supported programs providing equivalent services.

2. Develop cooperative programs with other state departments and agencies, political subdivisions of the state, and private agencies concerned with and providing services for persons with developmental disabilities.

3. Contract for the purchase of services with other state and local governmental or private agencies. Such agencies are authorized to accept and expend funds received pursuant to such contracts.

4. Stimulate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the prevention of developmental disabilities and improved methods of care and training for persons with developmental disabilities.

5. Apply for, accept, receive, hold in trust or use in accordance with the terms of the grant or agreement any public or private funds or properties, real or personal, granted or transferred to it for any purpose authorized by this chapter.

6. Make and amend rules from time to time as deemed necessary for the proper administration of programs and services for the treatment of persons with developmental disabilities, for the admission of persons with developmental disabilities to the programs and services and to carry out the purposes of this chapter.

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act, Public Law 91-517, and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department designated case management, housekeeping services, chore services, home health aid, personal

care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it 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 and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Accept and disburse grants, matching funds 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.

10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.

11. Establish and maintain separate financial accounts as required by federal law or regulations.

12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

13. Have an official seal that shall be judicially noticed.

14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its

successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.

16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.

17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in Arizona and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (c) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.
2. The department's liability for a hospital claim under this subsection is subject to availability of funds.
3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:
 - (a) An admission face sheet.
 - (b) An itemized statement.
 - (c) An admission history and physical.
 - (d) A discharge summary or an interim summary if the claim is split.
 - (e) An emergency record, if admission was through the emergency room.
 - (f) Operative reports, if applicable.
 - (g) A labor and delivery room report, if applicable.
4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.
5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:
 - (a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine per cent of the rate.
 - (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate.
 - (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate plus a fee of one per cent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.
2. State and local tax and revenue records, including information on residence address, employer, income and assets.
3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities and cable television companies.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of the state and after considering each of the following factors:

1. The obligor's financial resources.
2. The cost of further enforcement action.
3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

ARIZONA STATE RETIREMENT SYSTEM (R-18-0604)

Title 2, Chapter 8, Article 1, Retirement System

Amend: R2-8-104; R2-8-116; R2-8-118; R2-8-122; R2-8-124;
R2-8-125

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM - REGULAR RULEMAKING

MEETING DATE:

AGENDA ITEM: E-5

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

FROM: Council Staff

DATE: May 22, 2017

SUBJECT: ARIZONA STATE RETIREMENT SYSTEM (R-18-0604)
Title 2, Chapter 8, Article 1, Retirement System

Amend: R2-8-104; R2-8-116; R2-8-118; R2-8-122; R2-8-124;
R2-8-125

SUMMARY OF THE RULEMAKING

The Arizona State Retirement System (ASRS) provides for retirement planning and benefits for state employees and teachers. The ASRS is directed by the governor-appointed ASRS Board (Board). The Board consists of nine members and is responsible for supervising the administration of the ASRS, including the defined contribution plan, defined benefit plan, long-term disability income plan, and health benefit supplement plan.

In this rulemaking, ASRS seeks to amend six rules related to ASRS interest rates. In particular, ASRS proposes to update Section 118 to add the new interest rate approved by the Board in December 2017. The ASRS also proposes to amend the rules to clarify when a member's account stops accruing interest. All rules referring to the interest rate are being updated to incorporate consistent language.

The rules were last amended at various times between 2004 and 2018. The ASRS received an exemption from the Governor's Office on February 21, 2018.

Proposed Action

- Section 104 - *Definitions*: Terms are being updated to reflect changes to the other rules. In particular, a definition for "Assumed actuarial investment earnings rate" is added and the terms, "Investment return rate" and "System," are removed.

- Section 116 - *Alternate Contribution Rate*: A reference is updated and the term “assumed actuarial interest rate” is being replaced with “assumed actuarial investment earnings rate.”
- Section 118 - *Application of Interest Rates*: The table in subsection (A) is updated to add the new assumed actuarial investment earnings rate, 7.50%, approved by the Board in December 2017. Also, subsection (C) is added to clarify that a member’s retirement account stops accruing interest the last full month prior to the member’s retirement date.
- Section 122 - *Remittance of Contributions*: Clarifying changes are made throughout the rule.
- Section 124 - *Termination Incentive Program by Agreement; Unfunded Liability Calculations*: In subsection (J), “assumed actuarial interest and investment rate” is replaced with “assumed actuarial investment earnings rate.”
- Section 125 - *Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations*: In subsection (L), “assumed actuarial interest and investment rate” is replaced with “assumed actuarial investment earnings rate.”

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

Yes. The ASRS cites to A.R.S. § 38-714(E)(4) as general authority, under which the Board may “[a]dopt, amend or repeal rules for the administration of the plan.”

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 rules are being amended to update the new interest rate that was approved in December 2017 and to clarify when a member account stops accruing interest. The ASRS currently has a total membership of approximately 586,306.

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?

Yes. The ASRS concludes that the proposed rules impose the least burden and costs. The proposed rules provide greater clarity to the public.

5. What are the economic impacts on stakeholders?

The rulemaking directly affects ASRS members, ASRS beneficiaries, and ASRS employers. There will be little to no economic impact to those directly affected by this rulemaking because it provides the new interest rate, clarifies when a member's account stops accruing interest, and incorporate consistent language.

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

Yes. The ASRS indicates that it received no written comments on the rulemaking and no one attended the oral proceeding on April 16, 2018.

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

No. Only non-substantial changes were made between the proposed rules and the final rules.

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 there are no corresponding federal laws 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 or rely upon any study for the rulemaking.

11. Conclusion

If approved, the rules will become effective immediately upon filing with the Secretary of State. The ASRS requests this immediate effective date under A.R.S. § 41-1032(A)(2) to comply with the new interest rate which becomes effective as of July 1, 2018. Council staff recommends approval of the rulemaking.



ARIZONA STATE RETIREMENT SYSTEM

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WWW.AZASRS.GOV

Paul Matson
Director

April 17, 2018

Ms. Nicole A. Colyer, 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. Colyer:

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 April 16, 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 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

- | <u>1. Articles, Parts, and Sections Affected</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R2-8-104 | Amend |
| R2-8-116 | Amend |
| R2-8-118 | Amend |
| R2-8-122 | Amend |
| R2-8-124 | Amend |
| R2-8-125 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 38-711, 38-735, 38-738, 38-740, and 38-749
- 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):**
The ASRS is requesting an immediate effective date upon filing this Notice of Final Rulemaking with the Secretary of State. Pursuant to A.R.S. § 41-1032(A) (2), an immediate effective date is necessary in order to comply with new interest rate that was set by the Board and which is effective for the new fiscal year beginning July 1, 2018.
- 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. 509, March 9, 2018
Notice of Proposed Rulemaking: 24 A.A.R. 495, March 9, 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 update R2-8-118 Application of Interest Rates to add the new rate that was approved by the Board in December 2017. The rule needs to clarify when a member account stops accruing interest. In addition, all rules referring to the interest rate will require an update to incorporate consistent language, as well as remove any reference to system members.

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:

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 rule will have minimal economic impact, if any, because it merely clarifies current statutory requirements without imposing any additional requirements on the public. These rules will increase the readability of the statutory requirements related to interest rates, leading to a

reduction in the resources the ASRS must expend in order to rectify unintended consequences resulting from a misunderstanding of how interest rates are accrued and applied. Thus, the economic impact is minimized.

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 April 16, 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

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 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.

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:

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 1. RETIREMENT SYSTEM

Section

- R2-8-104. Definitions
- R2-8-116. Alternate Contribution Rate
- R2-8-118. Application of Interest Rates
- R2-8-122. Remittance of Contributions
- R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations
- R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations

ARTICLE 1. RETIREMENT SYSTEM

R2-8-104. Definitions

- A. No change.

- B. Unless otherwise specified, in this Chapter:
 - 1. “Actuarial assumption” means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.

 - 2. “Assumed actuarial investment earnings rate” means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).

 - 23. “Authorized employer representative” means an individual specified by the ASRS employer to provide the ASRS with information about a member who previously worked for the ASRS employer.

 - 34. “Contribution” means:
 - a. Amounts required by A.R.S. Title 38, Chapter 5, ~~Article~~Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member; ~~other than amounts attributed to the long-term disability program;~~

 - b. Any voluntary amounts paid to the ASRS by a member to be placed in the member’s account; and

 - c. Amounts credited by transfer under A.R.S. § 38-924.

45. “Day” means a calendar day, and excludes the:

- a. Day of the act or event from which a designated period of time begins to run; and
- b. Last day of the period if a Saturday, Sunday, or official state holiday.

56. “Designated beneficiary” means the same as in A.R.S. § 38-762(G).

67. “Director” means the Director appointed by the Board as provided in A.R.S. § 38-715.

78. “Individual retirement account” or “IRA” means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).

~~8. “Investment return rate” means a percentage of total return on an asset.~~

9. “Party” means the same as in A.R.S. § 41-1001(14).

10. “Person” means the same as in A.R.S. § 41-1001(15).

11. “Plan” means the same as “defined benefit plan” in A.R.S. § 38-712(B), and as administered by the ASRS.

12. “Retirement account” means the same as in A.R.S. § 38-771(J)(2).

13. “Rollover” means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).

~~14. “System” means the same as “defined contribution plan” in A.R.S. § 38-769(O)~~

~~(7), and as administered by the ASRS.~~

1514. “Terminate employment” means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.

1615. “United States” means the same as in A.R.S. § 1-215(39).

R2-8-116. Alternate Contribution Rate

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the ~~assumed~~ actuarial interest rate assumed actuarial investment earnings rate listed in ~~R2-8-118(B).~~ R2-8-118(A).
- F. No change.

R2-8-118. Application of Interest Rates

- A. Application of interest from inception of the ASRS Plan through the present is as

follows:

| Effective Date of Interest Rate Change | Assumed Actuarial Interest and Investment Return Rate <u>Assumed Actuarial Investment Earnings Rate</u> | Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death | | Interest Rate Used to Determine Survivor Benefits |
|--|--|---|--------------------------|---|
| 7-1-1953 | 2.50% | 2.50% | | 2.50% |
| 7-1-1959 | 3.00% | 3.00% | | 3.00% |
| 7-1-1966 | 3.75% | 3.75% | | 3.75% |
| 7-1-1969 | 4.25% | 4.25% | | 4.25% |
| 7-1-1971 | 4.75% | 4.75% | | 4.75% |
| 7-1-1975 | 5.50% | 5.50% | | 5.50% |
| 7-1-1976 | 6.00% | 5.50% | | 6.00% |
| 7-1-1981 | 7.00% | 5.50% | | 7.00% |
| 7-1-1982 | 7.00% | 7.00% | | 7.00% |
| 7-1-1984 | 8.00% | 8.00% | | 8.00% |
| 7-1-2005 | 8.00% | 4.00% for Plan Members | 8.00% for System Members | 8.00% |
| 7-1-2013 | 8.00% | 2.00% for Plan Members | 8.00% for System Members | 8.00% |
| <u>7-1-2018</u> | <u>7.50%</u> | <u>2.00%</u> | | <u>7.50%</u> |

B. No change.

C. Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the retirement date.

R2-8-122. Remittance of Contributions

A. ~~Remittance of employee member contributions: Each state department and employer member of the ASRS, including, any county, municipality or political subdivision,~~ Each Employer shall certify on each payroll the amount to be contributed by each one of their employee members of the ASRS and shall remit

~~the amount of employee member contributions to the ASRS, together with such detailed report as may be required by the ASRS to identify the individual owner of each such member contribution,~~ not later than 14 ~~calendar~~ days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th ~~calendar~~ day after the last day of the applicable payroll period shall become delinquent after that date and shall ~~be increased~~ accrue, by interest at the ~~rate of eight percent~~ assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.

- B. ~~Remittance of employee member contributions: Each state department and employer member of the ASRS, including, any county, municipality or political subdivision,~~ Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 ~~calendar~~ days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th ~~calendar~~ day after the last day of the applicable payroll period shall become delinquent after that date and shall ~~be increased~~ accrue, by interest at the ~~rate of eight percent~~ assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.

R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the ~~assumed actuarial interest and investment rate contained in R2-8-118(A).~~ assumed actuarial investment earnings rate listed in R2-8-118(A).
- K. No change.

R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.
- K. No change.
- L. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the ~~assumed actuarial interest and investment rate contained in R2-8-118(A).~~ assumed actuarial investment earnings rate listed in R2-8-118(A).

M. No change.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. Identification of the rulemaking:

The ASRS needs to update R2-8-118 Application of Interest Rates to add the new rate that was approved by the Board in December 2017. The rule needs to clarify when a member account stops accruing interest. In addition, all rules referring to the interest rate will require an update to incorporate consistent language, as well as remove any reference to system members.

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

In each fiscal year, the ASRS applies the Board approved interest rate to approximately 457,015 member accounts. The majority of account transactions and calculations, including service purchases and refunds, use the assumed actuarial investment earnings rate. The ASRS processes approximately 3213 service purchases and 11,852 refunds each fiscal year. With the changes completed in this rulemaking, the interest rules will be clearer and more effective. Ultimately, the rules will clarify what the rates are and provide 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 new interest rate affecting various transactions. Implementing clear and concise language will ensure members, beneficiaries, and Employers understand how the ASRS applies the assumed actuarial investment earnings rate. This rulemaking will ensure the ASRS is consistent with Arizona statutes.

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

Arizona statutes indicate that the ASRS pays or charges interest on various transactions as set by the Board; 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 interest rate rule, which will incorporate consistent language and reducing confusion.

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

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 rule will have minimal economic impact, if any, because it merely clarifies current statutory requirements without imposing any additional requirements on the public. These rules will increase the readability of the statutory requirements related to interest rates, leading to a reduction in the resources the ASRS must expend in order to rectify unintended consequences resulting from a misunderstanding of how interest rates are accrued and applied. Thus, the economic impact is minimized.

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, as well as their beneficiaries, 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, beneficiaries, and Employers may be affected based on various transactions. This rule will provide the interest rate for various transactions. Such clarification will benefit members, beneficiaries, and Employers by increasing the readability

of the interest rates used in various transactions and calculations.

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, beneficiaries, and Employers are directly affected by this rulemaking because it will provide the new interest rate, clarify when a member's account stops accruing interest, and incorporate consistent language. 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 businesses:

- 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, beneficiaries, 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 interest rate without imposing any additional requirements on the public.

R2-8-104. Definitions

- A. The definitions in A.R.S. § 38-711 apply to this Chapter.
- B. Unless otherwise specified, in this Chapter:
 - 1. “Actuarial assumption” means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
 - 2. “Authorized employer representative” means an individual specified by the ASRS employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
 - 3. “Contribution” means:
 - a. Amounts required by A.R.S. Title 38, Chapter 5, Article 2 to be paid to the ASRS by a member or an employer on behalf of a member other than amounts attributed to the long-term disability program;
 - b. Any voluntary amounts paid to the ASRS by a member to be placed in the member’s account; and
 - c. Amounts credited by transfer under A.R.S. § 38-924.
 - 4. “Day” means a calendar day, and excludes the:
 - a. Day of the act or event from which a designated period of time begins to run; and
 - b. Last day of the period if a Saturday, Sunday, or official state holiday.
 - 5. “Designated beneficiary” means the same as in A.R.S. § 38-762(G).
 - 6. “Director” means the Director appointed by the Board as provided in A.R.S. § 38-715.
 - 7. “Individual retirement account” or “IRA” means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
 - 8. “Investment return rate” means a percentage of total return on an asset.
 - 9. “Party” means the same as in A.R.S. § 41-1001(14).
 - 10. “Person” means the same as in A.R.S. § 41-1001(15).
 - 11. “Plan” means the same as “defined benefit plan” in A.R.S. § 38-712(B), and as administered by the ASRS.
 - 12. “Retirement account” means the same as in A.R.S. § 38-771(J)(2).
 - 13. “Rollover” means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
 - 14. “System” means the same as “defined contribution plan” in A.R.S. § 38-769(O)(7), and as administered by the ASRS.
 - 15. “Terminate employment” means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
 - 16. “United States” means the same as in A.R.S. § 1-215(39).

Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) “required” corrected to “required” (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4)

R2-8-116. Alternate Contribution Rate

- A. For purposes of this section, the following definitions apply:
 - 1. “ACR” means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee’s compensation.
 - 2. “Class of positions” means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
 - 3. “Compensation” has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
 - 4. “Leased from a third party” means:
 - a. The employee is not employed by an employer; and
 - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:
 - 1. The retired member is leased from a third party; and
 - 2. All employees in the entire class of positions, to which the retired member’s position belongs, have been leased from a third party; and
 - 3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C. In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D. The employer shall directly remit payment of an ACR to the ASRS from the employer’s funds, through the

employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.

- E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial interest rate listed in R2-8-118(B).
- F. A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

Historical Note

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2).

R2-8-118. Application of Interest Rates

A. Application of interest from inception of the ASRS through the present is as follows:

| Effective Date of Interest Change | Assumed Interest and Investment Return Rate | Actuarial Interest Upon Termination of Service by Other Than Retirement or Death | Return Used to Determine Return of Contributions from Separation | Interest Rate Used to Determine Survivor Benefits |
|-----------------------------------|---|--|--|---|
| 7-1-1953 | 2.50% | 2.50% | | 2.50% |
| 7-1-1959 | 3.00% | 3.00% | | 3.00% |
| 7-1-1966 | 3.75% | 3.75% | | 3.75% |
| 7-1-1969 | 4.25% | 4.25% | | 4.25% |
| 7-1-1971 | 4.75% | 4.75% | | 4.75% |
| 7-1-1975 | 5.50% | 5.50% | | 5.50% |
| 7-1-1976 | 6.00% | 5.50% | | 6.00% |
| 7-1-1981 | 7.00% | 5.50% | | 7.00% |
| 7-1-1982 | 7.00% | 7.00% | | 7.00% |
| 7-1-1984 | 8.00% | 8.00% | | 8.00% |
| 7-1-2005 | 8.00% | 4.00% for Plan Members | 8.00% for System Members | 8.00% |
| 7-1-2013 | 8.00% | 2.00% for Plan Members | 8.00% for System Members | 8.00% |

- B. At the beginning of each fiscal year interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
 1. Employer and employee contributions;
 2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
 3. Amounts credited by transfer under A.R.S. § 38-924; and
 4. Interest credited in previous years.

Historical Note

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1).

R2-8-122. Remittance of contributions

- A. Remittance of employee member contributions: Each state department and employer member of the ASRS, including, any county, municipality or political subdivision, shall certify on each payroll the amount to be contributed by each one of their employee members of the ASRS and shall remit the amount of employee member contributions to the ASRS, together with such detailed report as may be required by the ASRS to identify the individual owner of each such member contribution, not later than 14 calendar days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the ASRS.
- B. Remittance of employer contributions: Each state department and employer member of the ASRS, including, any

county, municipality or political subdivision, shall remit the amount of employer contributions to the ASRS not later than 14 calendar days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the ASRS.

Historical Note

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-122 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Section amended by Final Rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1).

R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations

- A. The following definitions apply to this Section unless otherwise specified:
 1. "Compensation" means the same as in A.R.S. § 38-711(7).
 2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).
- B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
 1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
 2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
 - a. The member's full name;
 - b. The member's date of birth; and
 - c. The member's current Compensation;
- C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.
- D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).
- E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
 1. The member's full name;
 2. The member's date of birth;
 3. The member's Compensation at termination;
 4. The date the member terminated employment; and
 5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G. If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial interest and investment rate contained in R2-8-118(A).
- K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3).

R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations

- A.** The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
 2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
 - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and
 - b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
 3. "Compensation" means the same as in A.R.S. § 38-711(7).
 4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
 5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
 - a. A change in the employee's primary job responsibilities; and
 - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
 - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
 6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
 7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
 8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B.** Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C.** Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D.** Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
 1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
 2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E.** Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F.** The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G.** If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a

Promotion.

- H.** If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I.** In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J.** Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial interest and investment rate contained in R2-8-118(A).
- M.** The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3).

38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.
2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.
3. "ASRS" means the Arizona state retirement system established by this article.
4. "Assets" means the resources of ASRS including all cash, investments or securities.
5. "Average monthly compensation" means:
 - (a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:
 - (i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.
 - (ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.
 - (b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before

and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(a) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(b) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(c) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(d) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(e) Amounts that are paid as salary or wages to a member for which employer contributions

have not been paid.

8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.

9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.

10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of

a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.

18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.

19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.

20. "Late retirement" means retirement after normal retirement.

21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.

22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.

23. "Member":

(a) Means any employee of an employer on the effective date.

(b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.

(c) Means any person receiving a benefit under ASRS.

(d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.

(e) Does not include any employee of an employer who is otherwise eligible pursuant to this

article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.

(f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:

(i) Is not otherwise an employee of an employer.

(ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.

(iii) Performs services under the primary direction or control of the employer.

24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

38-735. Payment of contributions; recovery of delinquent payments

A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.

B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.

C. Payments made by employers pursuant to this article or article 2.1, 7 or 8 of this chapter become delinquent after the due date prescribed in the board's rules and thereafter shall be

increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this article or article 2.1, 7 or 8 of this chapter, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer that is liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state. The employer shall record delinquent payments that are recovered or deducted from other monies pursuant to this subsection pursuant to applicable accounting and financial reporting standards.

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.

38-740. Return of contributions

A. A member whose membership commenced before July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of the contributions as follows:

1. If the member has less than five years of credited service, the member shall receive all of the member's contributions.

2. If a member has five or more years of credited service, the member shall receive the member's contributions and an amount equal to a percentage of the employer contributions paid on behalf of the member. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the

payment required by section 38-738, subsection B, paragraph 1. The percentage of employer contributions paid on behalf of the member shall be as follows:

- (a) 5.0 to 5.9 years of credited service, twenty-five per cent.
- (b) 6.0 to 6.9 years of credited service, forty per cent.
- (c) 7.0 to 7.9 years of credited service, fifty-five per cent.
- (d) 8.0 to 8.9 years of credited service, seventy per cent.
- (e) 9.0 to 9.9 years of credited service, eighty-five per cent.
- (f) 10.0 or more years of credited service, one hundred per cent.

3. Interest on the returned contributions as determined by the board.

B. A member whose membership commenced on or after July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of all of the member's contributions with interest as determined by the board.

C. Notwithstanding subsection B of this section, if a member has five or more years of credited service and the member is terminated solely because of an employer reduction in force by reason of a lack of monies or elimination of the member's position, the member is entitled to receive the amounts prescribed in subsection A of this section.

D. Withdrawal of contributions with interest constitutes a withdrawal from membership in ASRS and results in a forfeiture of all other benefits under ASRS.

E. If a member has received an overpayment pursuant to section 38-765 or 38-797.08, ASRS shall withhold the overpayment amount plus any required income tax withholding from the return of contributions.

F. Notwithstanding any other provision of this article, a member who has not received a return of contributions pursuant to this section may combine any two or more periods of service for purposes of determining the member's benefits.

G. If a member receives more than the amount due to a member pursuant to this section, the member shall repay the amount of the overpayment together with interest at the interest rate earned on ASRS investments as reported on a quarterly basis, but not less than the valuation rate established by the board, from the time of overpayment to the settlement of the debt.

[38-749. Employer termination incentive program; employer payment of actuarial cost; definition](#)

A. If a termination incentive program that is offered by an employer results in an actuarial unfunded liability to ASRS, the employer shall pay to ASRS the amount of the unfunded

liability. ASRS shall determine the amount of the unfunded liability in consultation with its actuary.

B. An employer shall notify ASRS if the employer plans to implement a termination incentive program that may affect ASRS funding.

C. If ASRS determines that an employer has implemented a termination incentive program that results in an actuarial unfunded liability to ASRS, ASRS shall assess the cost of the unfunded liability to that employer. If the employer does not remit full payment of all monies 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.

D. For the purposes of this section, "termination incentive program":

1. Means a total increase in compensation of thirty per cent or more that is given to a member in any one or more years before termination that are used to calculate the member's average monthly compensation if that increase in compensation is used to calculate the member's retirement benefit and that increase in compensation is not attributed to a promotion.

2. Means anything of value, including any monies, credited service or points that the employer provides to or on behalf of a member that is conditioned on the member's termination except for payments to an employee for accrued vacation, sick leave or compensatory time unless the payment is enhanced beyond the employer's customary payment.

DEPARTMENT OF ENVIRONMENTAL QUALITY (R-18-0605)

Title 18, Chapter 2, Article 7, Existing Stationary Source Performance Standards; Article 9,
New Source Performance Standards

Amend: R18-2-731; R18-2-901

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 5, 2018

AGENDA ITEM: E-6

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

FROM: Council Staff

DATE: May 22, 2017

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (R-18-0605)
Title 18, Chapter 2, Article 7, Existing Stationary Source Performance Standards;
Article 9, New Source Performance Standards

Amend: R18-2-731; R18-2-901

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Department of Environmental Quality (Department) seeks to amend two rules in A.A.C. Title 18, Chapter 2, related to air pollution control. The Department is proposing to adopt updated incorporations by reference of federal New Source Performance Standards (NSPS) for Municipal Solid Waste (MSW) landfills.

The Department is engaging in this rulemaking to reduce the amount of Nonmethane Organic Compound (NMOC) gas emissions from MSW landfills and provide an alternative methodology to ensure that surface emissions are below a specific threshold. The proposed changes are necessary for Arizona to retain its delegated authority from the U.S. Environmental Protection Agency (EPA) to implement and enforce NSPS and emission guidelines at MSW landfills within Arizona and to avoid a Federal Implementation Plan (FIP).

Section 731 was initially made in 1997 and has not been amended since. Section 901 was last amended in 2015. The Department received an exemption from the moratorium on March 3, 2017.

Proposed Action

- Section 731 - *Standards of Performance for Existing Municipal Solid Waste Landfills*: Subsection (A)(1) is amended to clarify that this section applies to any MSW landfill that was constructed or modified on or before July 17, 2014. In addition, subsection (C) is being amended to incorporate by reference EPA's most recent emission guidelines for MSW landfills.

- Section 901 - *Standards of Performance for New Stationary Sources*: A subsection is added to incorporate by reference EPA's most recent NSPS for MSW landfills.

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

Yes. The Department cites to general and specific authority for the rules, including A.R.S. § 49-404(A), under which the Department shall "maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act."

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:

In this rulemaking, the Department is proposing rule amendments that will align with new federal rules pertaining to the surface emissions thresholds at MSW landfills in Arizona. The Department has identified that the owners and operators of four MSW landfills in Arizona (Cinder Lake, La Paz County, Mohave County, and Copper Mountain) will be directly affected by this rulemaking.

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?

Yes. The Department indicates that this rulemaking is required to comply with federal requirements. No alternatives are available. If the Department does not implement these rules the same costs would occur and be enforced by the EPA. According to the Department, the EPA would likely require stricter emission limits and controls for MSW landfills in Arizona. Regardless, this rulemaking benefits the residents of Arizona and employees of MSW landfills due to improved air quality.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Department, publicly and privately owned MSW landfills and the public.

The Department anticipates minimal economic impact on itself because the current number of full-time employees in the Permits and Compliance Sections of the Air Quality Division at the Department are adequate to implement and enforce the proposed amendments. Additionally, costs to revise permits every five years will be reimbursed by the MSW landfills.

The Department identifies three public MSW landfills (Cinder Lake, La Paz County, and Mohave Valley) and one out of the five privately owned MSW landfills (Copper Mountain)

under the Department's jurisdiction may be required to install a gas control system. In addition, The national average cost to purchase and install a gas control system is approximately \$940,000. The Department anticipates that the new amendments will have minimal impact on employment at MSW landfills.

The Department notes that there will be no direct economic impacts on the public, but the public will benefit from improved air quality.

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

Yes. The Department indicates that it received two written comments on the rulemaking and no one attended the oral proceeding on April 16, 2018. The comments, along with the Department's responses, are on pages 8 and 9 of the Notice of Final Rulemaking. Council staff believes the Department 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. The Department indicates that no substantial changes have been made between the proposed rules and the final rules.

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 Department indicates that the rules incorporate federal standards by reference, and are not more stringent than federal law.

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.

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 Department indicates that it did not review or rely upon any study for the rulemaking.

11. Conclusion

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



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

APR 17 2018

Governor's Regulatory Review Council
Attn: Madam Chair Nicole Ong Colyer
State of Arizona
100 N. 15th Avenue, #305
Phoenix, Arizona 85007

Re: Amendments to Arizona Administrative Code, Title 18, Environmental Quality, Chapter 2.
Department of Environmental Quality-Air Pollution Control, Articles 7 and 9, for Municipal
Solid Waste Landfills

Dear Chairperson Nicole Ong Colyer,

The Arizona Department of Environmental Quality (ADEQ) has approved amendments to the Arizona Administrative Code relating to emission standards for Municipal Solid Waste landfills (MSW) for consideration by the Council on June 5, 2018. ADEQ is amending R18-2-731 to incorporate by reference the U.S. Environmental Protection Agency's (EPA) most recent Emissions Guidelines for existing MSW landfills. ADEQ is also amending R18-2-901 to incorporate by reference EPA's most recent New Source Performance Standards (NSPS) for new MSW Landfills. These amendments retain the State's delegated authority from EPA to permit and enforce the Emission Guidelines and NSPS for MSW landfills in Arizona.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. §41-1052 and A.A.C. R1-6-201:

I. Information Required by R1-6-201(A)(1)

1. The public record closed on April 16, 2018 at 5:00 p.m.
2. The amendments included in this rulemaking do not relate to a previous Five Year Review Report.
3. The rules do not contain a new fee.
4. The rules do not contain a fee increase.
5. The Department is not seeking an immediate effective date for these rules.

6. I certify that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
7. A full-time employee will not be required to implement and enforce the rule.
8. A list of all documents enclosed is provided in sections II and III.

II. List of Documents Enclosed under R1-6-201(A)

One electronic copy of the following is enclosed:

1. This cover letter.
2. The Notice of Final Rulemaking (NFRM), including the preamble, table of contents, and text of each rule.
3. A complete economic, small business and consumer impact statement, which is included in the preamble of the NFRM.
4. No written comments were received by ADEQ on the Notice of Proposed Rulemaking (NPRM). No testimony was offered at the April 16, 2018 public hearing on the NPRM. Therefore, no record or transcript of such comments or testimony are included in this submittal.
5. No analysis was submitted to ADEQ regarding the rules impact on the competitiveness of businesses in the State of Arizona as compared to the competitiveness of businesses in other states. Therefore, no such analysis is included in this submittal.

III. List of Documents Enclosed under A.A.C. R1-6-201(B)

One electronic copy of the following is enclosed:

1. The federal regulations to be incorporated by reference; specifically: 40 CFR 60, Subpart Cf and Subpart XXX.
2. The general and specific state statutes authorizing the rule, including relevant statutory definitions; specifically: A.R.S. §§ 49-104(A)(1), (A)(10), 49-421(definitions) and 49-425(A).
3. No term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.
4. All language in existing sections being amended is shown in full. It is therefore not necessary to include a separate copy of existing rule language pursuant to R1-6-201(B)(4).

Thank you for your timely review and approval. Please contact Elias Toon, Air Quality Division, at 602-771-4665, or Toon.Elias@azdeq.gov, if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to be "Bret Parke", with a stylized flourish extending to the right.

Bret Parke, Deputy Director
Enclosures (5)

cc: Michael Braun, AZ Administrative Rules Oversight Committee (via email)

NOTICE OF FINAL RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

PREAMBLE

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

| | |
|-----------|-------|
| R18-2-731 | Amend |
| R18-2-901 | Amend |

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

Authorizing statute: A.R.S. §§ 49-104(A)(10), 49-404(A)

Implementing statute: A.R.S. § 49-425(A)

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

Not applicable

 - 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 Rulemaking Docket Opening: 24 A.A.R. 514, March 9, 2018

Notice of Proposed Rulemaking: 24 A.A.R. 501, March 9, 2018

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

Name: Elias Toon

Address: Arizona Department of Environmental Quality

Air Quality Division, AQIP Section

1110 W. Washington St.

Phoenix, AZ 85007

Telephone: (602) 771-4665

Fax: (602) 771-2299

E-mail: Toon.Elias@azdeq.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:

Summary.

The Arizona Department of Environmental Quality (ADEQ) is proposing to amend R18-2-731 and R18-2-901 to incorporate by reference new federal rules applicable to Municipal Solid Waste (MSW) landfills within the State of Arizona.

The purpose of this rulemaking is to reduce the amount of Nonmethane Organic Compound (NMOC) gas emissions from MSW landfills and provide an alternative site-specific emissions threshold methodology to demonstrate whether or not surface emissions are below a specific threshold. These changes are necessary in order for Arizona to retain its delegated authority from the U.S. Environmental Protection Agency (EPA) to implement and enforce New Source Performance Standards (NSPS) and Emissions Guidelines at MSW landfills within the State of Arizona and avoid a Federal Implementation Plan (FIP).

The rules will be part of a plan submitted to the EPA pursuant to Clean Air Act (CAA) Section 111(d).

Background.

Amendments to R18-2-731: EPA's Emissions Guidelines for MSW Landfills that Ceased Construction, Reconstruction or Modification on or before July 17, 2014

ADEQ is amending R18-2-731 to incorporate by reference EPA's most recent emissions guidelines for MSW landfills.

Pursuant to Section 111 of the CAA, EPA promulgated Emissions Guidelines for existing MSW landfills on March 12, 1996, and subsequently amended them in 1998, 1999, and 2000, to make technical corrections and clarifications.

On July 17, 2014, EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) to request public input on controls and practices that could further reduce emissions from existing MSW landfills

and to determine if changes to the Emission Guidelines were appropriate.

On August 29, 2016, EPA updated and finalized the Emission Guidelines for existing MSW landfills, codified in 40 CFR Part 60, Subpart Cf (see 81 FR 59275). EPA reviewed the Emission Guidelines for MSW landfills that accepted waste after November 8, 1987, and commenced construction, reconstruction or modification on or before July 17, 2014. This action will result in additional reductions in landfill emissions, including methane, by lowering the NMOC emissions threshold at which a landfill must install controls from 50 megagrams per year (Mg/yr) to 34 Mg/yr. This action also provided an alternative site-specific emissions threshold methodology, referred to as “Tier 4,” to determine when a landfill must install and operate a Gas Collection and Control System (GCCS). The final rule became effective on October 28, 2016.

Landfills that close on or before September 27, 2017 will continue to be subject to the NMOC emissions threshold of 50 Mg/yr for determining when controls must be installed or can be removed. Pursuant to CAA Section 111(d), states must submit a state plan implementing the new guideline no later than May 30, 2017 in order to avoid a FIP issued by EPA. ADEQ will include the amended version of R18-2-731 in its state plan submitted to EPA.

Amendments to R18-2-901: EPA’s New Source Performance Standards for MSW Landfills that Commence Construction, Reconstruction or Modification after July 17, 2014

Along with the amendments to R18-2-731, ADEQ is also amending R18-2-901 to incorporate by reference EPA’s most recent New Source Performance Standards (NSPS) for MSW landfills.

Pursuant to Section 111 of the CAA, EPA must review NSPS, and if appropriate, revise standards of performance for new MSW landfills at least every eight years.

On July 17, 2014, EPA proposed a new NSPS based on its ongoing review. On August 29, 2016, EPA finalized the new NSPS, now codified at 40 CFR Part 60, Subpart XXX, which updated the standards of performance for MSW landfills that commence construction, reconstruction or modifications after July 17, 2014 (see 81 FR 59331). This action, too, will result in additional emissions reductions at landfills by lowering the emissions threshold at which a landfill must install controls from 50 megagrams per year (Mg/yr.) to 34 Mg/yr. This action also provided an alternative site specific emissions threshold methodology, referred to as “Tier 4,” to determine when a landfill must install and operate a Gas Collection and Control System (GCCS). The final rule became effective on October 28, 2016.

EPA promulgated the new Emissions Guidelines and NSPS simultaneously to update NMOC

emissions standards for both new and existing landfills. ADEQ will also incorporate by reference these new federal regulations at the same time in order to streamline the rulemaking process and ensure Arizona will retain its delegated authority from the EPA to implement and enforce NSPS and Emissions Guidelines at MSW landfills within the State of Arizona.

Regulatory Requirements.

To satisfy CAA requirements under Section 111(d), ADEQ must develop and submit to EPA a plan within nine months to provide for:

1. Established standards of performance for any existing source for any air pollutant;
 - (i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) [or emitted from a source category which is regulated under section 112] [or 112(b)] but
 - (ii) to which a standard of performance under this section would apply if such existing sources were a new source, and;
2. The implementation and enforcement of such standards of performance.

As part of the 111(d) plan and in order to provide a successful strategy that will bring MSW landfills within Arizona into compliance with federal law, ADEQ will submit these rules to EPA for approval, making them enforceable under State law.

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:

This rulemaking is incorporating by reference federal standards, and as such, 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:

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

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

The following discussion addresses each of the elements required for an Economic, Small Business, and Consumer Impact Statement (EIS) under A.R.S. §41-1055.

An identification of the rulemaking.

The rulemaking addressed by this EIS consists of amendments to R18-2-731 and R18-2-901 to incorporate by reference new federal standards for NMOC gas emissions from new and existing MSW landfills. The purpose of these amendments is to bring MSW landfills within the State of Arizona into compliance with new federal air quality standards for NMOC emissions.

The impact of the new federal air quality standards of NMOC gas emissions may require the owners and operators of MSW landfills to install gas control equipment in order to comply with new emissions limits. The lower emissions limits may result in compliance costs for some MSW landfills and minor administrative costs for ADEQ. It is important to note that if the state rulemaking does not occur, the same costs would still apply and be enforced by EPA instead of ADEQ via the Federal Implementation Plan (FIP).

The remainder of the changes are procedural or technical in nature and should have at most a trivial economic impact on the agency, businesses or consumers.

An identification of the persons who will be directly affected by, bear the cost of or directly benefit from the rule making.

The persons who will be directly affected by and bear the costs of this rulemaking are the owners and operators of MSW landfills within the State of Arizona. ADEQ has identified four MSW landfills, Cinder Lake, La Paz County, Mohave Valley, and Copper Mountain that may be required to install new gas control equipment.

The persons who will benefit from this rulemaking are the residents of Arizona, as well as the employees of MSW landfills, due to the improved air quality that will result from this rulemaking and the corresponding control technology MSW landfills may be implementing to lessen NMOC emissions.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency or other agencies directly affected by the implementation and enforcement of the rule making.

ADEQ estimates that the current number of full-time employees assigned in the Permits and Compliance Sections of the Air Quality Division at ADEQ are adequate to implement and enforce the NSPS and Emissions Guidelines for MSW landfills in Arizona. The costs of the rules to the implementing agency will therefore be minimal.

Furthermore, permits for MSW landfills are revised every five years, with minor revisions occurring periodically (as part of CAA Title V permitting requirements). Under A.A.C.

R18-2-301(2) and R18-2-326(B)(1)(a), the permit applicant—in this case, MSW landfills—will ultimately be required to reimburse ADEQ for the cost of revisions as part of permit fees.

ADEQ has permitting, enforcement, and compliance jurisdiction for most MSW landfill emissions in Arizona. Maricopa County Air Quality Department (MCAQD) is conducting its own rulemaking for landfills that fall under its jurisdiction. Therefore, the costs and benefits will be similar in Maricopa County.

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

The rules that are the subject of this preamble and EIS are necessary to comply with federal requirements under Section 111(d) of the CAA. ADEQ estimates there are currently 13 MSW landfills within its jurisdiction. Based on estimated emissions and landfill size, ADEQ has identified three publicly owned MSW landfills that may require installation of a gas control system including Cinder Lake Landfill, La Paz County Landfill, and Mohave Valley Landfill. The national average cost to purchase and install a gas control system is approximately \$940,000.

The new NSPS and Emissions Guidelines are expected to significantly reduce emissions of landfill gas and its components, which include methane, volatile organic compounds (VOCs), and hazardous air pollutants (HAPs). The EPA expects that the reduced emissions will result in improvements in air quality and lessen the potential for health effects associated with exposure to air pollution related emissions, and result in climate benefits due to reductions of methane.

ADEQ will also avoid the issuance of a FIP by the EPA under Section 111(d) of the CAA. A FIP would likely require more strict emission limits and controls for MSW landfills located in Arizona. Adoption of these rules will also allow Arizona to retain its delegated authority from the EPA to implement and enforce NSPS and Emissions Guidelines at MSW landfills within the State of Arizona.

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

The rules that are the subject of this preamble and EIS are necessary to comply with federal requirements under Section 111(d) of the CAA. ADEQ estimates there are currently five privately owned MSW landfills within its jurisdiction. Based on estimated emissions and landfill size, ADEQ has identified one MSW landfill, Copper Mountain Landfill, which may require

installation of a gas control system. The national average cost to purchase and install a gas control system is approximately \$940,000.00.

The new NSPS and Emissions Guidelines are expected to significantly reduce emissions of landfill gas and its components, which include methane, volatile organic compounds (VOCs), and hazardous air pollutants (HAPs). The EPA expects that the reduced emissions will result in improvements in air quality and lessen the potential for health effects associated with exposure to air pollution related emissions, and result in climate benefits due to reductions of methane.

ADEQ will also avoid the issuance of a FIP by the EPA under Section 111(d) of the CAA. A FIP would likely require more strict emission limits and controls for MSW landfills located in Arizona. Adoption of these rules will also allow Arizona to retain its delegated authority from the EPA to implement and enforce NSPS and Emissions Guidelines at MSW landfills within the State of Arizona.

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

ADEQ anticipates that employment impacts will be minor. ADEQ does not expect short- or long-term employment, production, or industrial growth in Arizona to be negatively impacted by this rulemaking. Furthermore, no sources are expected to close from the implementation of this rulemaking.

A statement of the probable impact of the rulemaking on small businesses.

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

Under A.R.S. § 41-1001(21) “Small business” means a concern, including its affiliates, which is [1] independently owned and operated, which is [2] not dominant in its field and which [3] employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

None of the MSW landfills within ADEQ’s jurisdiction qualify as a small business.

(b) The administrative and other costs required for compliance with the rule making.

Not Applicable

(c) A description of the methods that the agency may use to reduce the impact on small

businesses.

Not Applicable

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

Not Applicable

A statement of the probable effect on state revenues.

Since any costs associated with the rulemaking will be recoverable through air quality permit fees, there will be no net effect on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking—compliance with the federal NSPS and Emissions Guidelines for MSW landfills. The MSW landfills are the primary source of emissions and are responsible for installing adequate control technologies that will bring MSW landfills into compliance.

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

All data on which the MSW landfill rules are based can be located by referring to the Federal Register citations for each Subpart to be incorporated by reference. (Refer to the notice at 81 FR 59275 for the Emission Guidelines and the notice at 81 FR 59331 for the New Source Performance Standards). Copies of the Federal Register are available online at:

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

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

No substantive changes have been made to the rules.

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

the agency response to the comments:

On Monday, April 16, 2018, at 1:00 p.m. at ADEQ's Phoenix Offices, the Arizona Department of Environmental Quality conducted a public hearing on the NPRM. The public comment period for the rules began on Friday, March 16, 2018, and closed on Monday, April 16, 2018, at 5:00 p.m. No oral comments were received during the public hearing.

Prior to the start of the official public comment period, ADEQ received two comments during informal stakeholder outreach efforts. The Arizona Department of Environmental Quality (ADEQ) received written comments from a Senior Manager at Republic Services and from a partner at the law firm Troutman Sanders. These comments are summarized and addressed below.

I. Comment on complying with Clean Air Act deadlines

- 1) Comment: A stakeholder from Troutman Sanders expressed that while EPA was reconsidering the federal NSPS/NESHAPs for MSW landfills rulemaking, no state is required to submit a plan for such rule under CAA Section 111(d). The stakeholder commented that CAA Section 111(d) rules "do not require a state to 'comply,' rather, they give states a choice: They may either elect to prepare a state plan, or wait for a federal plan." Given EPA's reconsideration of the federal rule, as well as the alternative path of a federal plan, the stakeholder recommended that the state should choose to wait to conduct the state rulemaking and submitting its plan to EPA.

(Comment submitted by Troutman Sanders)

Response: On August 29, 2016 the Environmental Protection Agency (EPA) finalized rulemakings in the Federal Register (FR) updating the *Standards of Performance for Municipal Solid Waste Landfills* (81 FR 59332) and *Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills* (81 FR 59276). These rules became effective October 28, 2016 and were adopted in the code of federal regulation (CFR) under Title 40 CFR Part 60, Subpart XXX and Title 40 CFR Part 60, Subpart Cf respectively. The Arizona Department of Environmental Quality (ADEQ) was required to submit a plan to EPA establishing performance standards for MSW landfills by May 30, 2017; however, EPA announced its intention to stay the rules in May of 2017 and the stay was published in the federal register on May 31, 2017 (82 FR 24878). The 90-day stay expired on August 29th, 2017 without being renewed. Therefore, the requirements and deadlines in EPA's original rule promulgated on August 29, 2016 were in effect. In response, ADEQ is submitting a State plan to fulfill the federal requirements. While ADEQ appreciates the stakeholder's

recommendation to wait to submit a plan and instead be susceptible to a federal plan by EPA, ADEQ thinks it is the state's best interest to maintain primacy over implementing the new standards. EPA has yet to announce the possibility of another stay or a new timeline for plan submittals, and as such, states are required to submit these plans accordingly. To address stakeholder concerns and to maintain enforcement flexibility, ADEQ has amended these rules so that they are effective upon EPA's approval of the state plan.

II. Comment on contacting EPA for additional clarification

- 1) Comment: A stakeholder from Republic Services expressed that they wished for ADEQ to reach out to EPA for their input on the regulatory process for implementing the Subpart Cf emission guidelines before submitting a state plan. They also provided the contact information for a representative at EPA.

(Comment submitted by Republic Services)

Response: ADEQ has reached out to EPA on several levels and at best received informal verbal guidance. Until EPA proposes another stay or at least a timeline for a revision of the federal rule promulgated on August 29, 2016, ADEQ must comply with the federal rule as written. ADEQ has tied the effectiveness of the state rule and plan to EPA approval. ADEQ feels this will provide the greatest flexibility to stakeholders while still complying with the federal rule as written.

ADEQ thanks Republic Services and Troutman Sanders for participating in the public comment process.

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 ADEQ 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 rules subject of this rulemaking do not inherently require a permit. As Class I Major Sources pursuant to A.A.C. R18-2-302, MSW Landfills are permitted in accordance with Title V of the CAA and Title 49, Chapter 3 of the Arizona Revised Statutes. Therefore, the rules will be

incorporated into revisions of MSW Landfill Title V permits.

- 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 federal Clean Air Act and implementing regulations adopted by EPA apply to the subject of this rulemaking. This rulemaking is no more stringent than required by 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 rule:**

| <u>New Incorporations by Reference</u> | <u>Location</u> |
|--|-----------------|
| 40 CFR 60, Subpart Cf | R18-2-731 |
| 40 CFR 60, Subpart XXX | R18-2-901 |

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

Not Applicable

- 15. **The full text of the rules follows:**

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

ARTICLE 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS

R18-2-731. Standards of Performance for Existing Municipal Solid Waste Landfills

ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS

R18-2-901. Standards of Performance for New Stationary Sources

ARTICLE 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS

R18-2-731. Standards of Performance for Existing Municipal Solid Waste Landfills

- A. This Section applies to each municipal solid waste landfill (MSW landfill) at which:
1. Construction, reconstruction, or modification began on or before May 30, 1994 July 17, 2014; and
 2. Waste was accepted at any time since November 8, 1987, or additional design capacity is available for future waste deposition.
- B. For the purposes of this Section, “Municipal solid waste landfill or MSW landfill” means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA (Resource Conservation and Recovery Act) Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.
- C. MSW landfills covered by this Section shall comply with 40 CFR 60, Subpart ~~WWW~~, as modified by this subsection Cf, effective as of the date of EPA approval of the state plan under section 111(d) of the Act. 40 CFR 60, Subpart WWW, “Standards of Performance for Municipal Solid Waste Landfills,” is incorporated by reference in R18-2-901 will remain in effect until Arizona’s state plan implementing Subpart Cf is approved by EPA. 40 CFR 60, Subpart Cf “Emissions Guidelines and Compliance Times for Municipal Solid Waste Landfills,” as adopted on August 29, 2016 (and no future amendments) is hereby incorporated by reference as applicable requirements. MSW landfills may meet the requirements of Subpart Cf by complying with 40 CFR 60, Subpart XXX. 40 CFR 60, Subpart XXX “Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction or Modification After July 17, 2014,” is incorporated by reference in R18-2-901.
1. ~~Definitions. In addition to the definitions in 40 CFR 60.751, “Administrator” means the Director of the Department of Environmental Quality.~~
 2. ~~Reporting. Each MSW landfill shall comply with the reporting requirements of 40 CFR 60.757. The initial design capacity report and initial NMOC emission rate report shall be due 90 days after the effective date of this rule.~~
 3. ~~Design plan. An MSW landfill that is required to install a collection and control system shall submit a design plan for the system to the Director with a Standard Permit Application Form not later than 12 months after it submitted or should have submitted a NMOC emission rate report indicating emissions greater than 50 Mg per year. The design plan shall be prepared by a professional engineer registered in Arizona. The Director shall not approve the design plan if it does not meet the requirements of 40 CFR 60.752(b)(2)(ii).~~
 4. ~~System installation. An MSW landfill that is required to install a collection and control system~~

~~shall complete installation of the system not later than 30 months after the effective date of this rule.~~

- ~~5. An MSW landfill that first becomes subject to the collection and control system requirement after the effective date of this rule shall submit a design plan for the system to the Director not later than 12 months after it submitted or should have submitted an NMOC emission rate report indicating emissions greater than 50 Mg per year.~~

ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS

R18-2-901. Standards of Performance for New Stationary Sources

Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS), and all accompanying appendices, adopted as of June 28, 2013, unless otherwise specified, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart D - Standards of Performance for Fossil-Fuel- Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
3. Subpart Da - Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
4. Subpart Db - Standards of Performance for Industrial- Commercial-Institutional Steam Generating Units.
5. Subpart Dc - Standards of Performance for Small Industrial- Commercial-Institutional Steam Generating Units.
6. Subpart E - Standards of Performance for Incinerators.
7. Subpart Ea - Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced after December 20, 1989 and on or Before September 20, 1994.
8. Subpart Eb - Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996.
9. Subpart Ec - Standards of Performance for Hospital/Medical/ Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.
10. Subpart F - Standards of Performance for Portland Cement Plants.
11. Subpart G - Standards of Performance for Nitric Acid Plants.

12. Subpart Ga - Standards of Performance for Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011.
13. Subpart H - Standards of Performance for Sulfuric Acid Plants.
14. Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.
15. Subpart J - Standards of Performance for Petroleum Refineries.
16. Subpart Ja - Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.
17. Subpart K - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
18. Subpart Ka - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
19. Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
20. Subpart L - Standards of Performance for Secondary Lead Smelters.
21. Subpart M - Standards of Performance for Secondary Brass and Bronze Production Plants.
22. Subpart N - Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
23. Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
24. Subpart O - Standards of Performance for Sewage Treatment Plants.
25. Subpart P - Standards of Performance for Primary Copper Smelters.
26. Subpart Q - Standards of Performance for Primary Zinc Smelters.
27. Subpart R - Standards of Performance for Primary Lead Smelters.
28. Subpart S - Standards of Performance for Primary Aluminum Reduction Plants.
29. Subpart T - Standards of Performance for Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
30. Subpart U - Standards of Performance for Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
31. Subpart V - Standards of Performance for Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
32. Subpart W - Standards of Performance for Phosphate Fertilizer Industry: Triple Superphosphate Plants.
33. Subpart X - Standards of Performance for Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.

34. Subpart Y - Standards of Performance for Coal Preparation Plants.
35. Subpart Z - Standards of Performance for Ferroalloy Production Facilities.
36. Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
37. Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
38. Subpart BB - Standards of Performance for Kraft Pulp Mills.
39. Subpart CC - Standards of Performance for Glass Manufacturing Plants.
40. Subpart DD - Standards of Performance for Grain Elevators.
41. Subpart EE - Standards of Performance for Surface Coating of Metal Furniture.
42. Subpart GG - Standards of Performance for Stationary Gas Turbines.
43. Subpart HH - Standards of Performance for Lime Manufacturing Plants.
44. Subpart KK - Standards of Performance for Lead-Acid Battery Manufacturing Plants.
45. Subpart LL - Standards of Performance for Metallic Mineral Processing Plants.
46. Subpart MM - Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.
47. Subpart NN - Standards of Performance for Phosphate Rock Plants.
48. Subpart PP - Standards of Performance for Ammonium Sulfate Manufacture.
49. Subpart QQ - Standards of Performance for Graphic Arts Industry: Publication Rotogravure Printing.
50. Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.
51. Subpart SS - Standards of Performance for Industrial Surface Coating: Large Appliances.
52. Subpart TT - Standards of Performance for Metal Coil Surface Coating.
53. Subpart UU - Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.
54. Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
55. Subpart VVa - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced after November 7, 2006.
56. Subpart WW - Standards of Performance for Beverage Can Surface Coating Industry.
57. Subpart XX - Standards of Performance for Bulk Gasoline Terminals.
58. Subpart AAA - Standards of Performance for New Residential Wood Heaters.
59. Subpart BBB - Standards of Performance for Rubber Tire Manufacturing Industry.
60. Subpart DDD - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
61. Subpart FFF - Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.

62. Subpart GGG - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries.
63. Subpart GGGa - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.
64. Subpart HHH - Standards of Performance for Synthetic Fiber Production Facilities.
65. Subpart III - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
66. Subpart JJJ - Standards of Performance for Petroleum Dry Cleaners.
67. Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
68. Subpart LLL - Standards of Performance for Onshore Natural Gas Processing; SO₂ Emissions.
69. Subpart NNN - Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
70. Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.
71. Subpart PPP - Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants.
72. Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.
73. Subpart RRR - Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
74. Subpart SSS - Standards of Performance for Magnetic Tape Coating Facilities.
75. Subpart TTT - Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
76. Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries.
77. Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.
78. Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills.
79. Subpart XXX – Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014. This subpart and all accompanying appendices are adopted as of August 29, 2016 (and no future amendments), and are incorporated by reference as applicable requirements.
- ~~80.~~ ~~79.~~ Subpart AAAA - Standards of Performance for Small Municipal Waste Combustion Units for Which Construction Is Commenced after August 30, 1999, or for Which Modification or Reconstruction Is Commenced after June 6, 2001.
- ~~81.~~ ~~80.~~ Subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced after November 30, 1999, or for Which Modification or Reconstruction Is Commenced on or after June 1, 2001.
- ~~82.~~ ~~81.~~ Subpart EEEE - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.

83. ~~82.~~ Subpart IIII - Standards of Performance for Stationary Compression Ignition Combustion Engines.

84. ~~83.~~ Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.

85. ~~84.~~ Subpart KKKK - Standards of Performance for Stationary Combustion Turbines.

86. ~~85.~~ Subpart LLLL - Standards of Performance for New Sewage Sludge Incineration Units.

87. ~~86.~~ Subpart OOOO - Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY -

AIR POLLUTION CONTROL

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

The following discussion addresses each of the elements required for an Economic, Small Business, and Consumer Impact Statement (EIS) under A.R.S. §41-1055.

An identification of the rulemaking.

The rulemaking addressed by this EIS consists of amendments to R18-2-731 and R18-2-901 to incorporate by reference new federal standards for Nonmethane Organic Compound (NMOC) gas emissions from new and existing Municipal Solid Waste (MSW) landfills. The purpose of these amendments is to bring MSW landfills within the State of Arizona into compliance with new federal air quality standards for NMOC emissions.

The impact of the new federal air quality standards of NMOC gas emissions may require the owners and operators of MSW landfills to install gas control equipment in order to comply with new emissions limits. The lower emissions limits may result in compliance costs for some MSW landfills and minor administrative costs for the Arizona Department of Environmental Quality (ADEQ). It is important to note that if the state rulemaking does not occur, the same costs would still apply and be enforced by the Environmental Protection Agency (EPA) instead of ADEQ via a Federal Implementation Plan (FIP).

An identification of the persons who will be directly affected by, bear the cost of or directly benefit from the rule making.

The persons who will be directly affected by and bear the costs of this rulemaking are the owners and operators of MSW landfills within the State of Arizona. ADEQ has identified four MSW landfills, Cinder Lake, La Paz County, Mohave Valley, and Copper Mountain that may be required to install new gas control equipment.

The persons who will benefit from this rulemaking are the residents of Arizona, as well as the employees of MSW landfills, due to the improved air quality that will result from this rulemaking and the corresponding control technology MSW landfills may be implementing to lessen NMOC

emissions.

A cost benefit analysis of the following:

- **The probable costs and benefits to the implementing agency or other agencies directly affected by the implementation and enforcement of the rule making.**

ADEQ estimates that the current number of full-time employees assigned in the Permits and Compliance Sections of the Air Quality Division at ADEQ are adequate to implement and enforce the New Source Performance Standards (NSPS) and Emissions Guidelines for MSW landfills in Arizona. The costs of the rules to the implementing agency will therefore be minimal.

Furthermore, permits for MSW landfills are revised every five years, with minor revisions occurring periodically (as part of [Clean Air Act] CAA Title V permitting requirements). Under A.A.C. R18-2-301(2) and R18-2-326(B)(1)(a), the permit applicant—in this case, MSW landfills—will ultimately be required to reimburse ADEQ for the cost of revisions as part of permit fees.

ADEQ has permitting, enforcement, and compliance jurisdiction for most MSW landfill emissions in Arizona. Maricopa County Air Quality Department (MCAQD) is conducting its own rulemaking for landfills that fall under its jurisdiction. Therefore, the costs and benefits will be similar in Maricopa County.

- **The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rule making.**

The rules that are the subject of this EIS are necessary to comply with federal requirements under Section 111(d) of the CAA. ADEQ estimates there are currently 13 MSW landfills within its jurisdiction. Based on estimated emissions and landfill size, ADEQ has identified three publicly owned MSW landfills that may require installation of a gas control system including Cinder Lake Landfill, La Paz County Landfill, and Mohave Valley Landfill. The national average cost to purchase and install a gas control system is approximately \$940,000.

The new NSPS and Emissions Guidelines are expected to significantly reduce emissions of landfill gas and its components, which include methane, volatile organic compounds (VOCs), and hazardous air pollutants (HAPs). The EPA expects that the reduced emissions will result in improvements in air quality and lessen the potential for health effects associated with exposure to air pollution related emissions, and result in climate benefits due to reductions of methane.

ADEQ will also avoid the issuance of a FIP by the EPA under Section 111(d) of the CAA. A FIP would likely require more strict emission limits and controls for MSW landfills located in Arizona. Adoption of these rules will also allow Arizona to retain its delegated authority from EPA to implement and enforce NSPS and Emissions Guidelines at MSW landfills within the State of Arizona.

- **The probable costs and benefits to businesses directly affected by the rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rule making.**

The rules that are the subject of this EIS are necessary to comply with federal requirements under Section 111(d) of the CAA. ADEQ estimates there are currently five privately owned MSW landfills within its jurisdiction. Based on estimated emissions and landfill size, ADEQ has identified one MSW landfill, Copper Mountain Landfill, which may require installation of a gas control system. The national average cost to purchase and install a gas control system is approximately \$940,000.00.

The new NSPS and Emissions Guidelines are expected to significantly reduce emissions of landfill gas and its components, which include methane, volatile organic compounds (VOCs), and hazardous air pollutants (HAPs). The EPA expects that the reduced emissions will result in improvements in air quality and lessen the potential for health effects associated with exposure to air pollution related emissions, and result in climate benefits due to reductions of methane.

ADEQ will also avoid the issuance of a FIP by the EPA under Section 111(d) of the CAA. A FIP would likely require more strict emission limits and controls for MSW landfills located in Arizona. Adoption of these rules will also allow Arizona to retain its delegated authority from the EPA to implement and enforce NSPS and Emissions Guidelines at MSW landfills within the State of Arizona.

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

ADEQ anticipates that employment impacts will be minor. ADEQ does not expect short- or long-term employment, production, or industrial growth in Arizona to be negatively impacted by this rulemaking. Furthermore, no sources are expected to close from the implementation of this rulemaking.

A statement of the probable impact of the rulemaking on small businesses.

• **An identification of the small businesses subject to the rulemaking.**

Under A.R.S. § 41-1001(21) “Small business” means a concern, including its affiliates, which is [1] independently owned and operated, which is [2] not dominant in its field and which [3] employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

None of the MSW landfills within ADEQ’s jurisdiction qualify as a small business.

• **The administrative and other costs required for compliance with the rule making.**

Not Applicable

• **A description of the methods that the agency may use to reduce the impact on small businesses.**

Not Applicable

• **The probable cost and benefit to private persons and consumers who are directly affected by the rule making.**

Not Applicable

A statement of the probable effect on state revenues.

Since any costs associated with the rulemaking will be recoverable through air quality permit fees, there will be no net effect on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking—compliance with the federal NSPS and Emissions Guidelines for MSW landfills. The MSW landfills are the primary source of emissions and are responsible for installing adequate control technologies that will bring MSW landfills into compliance.

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

acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

All data on which the MSW landfill rules are based can be located by referring to the Federal Register citations for each Subpart to be incorporated by reference. (Refer to the notice at 81 FR 59275 for the Emission Guidelines and the notice at 81 FR 59331 for the New Source Performance Standards).

Copies of the Federal Register are available online at:

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

R18-2-731. Standards of Performance for Existing Municipal Solid Waste Landfills

- A. This Section applies to each municipal solid waste landfill (MSW landfill) at which:
1. Construction, reconstruction, or modification began before May 30, 1991; and
 2. Waste was accepted at any time since November 8, 1987, or additional design capacity is available for future waste deposition.
- B. For the purposes of this Section, "Municipal solid waste landfill or MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA (Resource Conservation and Recovery Act) Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.
- C. MSW landfills covered by this Section shall comply with 40 CFR 60, Subpart WWW, as modified by this subsection. 40 CFR 60, Subpart WWW, "Standards of Performance for Municipal Solid Waste Landfills," is incorporated by reference in R18-2-901.
1. Definitions. In addition to the definitions in 40 CFR 60.751, "Administrator" means the Director of the Department of Environmental Quality.
 2. Reporting. Each MSW landfill shall comply with the reporting requirements of 40 CFR 60.757. The initial design capacity report and initial NMOC emission rate report shall be due 90 days after the effective date of this rule.
 3. Design plan. An MSW landfill that is required to install a collection and control system shall submit a design plan for the system to the Director with a Standard Permit Application Form not later than 12 months after it submitted or should have submitted a NMOC emission rate report indicating emissions greater than 50 Mg per year. The design plan shall be prepared by a professional engineer registered in Arizona. The Director shall not approve the design plan if it does not meet the requirements of 40 CFR 60.752(b)(2)(ii).
 4. System installation. An MSW landfill that is required to install a collection and control system shall complete installation of the system not later than 30 months after the effective date of this rule.
 5. An MSW landfill that first becomes subject to the collection and control system requirement after the effective date of this rule shall submit a design plan for the system to the Director not later than 12 months after it submitted or should have submitted a NMOC emission rate report indicating emissions greater than 50 Mg per year. Historical Note Adopted effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1).

R18-2-901. Standards of Performance for New Stationary Sources

Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS), and all accompanying appendices, adopted as of June 28, 2013, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the

Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart D - Standards of Performance for Fossil-FuelFired Steam Generators for Which Construction is Commenced After August 17, 1971.
3. Subpart Da - Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
4. Subpart Db - Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units.
5. Subpart Dc - Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.
6. Subpart E - Standards of Performance for Incinerators.
7. Subpart Ea - Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced after December 20, 1989 and on or Before September 20, 1994.
8. Subpart Eb - Standards of Performance for Large Municipal Waste Combustors for Which Construction is Com- 18 A.A.C. 2 Arizona Administrative Code Title 18, Ch. 2 Department of Environmental Quality – Air Pollution Control December 31, 2017 Page 133 Supp. 17-4 menced after September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996.
9. Subpart Ec - Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.
10. Subpart F - Standards of Performance for Portland Cement Plants.
11. Subpart G - Standards of Performance for Nitric Acid Plants.
12. Subpart Ga - Standards of Performance for Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011.
13. Subpart H - Standards of Performance for Sulfuric Acid Plants.
14. Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.
15. Subpart J - Standards of Performance for Petroleum Refineries.
16. Subpart Ja - Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.
17. Subpart K - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
18. Subpart Ka - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
19. Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
20. Subpart L - Standards of Performance for Secondary Lead Smelters.
21. Subpart M - Standards of Performance for Secondary Brass and Bronze Production Plants.

22. Subpart N - Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.

23. Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.

24. Subpart O - Standards of Performance for Sewage Treatment Plants.

25. Subpart P - Standards of Performance for Primary Copper Smelters.

26. Subpart Q - Standards of Performance for Primary Zinc Smelters.

27. Subpart R - Standards of Performance for Primary Lead Smelters.

28. Subpart S - Standards of Performance for Primary Aluminum Reduction Plants.

29. Subpart T - Standards of Performance for Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.

30. Subpart U - Standards of Performance for Phosphate Fertilizer Industry: Superphosphoric Acid Plants.

31. Subpart V - Standards of Performance for Phosphate Fertilizer Industry: Diammonium Phosphate Plants.

32. Subpart W - Standards of Performance for Phosphate Fertilizer Industry: Triple Superphosphate Plants.

33. Subpart X - Standards of Performance for Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.

34. Subpart Y - Standards of Performance for Coal Preparation Plants.

35. Subpart Z - Standards of Performance for Ferroalloy Production Facilities.

36. Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.

37. Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.

38. Subpart BB - Standards of Performance for Kraft Pulp Mills.

39. Subpart CC - Standards of Performance for Glass Manufacturing Plants.

40. Subpart DD - Standards of Performance for Grain Elevators.

41. Subpart EE - Standards of Performance for Surface Coating of Metal Furniture.

42. Subpart GG - Standards of Performance for Stationary Gas Turbines.

43. Subpart HH - Standards of Performance for Lime Manufacturing Plants.

44. Subpart KK - Standards of Performance for Lead-Acid Battery Manufacturing Plants.

45. Subpart LL - Standards of Performance for Metallic Mineral Processing Plants.

46. Subpart MM - Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.

47. Subpart NN - Standards of Performance for Phosphate Rock Plants.

48. Subpart PP - Standards of Performance for Ammonium Sulfate Manufacture.

49. Subpart QQ - Standards of Performance for Graphic Arts Industry: Publication Rotogravure Printing.

50. Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.

51. Subpart SS - Standards of Performance for Industrial Surface Coating: Large Appliances.
52. Subpart TT - Standards of Performance for Metal Coil Surface Coating.
53. Subpart UU - Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.
54. Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
55. Subpart VVa - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced after November 7, 2006.
56. Subpart WW - Standards of Performance for Beverage Can Surface Coating Industry.
57. Subpart XX - Standards of Performance for Bulk Gasoline Terminals.
58. Subpart AAA - Standards of Performance for New Residential Wood Heaters.
59. Subpart BBB - Standards of Performance for Rubber Tire Manufacturing Industry.
60. Subpart DDD - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
61. Subpart FFF - Standards of Performance for Flexible Vinyl and Urethane Coating and Printing. Title 18, Ch. 2 Arizona Administrative Code 18 A.A.C. 2 Department of Environmental Quality – Air Pollution Control Supp. 17-4 Page 134 December 31, 2017
62. Subpart GGG - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries.
63. Subpart GGGa - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.
64. Subpart HHH - Standards of Performance for Synthetic Fiber Production Facilities.
65. Subpart III - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
66. Subpart JJJ - Standards of Performance for Petroleum Dry Cleaners.
67. Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
68. Subpart LLL - Standards of Performance for Onshore Natural Gas Processing; SO₂ Emissions.
69. Subpart NNN - Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
70. Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.
71. Subpart PPP - Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants.
72. Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.

73. Subpart RRR - Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.

74. Subpart SSS - Standards of Performance for Magnetic Tape Coating Facilities.

75. Subpart TTT - Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.

76. Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries.

77. Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.

78. Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills.

79. Subpart AAAA - Standards of Performance for Small Municipal Waste Combustion Units for Which Construction Is Commenced after August 30, 1999, or for Which Modification or Reconstruction Is Commenced after June 6, 2001.

80. Subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced after November 30, 1999, or for Which Modification or Reconstruction Is Commenced on or after June 1, 2001.

81. Subpart EEEE - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.

82. Subpart IIII - Standards of Performance for Stationary Compression Ignition Combustion Engines.

83. Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.

84. Subpart KKKK - Standards of Performance for Stationary Combustion Turbines.

85. Subpart LLLL - Standards of Performance for New Sewage Sludge Incineration Units.

86. Subpart OOOO - Standards of Performance for Crude Oil and N

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY -

AIR POLLUTION CONTROL

GENERAL AND SPECIFIC STATE STATUTES AUTHORIZING THE RULES

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality

policies. Beginning in 2014, the department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Assist the department of health services in recruiting and training state, local and district health department personnel.

15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

16. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

17. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph shall not be construed to adversely affect standards adopted by an Indian tribe under federal law.

18. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs

that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection H, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules shall:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. After July 20, 2011, the department shall establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

2. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-421. Definitions

In this article, unless the context otherwise requires:

1. "Air contaminants" includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind-borne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.

2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances by reason of their concentration and duration are or tend to be injurious to human, plant

or animal life, or cause damage to property, or unreasonably interfere with the comfortable enjoyment of life or property of a substantial part of a community, or obscure visibility, or which in any way degrade the quality of the ambient air below the standards established by the director.

3. "Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.

4. "Special inspection warrant" means an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to the director or his deputies, authorizing him to enter into or upon any public or private property for the purpose of making an inspection authorized by law.

49-425. [Rules; hearing](#)

A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

DEPARTMENT OF CHILD SAFETY (F-18-0602)

Title 21, Chapter 1, Article 3, Appeals and Hearing Procedures; Article 5,
Substantiation of Report Findings

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 5, 2018

AGENDA ITEM: F-1

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

FROM: Council Staff

DATE: May 22, 2018

SUBJECT: DEPARTMENT OF CHILD SAFETY (F-18-0602)
Title 21, Chapter 1, Article 3, Appeals and Hearing Procedures; Article 5,
Substantiation of Report Findings

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report:

The purpose of the Arizona Department of Child Safety (Department) is "to protect children as provided in section 8-451, Arizona Revised Statutes." Laws 2014, 2nd S.S., Ch.1, § 162. On May 29, 2014, the Legislature created the Department and the responsibilities and authority in Article 74 for child welfare agency were transferred from Department of Economic Security (DES) to the Department.

This five-year review report from the Arizona Department of Child Safety (Department) covers 22 rules in A.A.C. Title 21, Chapter 1. The fourteen rules in Article 3 relate to the appeals and hearing procedures. The eight rules in Article 5 relate to substantiating any report findings received by the Department's Protective Services Review Team.

The rules were made by final exempt rulemaking on November 30, 2015. This is the first five-year-review report on the rules.

Proposed Action

The Department indicates that it plans to update statutory references and address the other minor issues identified in this report, prior to the next five-year-review report.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites applicable general and specific statutory authority for the rules reviewed. Of particular significance is A.R.S. § 8-453(A)(5), under which the Department shall

“[a]dopt rules to implement the purposes of the [D]epartment and the duties and powers of the director.”

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Department indicates that no costs are associated with filing an appeal or hearing request. The Department believes that public benefits as the rules provide clear information regarding their rights to contest an adverse action or a proposed substantiation finding of abuse or neglect.

Key stakeholders are the Department, child welfare agencies, foster care providers, children in care, and the clients.

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?

Yes. The Department indicates that the benefits of the rules outweigh the costs and impose the least burden and costs to persons regulated by the rules while achieving the underlying regulatory objective.

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 criticisms of the rules since the rules became effective on November 30, 2015. A summary of the comments received during the exempt rulemaking process are summarized in the Notice of Final Exempt Rulemaking at 21 A.A.R. 2556, October 30, 2015.

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 effective in achieving their objectives and clear, concise, and understandable. In addition, the Department indicates that the rules are consistent with other rules and statutes, with the following exceptions:

- Section 501: The rule contains outdated references to A.R.S. § 8-811(L)(1) and § 8-201(24). The references should be changed to A.R.S. § 8-811(N)(1) and 8-201(25), respectively.
- Section 305: Subsection (A)(2) is inconsistent with A.R.S. § 8-506(A), which indicates that an applicant or a foster home license holder may request a hearing within 25 days after the mailing date on the notice of proposed denial, revocation or suspension. However, the rule only addresses revocation of a license. The rule should be amended to include denial and suspension.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are enforced as written, with the exception of Section 502. Subsection (B) requires the Department to send the initial notification letter to the alleged perpetrator within 14 days after the investigation is completed. However, due to the high volume of processed investigations and the lack of internal resources, the Department is unable to process the letters in a timely manner. The Department indicates that it is working diligently to rectify this issue by shifting internal resources for assistance.

6. 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 the rules are not more stringent than corresponding federal laws.

7. 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?

No. The rules do not require a permit or license. In addition, the rules in Chapter 1 are exempt from A.R.S. § 41-1037. Per A.R.S. § 41-1037(A)(5), there is an exception to the requirement to use a general permit for a permit, license or authorization issued pursuant to A.R.S. §§ 8-503 and 8-505.

8. Conclusion

The Department proposes to address the issues identified in this report prior to the next five-year-review report. The Department believes the issues are minor and do not require immediate attention. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval of this report.



Arizona Department of Child Safety

Douglas A. Ducey
Governor

Gregory McKay
Director

March 30, 2018

Ms. Nicole O. Colyer, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: Five-Year Review Report for A.A.C. Title 21, Chapter 1, Articles 3 and 5

Dear Ms. Colyer:

In compliance with A.R.S. § 41-1056, enclosed is the Department's five-year-review report of A.A.C. Title 21, Chapter 1, Article 3 Appeals and Hearing Procedures and Article 5 Substantiation of Report Findings. All of the rules in Articles 3 and 5 have been reviewed and none of them have been rescheduled for review under A.R.S. § 41-1056(H), or are being requested to expire under A.R.S. § 41-1056(J). The agency is in compliance with A.R.S. § 41-1091.

For any questions, please contact Angie Trevino, Rules Development and Policy Specialist, at (602) 255-2569, Angelica.Trevino@azdcs.gov or Kathryn Blades, Legislative Liaison, at 602-255-2527, Kathryn.Blades@azdcs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory McKay". Below the signature, the text "For Director McKay" is written in a smaller, cursive hand.

For Director McKay

Gregory McKay
Director

Enclosure

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year-Review Report

Title 21. Child Safety

Chapter 1. Department of Child Safety - Administration

Article 3. Appeals and Hearing Procedures

Article 5. Substantiation of Report Findings

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. §§ 8-145, 8-166, 8-506, 8-506.01, 8-521, 8-521.01, 8-811, 8-814

2. The objective of each rule:

Article 3. Appeals and Hearing Procedures

| Rule | Objective |
|---|---|
| R21-1-301. Definitions | The objective of this rule is to define the terms used in Article 3. |
| R21-1-302. Hearing Proceedings | The objective of this rule is to advise the public that pre-hearing and hearing proceedings are governed by the Arizona Revised Statute unless otherwise specified. |
| R21-1-303. Entitlement to a Hearing; Appealable and Not Appealable Actions | The objective of this rule is to advise of the opportunity for an applicant, licensee, or client to obtain a hearing to challenge an adverse action and to specify the actions that are not appealable. |
| R21-1-304. Computation of Time | The objective of this rule is to indicate how terms are being defined and used for the purposes of computation of time used in this Article. It clarifies how days are counted. |
| R21-1-305. Request for Hearing; Form; | The objective of this rule is to specify the time period and the formal and procedural requirement for filing an appeal, and the circumstances that will excuse the late filing of an appeal. |

| | |
|---|--|
| Time Limits; Pre-sumptions | |
| R21-1-306. Administration; Transmittal of Appeal | The objective of this rule is to establish the Department's time requirement to forward notification of appeals to OAH so that appeals can be processed without delay. |
| R21-1-307. Stay of Adverse Action Pending Appeal | The objective of this rule is to convey the general requirement that the Department will not carry out the adverse action until certain requirements are met and to specify under what circumstances an adverse action may be carried out before finality attaches to the adverse action notice. |
| R21-1-308. Hearings: Location; Notice; Time | The objective of this rule is to specify when and where hearings are scheduled after the Department has received a request to appeal and notification requirements of such hearings. |
| R21-1-309. Rescheduling a Hearing | The objective of this rule is to inform that an appellant may request a postponement or rescheduling of a hearing and advises of the procedures and timeframes for requesting a postponement or rescheduling of a hearing. |
| R21-1-310. Subpoenas | The objective of this rule is to explain when and how a party may request a subpoena. |
| R21-1-311. Parties' Rights | The objective of this rule is to inform parties to a hearing of their rights. |
| R21-1-312. Withdrawal of an Appeal | The objective of this rule is to establish the process for withdrawing a request for an appeal. |
| R21-1-313. Effect of the Decision | The objective of this rule is to inform that the Department's Director may opt to review and act upon the ALJ's decision and inform when a decision is effective. |
| R21-1-314. Judicial Review | The objective of this rule is to indicate that parties have a right to judicial review of an adverse final administrative decision and clarify the procedures that must be followed. |

Article 5. Substantiation of Report Findings

| Rule | Objective |
|---|--|
| R21-1-501. Definitions | The objective of this rule is to define the terms used in Article 5. |
| R21-1-502. Initial Notification Letter | The objective of this rule is to advise of the information PSRT must notify an alleged perpetrator and specify the time period in which PSRT must send the notification. |
| R21-1-503. Time Frame to Request an Administrative Hearing | The objective of this rule is to specify the time period for requesting an administrative hearing. It informs of circumstances in which an untimely request will be considered. |
| R21-1-504. PSRT Review | The objective of this rule is to specify PSRT's actions upon receipt of a timely administrative hearing request and information to include when sending a hearing notice. |
| R21-1-505. Exceptions to Right to a Hearing | The objective of this rule is to specify the conditions in which an alleged perpetrator does not have the right to request an administrative hearing and a time period to provide pending court information. |
| R21-1-506. Dependency Adjudication | The objective of this rule is to specify a circumstance in which a person's name will be entered in the Central Registry. |
| R21-1-507. Director Review and Further Appeal after the Administrative Hearing | The objective of this rule is to inform of timeframe for the Department's Director to review the ALJ's decision and inform the perpetrator of their right to appeal an administrative decision. |
| R21-1-508. Entry into the Central Registry | The objective of this rule is to specify the conditions in which a person's name and substantiation finding is or is not entered in the Central Registry. |

3. Are the rules effective in achieving their objectives?

Yes X

No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

| Rule | Explanation |
|------|-------------|
| | |

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

The Department has not received written criticisms of the rules since the implementation of the rules, which became effective on November 30, 2015. During the rulemaking activities in 2015, the Department provided opportunities for the public to submit their comments. Public comments are summarized in the Notice of Final Exempt Rulemaking published on October 30, 2015, under Volume 21, Issue 44 of the Arizona Administrative Register.

8. Economic, small business, and consumer impact comparison:

General

The Department adopted the rules covered in this five-year-review under its own title (Title 21. Child Safety) in November 2015. The Department did not prepare an Economic Impact Statement for these Articles when the rules were initially made as the rules were exempt from formal rulemaking procedures. Below is an assessment of the actual economic, small business, and consumer impact of the rules.

The rules under Article 3 pertain to appeal and administrative hearing requests from applicants, licensees, or clients who dispute an adverse action. The rules under Article 5 pertain to actions taken when the Department of Child Safety is proposing to substantiate findings of abuse or neglect against an alleged perpetrator. The Department's Protective Services Review Team (PSRT) administers reviews and appeals related to the proposed substantiated findings of child abuse or neglect. The purpose of the rules includes notifying those affected by an adverse action taken by the Department of their rights to formally dispute such action and details what actions are not appealable and provides the process to follow in submitting their disputes. The rules also outline the Department's process upon receipt of a request of an appeal.

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

In addition to employees of the Department of Child Safety, the persons directly impacted by these rules are individuals who are applicants for licensure as an adoption agency, a child welfare agency, a foster home, or clients receiving services from the Department such as children receiving medical services from CMDP, receiving a subsidy, or youth receiving services through the Independent Living Program/Transitional Independent Living Program. Others affected are clients who have been investigated on allegations of abuse or neglect and the Department proposes to substantiate allegation findings of abuse or neglect. The Department as well as applicants, licensees, and clients benefit from rules in Article 3 as the rules outline the rights to dispute an adverse action issued by the Department and outlines the Department's responsibilities. The Department as well as those investigated for allegations of child abuse or neglect benefit, from the rules in Article 5 as they outline the process when the Department is proposing to substantiate allegations of abuse or neglect and inform the alleged perpetrator of their rights to dispute the proposed substantiation finding.

The rules in Articles 3 and 5 have a positive economic impact because they explain to those affected by the rules of requirements and procedures for submitting a dispute to the Department of Child Safety when in receipt of an adverse action or a notice informing of a proposed substantiation of an allegation of child abuse or neglect.

Cost Benefit Analysis

Cost bearers and beneficiaries from these rules includes: Child Welfare Agencies; foster care providers; children in care; clients; and the Department. The Department does not anticipate allotting any new full-time employees or making changes to those currently allotted. The Department only anticipates hiring employees to fill vacancies as they arise. There are no political subdivisions affected by these rules. The benefits to others includes that the rules clearly explain the rights of those affected by an adverse action and of those receiving a notice informing them of the Department's intent to substantiate a finding of abuse or neglect. The rules also informs others and the Department of the expectations of all parties.

Article 3:

Rules are used by the Department to govern appeals and hearing procedures. There are no fees or other out-of-pocket costs to our clients associated with the filing of an appeal or participating in the hearing process. The cost to appellants is limited to their time and effort to file an appeal to an adverse action or time and attendance to a hearing.

The Department's organizational structure does not designate a specific unit to process and respond to appeals and hearings pertaining to Article 3. Instead responsibilities to process appeals and hearings are incorporated with other job responsibilities within the designed program unit. Program units impacted by these rules include: Comprehensive Medical and Dental Program (CMDP); Office of Licensing and Regulation (OLR); Adoption and Guardianship Subsidy; and Independent Living Program/Transitional Independent Living Program. Due to the organizational structure and units involved in processing requests for appeals and hearings, such costs are not readily quantifiable. The following sections provide a qualitative analysis of the costs and benefits for each of the cost bearers and beneficiaries.

CMDP:

Pertaining to CMDP services or benefits for non-Title XIX and Title XXI DCS clients, the Department has not received any appeals or requests for administrative hearings since the implementation of these rules. Additionally, from 2015 to present time, CMDP has processed 39 claim disputes from service providers of which none were appealed. On average CMDP membership for non-Title 19 is approximately 550 DCS clients. CMDP currently has one Manager assigned to process requests for appeals and hearings; however, these responsibilities are incorporated with other job duties.

OLR:

From 2016 to 2017, OLR took 113 adverse actions against foster homes and child welfare agencies. There were no adverse actions taken against adoption agencies. In response to the adverse actions taken, OLR received 37 appeal and administrative hearing requests.

Child welfare agencies are licensed by the Department to provide residential group care, emergency shelter care or provide services as a placing agency. Child welfare agencies generally contract with the Department. As of February 28, 2018, 146 child welfare agencies maintain active licenses of which 142 are group homes/shelters and four hold a license as a child placing agency. Foster care providers (foster homes) are licensed by the Department to provide foster care, generally in a family

setting. Foster care providers receive a set payment per child. As of January 2018, 4564 licensed foster care providers maintain active licenses. Additionally, as of February 28, 2018, 21 adoption agencies hold a license. OLR has assigned two staff members to process requests for appeals and hearings; however, the responsibilities to process requests for appeals and administrative hearings are incorporated with their other job duties.

Adoption Subsidy and Guardianship Subsidy:

Since the implementation of these rules, the Department has not received any appeals regarding adoption or guardianship subsidy. The subsidy unit has one Specialist and one Supervisor assigned to process appeal and hearing requests; however, responsibilities to process appeal and administrative requests are incorporated with other job duties.

Independent Living Program/Transitional Independent Living Program:

Since the implementation of these rules, the Independent Living Program/Transitional Independent Living Program has received six grievances and one administrative hearing request. Membership in programs vary day by day. On December 31, 2017, there were 1,701 youths participating in these programs. These youth programs have one staff member assigned to process appeal and hearing requests; however, responsibilities to process appeal and hearing requests are incorporated with other job duties.

Article 5:

Rules govern the Department's actions for substantiating an allegation of abuse or neglect and informing an alleged perpetrator of the process to request an Administrative Hearing. There is no fee or out-of-pocket cost to an alleged perpetrator for requesting a hearing. Those affected by a proposed substantiated finding benefit from the rules as the rules inform them of their due process rights.

During the calendar year 2016 (1/1/2016 to 12/31/2016), the Department processed 11,726 notices informing alleged perpetrators of their due process. In calendar year 2017 (1/1/2017 to 12/31/17), the Department processed 20,958 notices informing alleged perpetrators of their due process. Of these, the Department received 823 requests for appeal in 2016 and 814 requests for appeal in 2017. The Department also received 175 untimely appeal requests in 2016 and 159 untimely appeal requests in 2017. Additionally, PSRT processed the following appeals requested after the issue with

ineligibility was resolved (R21-1-505): 16 in 2016 and 22 in 2017. Hearings assigned in 2016 were 232 and 140 in 2017.

The Department's Protective Services Review Team consists of 11 full time employees (FTE) and four temporary employees: one Manager, one Assistant Manager, four temporary Legal Assistants, two Administrative Assistants, and seven PSRT Reviewers. This team is responsible for administering reviews and appeals related to the proposed substantiated findings of child abuse or neglect, which includes sending notifications and processing appeal and hearing requests. The Department does not anticipate allotting any new full-time employees or making changes to those currently allotted. The Department only anticipates hiring employees to fill vacancies as they arise.

The table below displays staffing expenditures for State Fiscal Year (SFY) 2017. PSRT expenditures for staffing to accomplish its functions include FTE salaries, benefits, and the contracted temporary staff.

| PSRT - State Fiscal Year 2017 | |
|--------------------------------|--------------|
| Expense Category | Amount |
| Salaries | \$467,151.18 |
| Benefits | \$167,339.14 |
| Contracted Temporary Employees | \$137,138.94 |
| Total | \$771,629.26 |

A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking

There is no known direct impact on private and public employment in businesses and political subdivisions of this state directly affected by these rules. The Office of Administrative Hearings is responsible for processing all the Department's requests for appeals and hearings.

A statement of the probable impact of the rules on small business

Identification of the small businesses subject to the rules

Small businesses subject to the rules in Article 3 may include applicants or licensees as foster care providers, child welfare agencies, and adoption agencies. There are no small businesses subject to the rules in Article 5.

The administrative and other costs required for compliance with the rules

There are no costs charged to child welfare agencies, adoption agencies, foster care providers, or clients for filing an appeal or requesting an administrative hearing.

A description of the methods that the agency may use to reduce the impact on small businesses

The Department is not proposing to amend the current rules under review. The impact on small businesses is positive as these rules inform applicants and licensees of their due process rights. It also informs them what to expect from the Department. There are no fees charged to appellants.

The probable costs and benefits to private persons and consumers who are directly affected by the rules

There are no costs associated with filing an appeal or hearing request. The benefits to private persons and consumers who are directly affected by the rules includes providing clear information regarding their rights to contest an adverse action or a proposed substantiation finding of abuse or neglect.

A statement of the probable effect on state revenues

There are no fees associated with these rules, the Department does not know of any direct or indirect effect of the rulemaking on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

The rules under review propose the least intrusive and least costly method of achieving the purpose in the existing rules.

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

Not applicable.

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?

This is the first review of the rules for Chapter 1, Articles 3 and 5. The rules in these Articles became effective on November 30, 2015.

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 the current rules pose the minimum cost and burden on businesses, the regulated public and on the general public.

12. Are the rules more stringent than corresponding federal laws?_ Yes ___ No X

Federal laws 45 CFR 205.10; 45 CFR 147 et seq. apply to this rulemaking. The rules are not more stringent than corresponding federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The Department has determined that A.R.S. § 41-1037 does not apply to these rules. The rules in Articles in 3 and 5 do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

The Department proposes to update references to Arizona Revised Statutes and correct rule not consistent with statute prior to the next five-year review report.

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- C. The Department shall take into account the CMDP Member's and out-of-home care provider's literacy and culture and make interpreters and translation services available to a CMDP Member at no cost.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-211. Consent for Treatment

- A. For a CMDP Member in voluntary placement only, the Department shall obtain consent of the parent or guardian for medical treatment involving surgery, general anesthesia, or blood transfusion of the CMDP Member, except for an emergency situation described in subsection (B).
- B. In case of an emergency, in which the CMDP Member in voluntary placement is in need of immediate hospitalization, medical attention, or surgery, and when the parents of a CMDP Member in voluntary placement cannot readily be located, the out-of-home care provider or the Child Safety Worker may give consent.
- C. For a CMDP Member under R21-1-201(6)(2) who is in the custody of the Department in an out-of-home placement, the Department shall, if possible, obtain the consent of the parent or guardian of the CMDP Member for surgery, general anesthesia, or blood transfusion.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-212. AHCCCS Fee Schedule

- A. CMDP shall pay a medical, dental, and health provider in accordance with the established AHCCCS fee schedule unless otherwise permitted by A.R.S. § 8-512, or in the contract between the Department and AHCCCS.
- B. A current AHCCCS fee schedule is available for a medical, dental, other health provider, and CMDP Member on the AHCCCS website, <http://www.azahcccs.gov/>. The Department shall also make the fee schedule available upon request.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-213. Claim Disputes and Appeals

- A. Claim disputes are governed by the Medicaid rules in 9 A.A.C. Chapter 34.
- B. Appeals by Title XIX and Title XXI eligible CMDP Members are governed by the Medicaid rules for State Hearings in 9 A.A.C. Chapter 34.
- C. Appeals by State-Only Members are governed by Article 3 of this Chapter.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

ARTICLE 3. APPEALS AND HEARING PROCEDURES**R21-1-301. Definitions**

The following definitions apply in this Article.

1. "Administration" means the Department's organizational unit responsible for licensing or providing benefits or services that are the subject of an adverse action. The administrations covered by this Article are: OLR, CMDP, ILP, TILP, adoption subsidy and guardianship subsidy.
2. "Administrative appeal" means a written request to the Department to contest an adverse action at an administrative hearing.
3. "Administrative Law Judge" or "ALJ" means the same as A.R.S. § 41-1092(1).
4. "Adoption agency" means the same as "agency" in A.R.S. § 8-101(2).
5. "Adoption subsidy" means the same as A.R.S. § 8-141(A)(1) and includes the non-recurring adoption expense program under A.R.S. § 8-161 et seq.
6. "Adverse action" means the denial, suspension, or revocation of a foster home license, Child Welfare Agency license, and adoption agency license, or a denial or reduction of guardianship subsidy, adoption subsidy, or CMDP, ILP, or TILP services.
7. "Appealable agency action" means the same as A.R.S. § 41-1092(3).
8. "Appellant" means the party who requests a hearing with the Department to challenge an adverse action under R21-1-303.
9. "Applicant" means a person who has applied for a license issued by the Department or for benefits or services provided by the Department. Benefits and services under this Article include CMDP, ILP, TILP, guardianship subsidy, and adoption subsidy.
10. "Child Welfare Agency" means a person licensed by the Department to engage in the activities defined in A.R.S. § 8-501(A)(1).
11. "CMDP" means the Comprehensive Medical and Dental Program described in A.R.S. § 8-512.
12. "Client" means a person who is licensed or receiving benefits or services from one or more of the Administrations covered by this Article.
13. "Corrective action plan" means a written proposal specified by OLR for a foster parent, or a Child Welfare Agency to remedy the violation of a licensing requirement within a specified time-frame.
14. "Department" or "DCS" means the Arizona Department of Child Safety.
15. "Foster Home" means the same as A.R.S. § 8-501(A)(5) and includes a "Group Foster Home" defined in A.R.S. § 8-501(A)(7).
16. "Foster parent" means the same as A.R.S. § 8-501, and includes anyone licensed for any type of foster home including a group home.
17. "Guardianship subsidy" means the program described in A.R.S. § 8-814.
18. "Independent Living Program" or "ILP" means an array of assistance and support services that DCS provides, contracts, refers, or otherwise arranges to help a person eligible under A.R.S. § 8-521, to transition to adulthood by building the skills and resources necessary to ensure personal safety, well-being, and permanency into adulthood.
19. "Licensee" means a person currently licensed as a foster parent, Child Welfare Agency, or adoption agency.
20. "Noncompliance Status" means the Department has received and substantiated a complaint or a Department representative has observed a violation of an adoption agency's license that does not endanger the health, safety, or well-being of a client.
21. "Office of Administrative Hearings" or "OAH" means the State's independent, quasi-judicial, administrative hearing body defined in A.R.S. § 41-1092.01.
22. "Office of Licensing and Regulation" or "OLR" means the administration in the Department responsible for licensing a foster home, Child Welfare Agency and adoption agency.

23. "Person" means an individual, partnership, joint venture, company, corporation, firm, association, society, or institution.
24. "Transitional Independent Living Program" or "TILP" means a program of services that provides assistance and support in counseling, education, vocation and employment, and the attainment or maintenance of housing to a person who qualifies under A.R.S. § 8-521.01.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-302. Hearing Proceedings

Unless otherwise expressly addressed, all pre-hearing and hearing proceedings in A.R.S. §§ 41-1092.01 through A.R.S. 41-1092.09 and 2 A.A.C. 19 shall apply.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-303. Entitlement to a Hearing; Appealable and Not Appealable Actions

- A. An applicant, licensee, or client, who disputes an adverse action may appeal and request an administrative hearing from the Department to challenge the adverse action as provided in this Article.
- B. The following adverse actions are appealable:
1. An adverse licensing action on:
 - a. A foster home license (A.R.S. § 8-506);
 - b. A Child Welfare Agency license (A.R.S. § 8-506.01); and
 - c. An adoption agency license (A.R.S. § 8-126).
 2. Any decision denying, reducing, or terminating:
 - a. An adoption subsidy (A.R.S. § 8-145);
 - b. Nonrecurring expenses (A.R.S. § 8-166);
 - c. A permanent guardianship subsidy (A.R.S. § 8-814);
 - d. Independent Living Program services (A.R.S. § 8-521);
 - e. Transitional Independent Living Program services (A.R.S. § 8-521.01); and
 - f. CMDP services or benefits for non-Title XIX and Title XXI eligible individuals. Title XIX and Title XXI eligible individuals must follow A.R.S. § 36-2903.01 and 9 A.A.C. 34, and may request an Administrative Hearing through the Arizona Health Care Cost Containment System.
- C. The following actions are not appealable:
1. An adverse action resulting from a uniform change in federal or state law, unless the Department has misapplied the law to the person seeking the hearing;
 2. Failure to obtain a Level One fingerprint clearance card;
 3. Imposition of noncompliance status for an adoption agency;
 4. Imposition of a corrective action plan for a foster home or a Child Welfare Agency license;
 5. Removal of a child from a placement;
 6. Failure to enter into a contract with a particular licensee or to place a child with a particular licensee; and
 7. Imposition of a provisional license for a foster home under A.R.S. § 8-509(D).
- D. A finding of child abuse or neglect in a DCS investigation is not appealable under this Article. A person may appeal a proposed finding of child abuse or neglect made in a DCS investigation of a person or a licensee as prescribed in A.R.S. § 8-811 and A.A.C. Title 21, Chapter 1, Article 5.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-304. Computation of Time

- A. In computing any time period:
1. The term "day" means a calendar day;
 2. The term "work day" means Monday through Friday, excluding Arizona state holidays;
 3. The date of the act, event, notice, or default from which a designated time period begins to run is not counted as part of the time period; and
 4. The last day of the designated time period is counted, unless it is a Saturday, Sunday, or Arizona state holiday.
- B. The mailing date is the date of the document, unless the facts show otherwise.
- C. A document mailed by the Department is deemed received by the addressee, five days after the mailing date to the addressee's last known address, unless the facts show otherwise.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-305. Request for Hearing: Form; Time Limits; Presumptions

- A. An appellant who wishes to appeal an adverse action shall file a written request within the following timeframes for a hearing with the Administration:
1. For a Child Welfare Agency, 20 days after receipt of the adverse action notice under A.R.S. § 8-506.01;
 2. For a foster home license revocation, 25 days after the mailing date of the adverse action notice under A.R.S. § 8-506;
 3. For all other appeals covered by this Article, 20 days after receipt of the adverse action notice.
- B. The Administration shall provide a form for requesting an administrative hearing and, upon request, shall assist an appellant in completing the form.
- C. An appellant shall include the following information in the request for an administrative hearing:
1. Name, address, and telephone number, and if applicable, e-mail address of the person subject to the adverse action;
 2. Identification of the Administration initiating the adverse action;
 3. A description of the adverse action that is the subject of the appeal;
 4. The date of the notice or letter of adverse action; and
 5. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.
- D. The Department shall not deny an appeal solely because the request does not include all the information listed in subsection (C), so long as the request contains sufficient information for the Department to determine the identity of the appellant.
- E. The Department shall forward the request for a hearing to OAH along with the information specified in A.A.C. R21-19-103.
- F. A request for hearing is deemed filed with the Department:
1. On the mailing date, as shown by the postmark, if sent first-class mail, postage prepaid, through the United States Postal Service to the Department; or
 2. On the date actually received by the Department, if not mailed as provided in subsection (F)(1).
- G. An appellant whose appeal is denied as untimely may request a review by the Department Director or designee. The request for review shall contain the following information:

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1. Whether the appellant received the adverse action notice, and if so, when the appellant received the notice;
 2. If the appellant did not receive the adverse action notice;
 - a. Whether the appellant moved recently, and if so, whether the appellant notified the Department of the new address;
 - h. The type of mail receptacle the appellant uses;
 - c. The person that collects or receives the appellant's mail besides the appellant such as the appellant's;
 - i. Spouse,
 - ii. Child, or
 - iii. Roommate.
 - d. Whether the appellant has or is currently experiencing problems in receiving mail such as:
 - i. Not receiving the appellant's own mail; or
 - ii. Receiving others' mail;
 3. If the appellant did not receive the adverse action notice, how the appellant found out about the adverse action; and
 4. The date the appellant made the appeal to the Department and the method sent such as:
 - a. Hand delivery,
 - b. U.S. Mail,
 - c. Fax, or
 - d. E-mail.
- II.** The Department Director or designee may determine that a document was timely filed if the appellant demonstrates that the delay in submission was due to any of the following reasons:
1. Department error or misinformation;
 2. Delay or other action by the United States Postal Service; or
 3. Delay caused by the appellant changing mailing addresses at a time when the appellant had no duty to notify the Administration of the change.
- I.** When the Administration receives a request for a hearing that was not filed on time, the Department Director or designee shall determine if the delay meets the criteria under subsection (H), and if so, shall schedule a hearing with OAH.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-306. Administration: Transmittal of Appeal

An Administration that receives a request for an appeal shall send the OAH a copy of the request and a copy of the adverse action notice within two work days of receipt of the request. The Administration shall include all information as specified in A.A.C. R2-19-103.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-307. Stay of Adverse Action Pending Appeal

- A.** If an applicant, licensee, or client does not appeal, the Department shall carry out the adverse action after the time for filing an appeal has passed, or sooner if the appellant waives the delay of action in writing.
- B.** If an applicant, licensee, or client does not appeal, the Department shall not carry out the adverse action if the appellant has an additional appealable adverse action notice that may result in the same adverse action proposed in the current notice, and the time for filing an appeal to the additional adverse action notice has not passed.
- C.** If an appellant timely appeals an appealable adverse action as provided in R21-1-305, the Department shall not carry out the

- adverse action until an administrative hearing has been held and the Director certifies a final administrative decision.
- D.** If an appellant timely appeals an adverse action under R21-1-305, the Department may immediately carry out the adverse action under the following circumstances:
1. The appellant expressly waives the delay of action;
 2. The appeal challenges an adverse action that is not appealable under R21-1-303(C);
 3. The appellant withdraws the request for hearing;
 4. The appellant fails to appear for the hearing; or
 5. The Department summarily suspends a license and makes all of the required findings under A.R.S. § 41-1064.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-308. Hearings: Location; Notice; Time

- A.** The hearing shall be held by OAH.
- B.** OAH may schedule a telephonic hearing or permit a witness to appear telephonically as granted in A.A.C. R2-19-114.
- C.** After receiving a request for an appeal, the Department shall hold the hearing:
 1. For a foster parent, 10 days after the Department receives the request for an appeal under A.R.S. § 8-506;
 2. For a Child Welfare Agency, 10 days after the Department receives the request for an appeal under A.R.S. § 506.01; and
 3. The time listed in A.R.S. § 41-1092.05(A)(2) for all other appeals.
- D.** The Department shall mail a notice of hearing to all interested parties at least 20 days before the scheduled hearing date, except where the hearing is held within the 10-day period specified in subsection (C)(1) and (C)(2). For hearings held within the 10-day period, the Department shall notify the parties by telephone and send a written notice at the earliest date practicable.
- E.** The notice of the hearing shall be in writing and shall include the information required in A.R.S. § 41-1092.05(D) and A.A.C. R2-19-104.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-309. Rescheduling a Hearing

- A.** An appellant may request to postpone or reschedule a hearing under R2-19-110.
- B.** Except in emergency circumstances, the appellant shall file a request for postponement at least five work days before the scheduled hearing date. OAH may deny an untimely request by considering the factors in A.A.C. R2-19-110.
- C.** When OAH reschedules a hearing under this Section or under A.A.C. R2-19-110, OAH notifies all interested parties in writing of the rescheduled hearing. The notice requirements in R21-1-305(A) do not apply to postponed or rescheduled hearings.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-310. Subpoenas

- A.** A party who wishes to have a witness testify at a hearing, or to offer a particular document or item in evidence, shall first attempt to obtain the witness or evidence by voluntary means.
- B.** A party shall request a subpoena under A.A.C. R2-19-106 and A.A.C. R2-19-113.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-311. Parties' Rights

A party to a hearing has the following rights:

1. The right to request a postponement of the hearing, as provided in A.A.C. R2-19-106(A)(2) and A.A.C. R2-19-110.
2. The right to a copy, before or during the hearing, of documents in the Department's file regarding the appellant, and documents the Department may use at the hearing, except documents:
 - a. Shielded by the attorney-client privilege;
 - b. Shielded by work-product privilege; or
 - c. Otherwise prohibited by federal or state confidentiality laws.
3. The right to file a motion with OAH to disqualify an ALJ from conducting a hearing as provided in A.R.S. § 41-1092.07(A);
4. The right to request subpoenas for witnesses and evidence as provided in A.A.C. R2-19-113;
5. The right to represent themselves or be represented by a licensed attorney, subject to any limitations prescribed in the Rules of the Supreme Court of Arizona, Rule 31;
6. The right to present evidence and to cross-examine witnesses; and
7. The right to further appeal, if dissatisfied with a decision.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-312. Withdrawal of an Appeal

- A. An appellant may withdraw an appeal at any time prior to the scheduled hearing by signing a written statement expressing the intent to withdraw. The Department shall make a form available for an appellant to withdraw an appeal. An appellant may also orally withdraw an appeal on the open record under A.A.C. R2-19-111.
- B. The Department shall sign the form and file the form at OAH.
- C. OAH shall vacate the hearing and return the matter to the Department under A.A.C. R2-19-111.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-313. Effect of the Decision

- A. If the Department Director reviews the ALJ's recommended decision the Director may agree or disagree with the recommended decision as permitted in A.R.S. § 41-1092.08(F).
- B. The Department Director's final administrative decision becomes effective on the day OAH certifies the Department Director's final administrative decision.
- C. If the Department Director chooses not to review the recommended decision, then the ALJ's recommended decision becomes the final administrative decision within the time-frame under A.R.S. § 41-1092.08.
- D. If the final administrative decision affirms the adverse action, the adverse action remains in effect until the appellant appeals and obtains a higher judicial decision reversing or vacating the final administrative decision.
- E. If a final administrative decision reverses the Department's adverse action, the Department shall not take the adverse action.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-314. Judicial Review

Any party adversely affected by a final administrative decision may seek judicial review as prescribed in A.R.S. § 1092.08 and A.A.C. R2-19-122.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

ARTICLE 4. FINGERPRINTING**R21-1-401. Definitions**

In this Article, unless the context otherwise requires:

1. "Applicant" means personnel who apply for a Level One fingerprint clearance card or a person who applies for a license or certificate issued by the Department and who A.R.S. § 46-141(I) requires to submit a full set of fingerprints for the purpose of obtaining a state and federal criminal records check.
2. "Criminal History" means the same as A.R.S. § 41-1750(Y)(5).
3. "Department" or "DCS" means the Arizona Department of Child Safety.
4. "Direct visual supervision" means within sight and hearing of a provider or personnel who have a Level One fingerprint clearance card.
5. "Juvenile" means an individual who is less than 18 years of age.
6. "Level One fingerprint clearance card" means the same as A.R.S. § 41-1758.07(A).
7. "License" means the whole or part of a Department permit, registration, or similar form of permission or authorization required by law, but does not include a foster home license.
8. "Person" means a corporation, company, partnership, firm, association or society, as well as a natural person.
9. "Provider" means a federally recognized Indian tribe, county, political subdivision, military base, or person with whom the Department contracts or licenses to provide services to juveniles.
10. "Personnel" means paid or unpaid persons who have or may have direct contact with juveniles or provide services directly to juveniles for a provider, including the provider, consultants, subcontractors, volunteers, students, and persons otherwise affiliated with the provider.
11. "Services directly to juveniles" means in-person interaction between a provider or personnel and a juvenile.
12. "Supervised" means that personnel are within direct visual supervision at all times when providing services of any nature directly to juveniles, including psychological, medical, or any ancillary services.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-402. Applicability

This Article covers any applicant, provider, and personnel. This Article does not apply to a foster home license or adoptive home certification.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-403. Time Period Prior To Results of Personnel Criminal Records Check or Issuance of a Level One Fingerprint Clearance Card

- A. A provider shall not allow an applicant who applies for a Level One fingerprint clearance card under A.R.S. § 46-141 to provide services directly to juveniles or have unsupervised contact with juveniles until the applicant obtains a valid Level One fingerprint clearance card.
- B. A provider shall not allow an applicant who is required to submit fingerprints to the Department under A.R.S. § 46-141(I) to provide services directly to or have unsupervised contact with juveniles unless the applicant clears the Criminal records check or obtains a valid Level One fingerprint clearance card, as applicable.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-404. Effect of No Criminal History Disclosed

A provider may allow an applicant or personnel who certifies under A.R.S. § 46-141(E), (F), and (G) that the applicant or personnel has not been convicted of or is awaiting trial for an offense listed in A.R.S. § 41-1758.07(B) or (C), or A.R.S. § 46-141(G), and who is not subject to registration as a sex offender in this state or any other jurisdiction, to provide supervised services directly to juveniles.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-405. Effect of Proscribed Criminal History Disclosed or Discovered

- A. A provider shall not allow an applicant or personnel who disclose or have been convicted of or are awaiting trial for an offense listed in A.R.S. § 41-1758.07(B) or (C), or A.R.S. § 46-141(G), or who are subject to registration as a sex offender in this state or any other jurisdiction to provide services directly to or have any contact with juveniles.
- B. A provider shall not allow an applicant or personnel who apply for a Good Cause Exception under A.R.S. § 41-619.55 to provide services directly to or have any contact with juveniles until the Good Cause Exception is granted.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-406. Effect of Denied, Expired, Revoked or Suspended Level One Fingerprint Clearance Card

Upon notification by the Department of the denial, expiration, revocation, or suspension of a Level One fingerprint clearance card, the provider shall immediately prohibit those personnel from providing services directly to or having any contact with juveniles.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

ARTICLE 5. SUBSTANTIATION OF REPORT FINDINGS**R21-1-501. Definitions**

The following definitions apply to this Article.

1. "Abuse" means the same as A.R.S. § 8-201(2).
2. "Amend the finding" means the same as A.R.S. § 8-811(L)(1).
3. "Case Record" means the Report of child abuse and neglect and related records the Department intends to submit at the hearing, including information from internal and external sources.

4. "Central Registry" means the information maintained by the Department of substantiated reports of child abuse or neglect for the purposes of A.R.S. § 8-804.
5. "Completed Investigation" means the case record and the proposed substantiated finding for the report of child abuse or neglect have been reviewed and approved by a supervisor and contains all of the information required to support a finding of proposed substantiation.
6. "Day" means a calendar day.
7. "Department" or "DCS" means the Arizona Department of Child Safety.
8. "Ineligibility Letter" means a notice sent from the Department via first class mail to a person alleged to have committed child abuse or neglect stating that the person is not entitled to an administrative hearing on the issue for one of the reasons listed in R21-1-505.
9. "Initial Notification Letter" means a notice sent from the Department via first class mail to an alleged perpetrator informing the person of the proposed finding of child abuse or neglect to be entered in the Central Registry and describing appeal rights to challenge the proposed finding.
10. "Legally excluded" means that an alleged perpetrator is not entitled to an administrative hearing under A.R.S. § 8-811, because:
 - a. A court or administrative law judge has made a finding of abuse or neglect based on the same allegations as in the proposed substantiated finding; or
 - b. A court has found that a child is dependent, or has terminated a parent's rights based upon the same allegations of abuse or neglect as in the proposed substantiated finding.
11. "Neglect" or "neglected" means the same as A.R.S. § 8-201(24).
12. "Perpetrator" means a person who has committed child abuse or neglect under the standards required for listing in the Central Registry.
13. "Probable Cause" means some credible evidence that abuse or neglect occurred.
14. "Proposed Substantiated Finding" means the Department has investigated and found probable cause to support an allegation of abuse or neglect sufficient to place the alleged perpetrator's name in the Central Registry, subject to the alleged perpetrator's right to notice and a hearing.
15. "PSRT" means the Department's Protective Services Review Team, that administers the process described in A.R.S. § 8-811 for review and appeal of proposed substantiated findings of child abuse or neglect.
16. "Report For Investigation" means the same as A.R.S. § 8-201(30).
17. "Substantiated Finding" means a proposed substantiated finding that:
 - a. An administrative law judge found to be true by a probable cause standard of proof after notice and an administrative hearing and the Department Director accepted the decision;
 - b. The alleged perpetrator did not timely appeal; or
 - c. The alleged perpetrator was not entitled to an administrative hearing because the alleged perpetrator was legally excluded as defined in subsection (11).

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-502. Initial Notification Letter

- A. When PSRT receives a proposed substantiated finding, PSRT shall notify an alleged perpetrator that:
1. The Department intends to substantiate the proposed finding and place the alleged perpetrator's name in the Central Registry;
 2. The alleged perpetrator may obtain a copy of the Report for Investigation; and
 3. The alleged perpetrator has the right to an administrative hearing before the person's name is entered in the Central Registry.
- B. The Department shall send the Initial Notification Letter to the alleged perpetrator no more than 14 days after the Completed Investigation.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-503. Time Frame to Request an Administrative Hearing

- A. An alleged perpetrator shall request a hearing on the proposed substantiated finding by the Department within 20 days from the mailing date of the Initial Notification Letter. The mailing date of the Initial Notification Letter is deemed the date of the letter.
- B. A request is timely if:
1. The request is postmarked no later than 20 days from the mailing date of the Initial Notification Letter;
 2. The request is not postmarked, and the request is stamped as received by the Department within 20 days of the mailing date of the initial notification letter;
- C. If the Department determines a hearing request is untimely, the Department shall enter the alleged perpetrator's name on the Central Registry unless:
1. The delay is due to Department error;
 2. The delay is due to the postal service; or
 3. There is evidence the delay is due to circumstances beyond the reasonable control of the alleged perpetrator.
- D. To request an administrative timeliness review, the alleged perpetrator shall submit:
1. An oral or written request to PSRT using the contact information on the initial notification letter;
 2. A statement explaining why the request is untimely; and
 3. Evidence of the cause of the untimeliness.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-504. PSRT Review

- A. Upon receiving a timely request for an administrative hearing, the PSRT shall within 60 days review the Case Record and shall:
1. Determine there is no probable cause that the alleged perpetrator committed child abuse or neglect and amend the proposed substantiated finding to unsubstantiated; or
 2. Determine there is probable cause and send the alleged perpetrator a hearing notice.
- B. The hearing notice shall include:
1. The date and time of the hearing;
 2. Notification of the right to request a settlement conference no later than 20 days before the hearing; and
 3. Notification of the right, upon oral or written request to the Department, to receive a copy of the case record, redacted as required by A.R.S. § 8-807.

Historical Note

New Section made by final exempt rulemaking at 21

A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-505. Exceptions to Right to a Hearing

- A. An alleged perpetrator shall be eligible to have an administrative hearing unless the alleged perpetrator is legally excluded.
- B. The Department shall mail an alleged perpetrator who is legally excluded an Ineligibility Letter within seven days of the PSRT determination of ineligibility for an appeal.
- C. The Department shall not schedule an administrative hearing if the alleged perpetrator:
1. Is a party in a pending civil, criminal, or administrative proceeding in which the same allegations of child abuse or neglect are at issue; or
 2. Has a pending juvenile proceeding in which the same allegations of child abuse or neglect are at issue.
- D. An alleged perpetrator whose hearing is not scheduled under subsection (C)(1) shall have six months from the date of the Ineligibility Letter to provide court documentation to the Department showing:
1. The results of the legal action;
 2. That the proceedings are still pending; or
 3. That the legal action did not determine the allegations of child abuse and neglect.
- E. If the alleged perpetrator does not contact the Department within six months of the date of the Ineligibility Letter with the information listed in subsection (D), the Department shall enter the person's name and the finding in the Central Registry.
- F. Notwithstanding subsection (E), if the alleged perpetrator contacts the Department after six months and provides the documentation in subsection (D) the alleged perpetrator may be entitled to a hearing subject to the provisions of R21-1-508.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-506. Dependency Adjudication

If the court in a proceeding described in A.R.S. § 8-811(F)(3), makes a finding of dependency based on child abuse or neglect against a person, the Department shall enter the person's name and the fact of the dependency finding in the Central Registry.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-507. Director Review and Further Appeal After the Administrative Hearing

- A. An administrative law judge's decision is not final until the Department Director reviews the decision. The Director has 30 days to review the administrative decision. The Director may accept, reject or modify an administrative law judge's decision under A.R.S. § 41-1092.08.
- B. A perpetrator may appeal the final administrative decision under A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-508. Entry into the Central Registry

- A. If the perpetrator does not appeal the proposed substantiation, PSRT shall enter the perpetrator's name and the substantiated finding in the Central Registry.
- B. If the administrative decision upholds the substantiation and the Department Director accepts the decision, PSRT shall enter the perpetrator's name and the substantiated finding in the Central Registry no later than 20 days after the date of the final administrative decision.

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- C. The Department shall not enter the person's name or the finding in the Central Registry if the:
 - 1. Final administrative decision holds that the allegations of abuse or neglect are not substantiated; or
 - 2. A court ruling described in R21-1-505(C) finds no abuse or neglect by the alleged perpetrator.
- D. If the court ruling described in R21-1-505(C) finds abuse or neglect by the perpetrator, the PSRT shall enter the person's name and the substantiated finding in the Central Registry.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

Arizona Revised Statutes

Title 8 - Child Safety

8-145. Appeals

An order denying, reducing or terminating a subsidy shall be appealable pursuant to title 41, chapter 6, article 6 and chapter 14, article 3.

8-166. Appeals

A person may appeal a department decision denying or reducing an application for reimbursement of nonrecurring expenses pursuant to title 41, chapter 6, article 6 and chapter 14, article 3.

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.
2. Provide transparency by being open and accountable to the public for the actions of the department.
3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.
4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.
5. Adopt rules to implement the purposes of the department and the duties and powers of the director.
6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.
7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.

8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.

9. Administer child welfare activities, including:

(a) Cross-jurisdictional placements pursuant to section 8-548.

(b) Providing the cost of care of:

(i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.

(ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.

(iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. Accept and disburse grants, matching funds 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.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.

4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-506. Denial, suspension or revocation of license; foster home; hearing; exception

A. The division may deny the application or suspend or revoke the license of any foster home for wilful violation of any provision of this article or failure to maintain the standards of the care prescribed by the division. Written notice of the grounds of the suspension or the proposed denial or revocation shall be given to the applicant or holder of the license. A copy of the written notice of the suspension or the proposed denial or revocation shall be forwarded to the agency that recommended the foster home for licensing. Within twenty-five days after the mailing date of the written notice of proposed denial, revocation or suspension, the applicant or holder may request a hearing in accordance with the rules of the division. If the hearing is requested it shall be held within ten days after the request, at which time the applicant or holder shall have the right to present testimony and confront witnesses.

B. A denial, suspension or revocation of a foster home license due to a failure to obtain or maintain a level I fingerprint clearance card as required by section 8-509 is not an appealable agency action.

8-506.01. Denial, suspension, revocation or change of license; child welfare agency; appeal

The division may deny the application or suspend or revoke the license of any child welfare agency for the wilful violation of any provision of this article or for failure to maintain the standards of the care prescribed by the division. Written notice of the grounds of the suspension or the proposed denial or revocation or any other material change in the license status, including provisional status, shall be given to the applicant or holder of the license. Within twenty days after receipt of written notice of a proposed denial, revocation, suspension or change, the applicant or holder may request a hearing in accordance with title 41, chapter 6, article 10. If the hearing is requested it shall be held within ten days of the request, at which time the applicant or holder has the right to subpoena witnesses, present testimony and confront witnesses.

8-521. Independent living program; conditions; eligibility; rules; case management unit; reports

A. The department or a licensed child welfare agency may establish an independent living program for youths who are the subject of a dependency petition or who are adjudicated dependent and are all of the following:

1. In the custody of the department, a licensed child welfare agency or a tribal child welfare agency.

2. At least seventeen years of age.

3. Employed or full-time students.

B. The independent living program may consist of a residential program of less than twenty-four hours a day supervision for youths under the supervision of the department through a licensed child welfare agency or a foster home under contract with the department. Under the independent living program, the youth is not required to reside at a licensed child welfare agency or foster home.

C. The director or the director's designee shall review and approve any recommendation to the court that a youth in the custody of the department be ordered to an independent living program.

D. For a youth to participate in an independent living program, the court must order such a disposition pursuant to section 8-845.

E. The department of child safety, a licensed child welfare agency or a tribal child welfare agency having custody of the youth shall provide the cost of care as required by section 8-453, subsection A, paragraph 9, subdivision (b), item (iii) for each child placed in an independent

living program pursuant to this section, except that the monthly amount provided shall not exceed the average monthly cost of purchased services for the child in the three months immediately preceding placement in an independent living program.

F. The department shall adopt rules pursuant to title 41, chapter 6 to carry out this section.

G. The department shall provide quarterly progress reports to the court and to local foster care review boards for each youth participating in the independent living program.

H. The local foster care review boards shall review at least once every six months the case of each youth participating in the independent living program.

I. The department shall establish an educational case management unit within the division consisting of two case managers to develop and coordinate educational case management plans for youths participating in the independent living program and to assist youths in the program to do the following:

1. Graduate from high school.
2. Pass the statewide assessment pursuant to section 15-741.
3. Apply for postsecondary financial assistance.
4. Apply for postsecondary education.

J. The department shall prepare a report on or before March 1 of each year that contains the following information for the previous calendar year:

1. The number of children in the program.
2. The number of children in the program by age and grade.
3. The number of children in the program by county of residence.
4. The number of children in the program who graduated from high school.
5. The number of children in the program who received a general equivalency diploma.
6. The number of children in the program enrolled in postsecondary education.

K. The department shall submit a copy of the report prescribed in subsection J of this section to the governor, the president of the senate, the speaker of the house of representatives and the secretary of state.

8-521.01. Transitional independent living program

A. The department may establish a transitional independent living program for persons who meet the following qualifications:

1. The person is under twenty-one years of age.
2. The person was the subject of a dependency petition, adjudicated dependent or placed voluntarily pursuant to section 8-806.

B. The department shall provide care and services that complement the person's own efforts to achieve self-sufficiency and to accept personal responsibility for preparing for and making the transition to adulthood. The care and services provided shall be based on an individualized written agreement between the department and the person.

C. Care and services may be provided as follows:

1. If the person was in out-of-home placement or in the independent living program when the person became eighteen years of age, the department may provide out-of-home placement, independent living or other transitional living support services.
2. If the person was in out-of-home placement in the custody of the department, a licensed child welfare agency or a tribal child welfare agency while the person was sixteen, seventeen or eighteen years of age, the department may provide transitional living support services.

8-811. Hearing process; definitions

A. The department shall notify a person who is alleged to have abused or neglected a child that the department intends to substantiate the allegation in the central registry pursuant to section 8-804 and of that person's right:

1. To receive a copy of the report containing the allegation.
2. To a hearing before the entry into the central registry.

B. The department shall provide the notice prescribed in subsection A of this section by first class mail or by personal service no more than fourteen days after completion of the investigation.

C. A request for a hearing on the proposed finding must be received by the department within twenty days after the mailing or personal service of the notice by the department.

D. The department shall not disclose any information related to the investigation of the allegation except as provided in sections 8-456, 8-807, 8-807.01 and 13-3620.

E. If a request for a hearing is made pursuant to subsection C of this section, the department shall conduct a review before the hearing. The department shall provide an opportunity for the accused person to provide written or verbal information to support the position that the department should not substantiate the allegation. If the department determines that there is no probable cause that the accused person engaged in the alleged conduct, the department shall amend the information or finding in the report and shall notify the person and a hearing shall not be held.

F. Notwithstanding section 41-1092.03, the notification prescribed in subsection A of this section shall also state that if the department does not amend the information or finding in the report as prescribed in subsection E of this section within sixty days after it receives the request for a hearing the person has a right to a hearing unless:

1. The person is a party in a pending civil, criminal or administrative proceeding in which the allegations of abuse or neglect are at issue.
2. The person is a party in a pending juvenile proceeding in which the allegations of abuse or neglect are at issue.
3. A court or administrative law judge has made findings as to the alleged abuse or neglect.
4. A court has found that a child is dependent or has terminated a parent's rights based on an allegation of abuse or neglect.

G. If the court or administrative law judge in a pending proceeding described in subsection F, paragraph 1 or 2 of this section does not make a finding of abuse or neglect and the matter is no longer pending in that forum, the person has a right to a hearing pursuant to subsection F of this section.

H. If the court or administrative law judge in a proceeding described in subsection F of this section has made a finding of abuse or neglect, the finding shall be entered into the central registry as a substantiated report.

I. If the department does not amend the information or finding in the report as prescribed in subsection E of this section, the department shall notify the office of administrative hearings of the request for a hearing no later than five days after completion of the review. The department shall forward all records, reports and other relevant information with the request for hearing within ten days. The department shall redact the identity of the reporting source before transmitting the information to the office of administrative hearings.

J. The office of administrative hearings shall hold a hearing pursuant to title 41, chapter 6, article 10, with the following exceptions:

1. A child who is the victim of or a witness to abuse or neglect is not required to testify at the hearing.
2. A child's hearsay statement is admissible if the time, content and circumstances of that statement are sufficiently indicative of its reliability.
3. The identity of the reporting source of the abuse or neglect shall not be disclosed without the permission of the reporting source.
4. The reporting source is not required to testify.
5. A written statement from the reporting source may be admitted if the time, content and circumstances of that statement are sufficiently indicative of its reliability.
6. If the person requesting the hearing fails to appear, the hearing shall be vacated and a substantiated finding of abuse or neglect shall be entered. On good cause shown, the hearing may be rescheduled if the request is made within fifteen calendar days after the date of the notice vacating the hearing for failure to appear.

K. On completion of the presentation of evidence, the administrative law judge shall determine if probable cause exists to sustain the department's finding that the parent, guardian or custodian abused or neglected the child. If the administrative law judge determines that probable cause exists to sustain the department's finding of abuse or neglect, the sustained finding shall be entered into the central registry as a substantiated report. If the administrative law judge determines that probable cause does not exist to sustain the department's finding, the administrative law judge shall order the department to amend the information or finding in the report.

L. When the department is requested to verify pursuant to section 8-807, if the central registry contains a substantiated report about a specific person, the department shall determine if the report was taken after January 1, 1998. If the report was taken after January 1, 1998, the department shall notify the requestor of the substantiated finding. If the report was taken before January 1, 1998, the department shall notify the person of the person's right to request an administrative hearing. The department shall not send this notification if the person was a party in a civil, criminal or administrative proceeding in which the allegations of abuse or neglect were at issue. The provisions of this section shall apply to the person's appeal.

M. The department shall provide the parent, guardian or custodian who is the subject of the investigation and the person who reported the suspected child abuse or neglect if that person is

the child's parent, guardian or custodian with a copy of the outcome of the investigation at one of the following times:

1. If the report is unsubstantiated.
2. If probable cause exists that abuse or neglect has occurred but a specific person is not identified as having abused or neglected the child.
3. After the time to request a hearing has lapsed pursuant to subsection C of this section without the department receiving a request for a hearing.
4. After a final administrative decision has been made pursuant to section 41-1092.08.

N. For the purposes of this section:

1. "Amend the finding" means to change the finding from substantiated to unsubstantiated.
2. "Amend the information" means to change information identifying the accused of having abused or neglected a child.

8-814. Permanent guardianship subsidy; offsets; discontinuation; annual review; appeals; definition

A. The department shall establish and administer an ongoing program of subsidized permanent guardianship. Subsidies shall be provided from monies appropriated to the department or made available to it from other sources for permanent guardianship purposes.

B. The department may provide a subsidy to an applicant on behalf of a child subject to the requirements of this section.

C. An applicant is not eligible for a subsidy until the applicant demonstrates that the child or a responsible person on behalf of the child has applied for all benefits to which the child is entitled from other state or federal programs.

D. The department shall determine the appropriate amount of the subsidy, which shall not exceed the maintenance payment allowable for an adoption subsidy pursuant to chapter 1, article 2 of this title. The amount of the subsidy shall be offset by benefits received pursuant to the programs described in subsection C of this section.

E. The department shall conduct an annual review of a subsidy to determine that the permanent guardian continues to be eligible for the subsidy and that the subsidy is for the appropriate amount.

F. A permanent guardian who is receiving a subsidy shall:

1. Cooperate with the department in the annual review process.

2. Notify the department in writing of any change:

(a) That would lead to discontinuance of the subsidy pursuant to subsection G of this section.

(b) In benefits being received from programs described in subsection C of this section within two weeks of the change.

(c) In address within two weeks of the change.

G. The department shall discontinue a subsidy if any of the following occurs:

1. The permanent guardianship terminates.

2. The child dies or does not reside with the permanent guardian.

3. The child reaches eighteen years of age, except that the department may continue the subsidy until the child's twenty-second birthday if the child is enrolled in and regularly attending school and has not received a high school diploma or certificate of equivalency.

4. The applicant fails to comply with any requirement in this section.

H. Any decision denying, reducing or terminating a permanent guardianship subsidy is appealable pursuant to title 41, chapter 6 and chapter 14, article 3.

I. Notwithstanding section 41-3102, this program does not include a specific expiration date.

J. For the purposes of this section, "applicant" means a person who is appointed as a permanent guardian pursuant to section 8-872 or as a provisional or successor permanent guardian pursuant to section 8-874 and who applies for a subsidy pursuant to this section.