

F-1

DEPARTMENT OF TRANSPORTATION (R-18-0301)

Title 17, Chapter 1, Article 7, Advertising and Sponsorship Program

New Article: Article 7

New Section: R17-1-701; R17-1-702; R17-1-703; R17-1-704; R17-1-705; R17-1-706;
R17-1-707; R17-1-708; R17-1-709; R17-1-710; R17-1-711; R17-1-712;
R17-1-713; R17-1-714



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: March 6, 2018

AGENDA ITEM: F-1

TO: Members of the Governor's Regulatory Review Council

FROM: Council Staff

DATE: February 20, 2018

SUBJECT: DEPARTMENT OF TRANSPORTATION (R-18-0301)
Title 17, Chapter 1, Article 7, Advertising and Sponsorship Program

New Article: Article 7

New Section: R17-1-701; R17-1-702; R17-1-703; R17-1-704; R17-1-705;
R17-1-706; R17-1-707; R17-1-708; R17-1-709; R17-1-710;
R17-1-711; R17-1-712; R17-1-713; R17-1-714

SUMMARY OF THE RULEMAKING

In this rulemaking, the Arizona Department of Transportation (Department) seeks to create one new article, containing 14 new rules, in A.A.C. Title 17, Chapter 1. The Department is engaging in this rulemaking to establish guidelines necessary to implement A.R.S. § 28-7316, which authorizes the Department to “establish a program to lease or sell advertising on nonhighway assets of the [D]epartment and to allow monetary sponsorship of facilities and other assets of the [D]epartment.”

The new article relates to the operation, modification, and termination of the Department's Advertising and Sponsorship Program. The Department indicates that the rules provide guidelines on the types of facilities the Department deems suitable for advertising and sponsorship activities, establish reasonable time, place, and manner restrictions, and ensure that the Department remains compliant with the Federal Highway Administration's (FHWA) policies on sponsorship agreements, sponsorship acknowledgement, and outdoor advertising control.

The Advertising and Sponsorship Program allows the Department to generate additional revenue for the state highway fund, as well as promote economic development by allowing businesses unique opportunities to directly market motor vehicle- and motorist-related goods, services, and safety information to the public. In addition, the rulemaking establishes standards for appropriate content and viewpoint-neutral advertising and sponsorships and ensures that the Department remains eligible for future federal highway grant funding.

The Department received an exemption from the Governor's Office on July 14, 2016.

Proposed Action

- **Article 17 – Advertising and Sponsorship Program:** The new article establishes standards and guidelines for the operation of the Advertising and Sponsorship Program.
- **Section 701 – Definitions:** The rule defines terms used throughout the Article.
- **Section 702 – Program Administration:** The rule allows the Department to operate the Advertising and Sponsorship Program or hire a contractor to administer the program. In addition, the rule indicates that the Department shall solicit offers for contracts pursuant to the Arizona Procurement Code.
- **Section 703 – Request for Advertising and Sponsorship; Approval or Denial; Timeframes:** The rule establishes that the Department has 10 days to provide written notice acknowledging receipt of the advertiser or sponsor's request, advertiser or sponsor has 15 days to respond to the written notice of an incomplete request, and the Department must render a decision within 20 days of acknowledging receipt of a complete request.
- **Section 704 – Advertising or Sponsorship Approval; Agreement; Lease:** The rule lays out criteria for an advertising or sponsorship agreement between the Department, or its contractor, and the advertiser or sponsor. Subsection (D) explicitly states that all agreements are public records under state law.
- **Section 705 – Advertising or Sponsorship Acknowledgement; Content Approval:** The rule clarifies that an advertiser or sponsor must obtain approval from the Department for all content displayed on Department's asset or facility.
- **Section 706 – Advertising or Sponsorship Acknowledgement; Prohibited Content:** The rule lists circumstances under which the Department shall deny a request for placement of advertising or sponsorship content. In addition, the Department provides types of content that the Department deems unacceptable for the program.
- **Section 707 – Denial of a Request for Advertising or Sponsorship; Administrative Hearing; Timeframes:** The rule provides notice to request an administrative hearing to advertisers or sponsors whose request for advertising is denied. The rule also establishes timelines for the administrative review process.
- **Section 708 – Program Administration; Pricing and Lease Procedures; Priority; Renewal:** The rule establishes factors that the Department must use when determining competitive pricing and rate schedules for advertisers.
- **Section 709 – Acknowledgement Signs and Plaques; Design and Placement:** The rule allows the Department to acknowledge sponsors with acknowledgement signs or plaques. Additionally, the rule sets design and placement criteria for the signs and plaques.
- **Section 710 – Criteria for Highway-related Acknowledgement Signs and Plaques:** The rule sets specific criteria for highway-related signs and plaques. In particular, the rule provides design guidelines if a graphic business logo is used to represent a sponsor.
- **Section 711 – Highway-related Sponsorship Restrictions and Allowances; Existing Leases and Agreement:** The rule provides guidelines for acknowledgement signs for sponsorships of rest areas and for sponsorships of travel service programs that are not site specific.

- **Section 712 – Program Eligibility and Compliance:** The rule requires all advertisers and sponsors to be in compliance with A.R.S. § 28-7316 and this Article.
- **Section 713 – Advertising or Sponsorship Agreement or Lease Termination:** The rule allows the Department to remove any existing content from the Department asset or facility, if the advertiser or sponsor becomes ineligible to participate in the program. The rule also holds the advertiser or sponsor responsible for any costs related to removal or reinstallation of signs.
- **Section 714 – Removal of Advertising or Sponsorship Content; Program Termination:** The rule allows the Department to relocate the acknowledgement sign or advertising or sponsorship content, due to construction activities that require the Department to temporarily remove signage or content.

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

Yes. As for general authority, A.R.S. § 28-366 authorizes the director of the Department to “adopt rules pursuant to [T]itle 41, [C]hapter 6 as the director deems necessary for enforcement of the provisions of the laws the director administers or enforces.”

As for specific authority, the Department cites to the following two statutes:

- A.R.S. § 28-7059, which authorizes the Department to adopt rules to implement the rest area sponsorship sign program.
- A.R.S. § 28-7316, which authorizes the Department to adopt rules to implement and administer a program to lease or sell advertising on non-highway assets and to allow monetary sponsorship of facilities and other assets of the Department.

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 establish a framework for the Department’s Advertising and Sponsorship Program that will allow private entities to purchase advertising on the non-highway assets of the Department or monetarily sponsor Department assets. The proceeds from these deals will help fund transportation infrastructure maintenance in Arizona.

Adding advertising to a public asset has two major barriers for efficacy and equity. First, the bidding process for businesses must be transparent and clear. Second, the general public must not be overwhelmed by the quantity of advertising. The Department’s rulemaking addresses these issues to minimize the costs imposed on stakeholders. The Department’s rules can always be amended in the future to improve their ability to regulate these problems.

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 rulemaking will provide additional revenue that will maintain transportation infrastructure in Arizona. Forgoing this revenue stream will cause hardship on the general public and businesses that utilize transportation infrastructure. Adding advertising to Department assets could be considered a cost to the general public, but this rulemaking is designed to minimize any adverse impacts to the general public. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Department, the Arizona Department of Public Safety (DPS), businesses that purchase advertising or sponsorship from the Department, and the general public.

The Department will benefit from this rulemaking because it provides an additional revenue stream that will help the Department maintain transportation infrastructure. The Department will incur minimal administrative costs as a result of this rulemaking.

DPS will benefit from this rulemaking because DPS uses the state highway fund. This rulemaking will generate additional revenue for the state highway fund.

The businesses that will be impacted are those that choose to utilize advertising opportunities through the Department. These businesses will benefit by having an additional method of advertising at their disposal. This rulemaking does not coerce any business into any type of activity. Participation is voluntary.

The general public will benefit from the transportation infrastructure improvements that will be funded by advertising revenue. The Department is promulgating these rules in order to provide a framework for advertising that will not impose significant costs on the general public.

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 rules and no one attended the oral proceeding held on August 29, 2017.

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

No. Between the proposed and final rules, a definition for “highway-related services” was added to Section 701 for clarification purposes. In addition, Section 704(B) was amended to remove the phrase “in the sole discretion of the Department,” since the phrase does not apply to all the subsections. Other minor technical changes were made at the request of Council staff. The final rules are not a substantial change from the proposed 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 are not more stringent than corresponding federal laws. The rules align with the most current FHWA policy directives, related to sponsorship of rest areas and sponsorship acknowledgement activities. Moreover, the Department provides a list of federal laws, rules, and guidelines applicable to the rulemaking on page 7 of the Notice of Final Rulemaking.

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

Yes. The rules require the Department to issue encroachment permits, under A.A.C. Title 17, Chapter 3, Article 5, to contractors to administer the advertising and sponsorship program. The permits allow contractors to install, maintain, or remove sponsorship content from a highway-related facility or asset. The Department indicates that a general permit is not technically feasible in such circumstances, since the Department must take multiple factors into consideration, such as the encroachment activity, the location, and the timing. Thus, the encroachment permits are not general permits and the exception in A.R.S. § 41-1037(A)(3) applies.

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 on any study for this rulemaking.

11. Conclusion

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

December 21, 2017

Ms. Nicole O. Colyer, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 305
Phoenix, AZ 85007

Re: 17 A.A.C. 1, Article 7 (New Article): Administrative Rules R17-1-701 through R17-1-714 – Advertising and Sponsorship Program

Dear Ms. Colyer:

The Arizona Department of Transportation submits the accompanying final rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with A.A.C. R1-6-201(A)(1):

- a. The rulemaking record closed on August 29, 2017, and the Department received no written comments;
- b. The rulemaking activity does not relate to a five-year review report;
- c. The rulemaking does not establish a new fee;
- d. The rulemaking does not increase an existing fee;
- e. An immediate effective date is not requested for these rules under A.R.S. § 41-1032;
- f. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;
- g. No new full-time employees are necessary to implement and enforce the rules;
- h. Documents included in this final rule package are as follows:
 - Signed cover letter;
 - Notice of Final Rulemaking;
 - Economic, Small Business and Consumer Impact Statement;
 - Written transcript of the oral proceeding;
 - General authorizing statutes, specific statutes, and definitions of terms; and
 - Request for, and approval of, the Department's exception from the rulemaking moratorium.

Sincerely,



Scott Omer
ADOT Deputy Director for Operations

Enclosures

NOTICE OF FINAL RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 7	New Article
R17-1-701	New Section
R17-1-702	New Section
R17-1-703	New Section
R17-1-704	New Section
R17-1-705	New Section
R17-1-706	New Section
R17-1-707	New Section
R17-1-708	New Section
R17-1-709	New Section
R17-1-710	New Section
R17-1-711	New Section
R17-1-712	New Section
R17-1-713	New Section
R17-1-714	New Section

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

Authorizing statutes: A.R.S. §§ 28-366 and 28-7045

Implementing statutes: A.R.S. §§ 28-7059, 28-7316, and 28-7913

3. The effective date of the rule:

As specified under A.R.S. § 41-1032(A), the rules will be effective 60 days after the Notice of Final Rulemaking is filed with the Office of the 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: 22 A.A.R. 3139, November 4, 2016

Notice of Proposed Rulemaking: 23 A.A.R. 2033, July 28, 2017

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

Name: John Lindley, Administrative Rules

Address: Arizona Department of Transportation
Government Relations and Policy Development Office
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007

Telephone: (602) 712-8804

E-mail: jlindley@azdot.gov

Web site: Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/about/GovernmentRelations.

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 Arizona Department of Transportation (ADOT) engages in this rulemaking to establish guidelines necessary for the implementation of Laws 2016, Chapter 66 (HB2250), specifically A.R.S. § 28-7316, which authorizes the Department to establish a program to:

Lease or sell advertising on non-highway assets of the Department; and

Allow monetary sponsorship of other facilities and other assets of the Department.

This rulemaking contains provisions relating to the operation, modification, and termination of the Department's Advertising and Sponsorship Program. The rules provide advertisers, sponsors, and other potential contractors clarification on the types of facilities the Department deems suitable for advertising and sponsorship activities, establish reasonable time, place, and manner restrictions necessary to protect the public health, peace, and safety, and ensure that the Department remains in compliance with the Federal Highway Administration's policies on sponsorship acknowledgment, sponsorship agreements, and outdoor advertising control.

The Department's primary reason for entering into advertising and sponsorship agreements, and in establishing designated advertising venues involving its non-highway assets and facilities, is to generate additional revenue for the state highway fund. A secondary purpose is to provide useful information to Department customers and patrons about motor vehicle- and motorist-related goods and services that may be of value to the public or further promote efforts to enhance the public safety. The Federal Highway Administration (FHWA) has urged state Departments of Transportation to seek sponsorship opportunities for programs currently facing funding challenges, such as traffic congestion management and traveler information systems. This rulemaking provides potential advertisers and sponsors with information regarding the Department's sponsorship agreements and how a sponsor may be acknowledged for

supporting or providing a service on behalf of the Department under a sponsorship agreement.

This rulemaking allows the Department to:

Generate additional funding for the state highway fund as provided under Laws 2016, Chapter 66 (HB2250);

Promote economic development by providing businesses with new and unique opportunities for the direct marketing of motor vehicle- and motorist-related goods, services, and safety information relevant to the motoring public;

Preserve the public health, peace, and safety by establishing and enforcing reasonable standards for appropriate content and viewpoint-neutral advertising and sponsorships that will not create a forum for public discourse or the exchange of viewpoints on any issue, subject matter, or topic;

Maintain compliance with federal requirements; and

Ensure continued eligibility for future federal highway grant funding.

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

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

Not applicable

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

As the nature of highway financing continues to evolve, private sector investment promises to be a significant source of revenue for individual states to meet their current and future highway construction and maintenance needs. For this reason, the Federal Highway Administration (FHWA) has recently updated its policy on Sponsorship Acknowledgment and Sponsorship Agreements within Highway Rights-of-way (FHWA Order 5160.1A, dated April 7, 2014) to assist the growing number of states seeking to create their own advertising and sponsorship programs.

A.R.S. § 28-7316, as added by Laws 2016, Ch. 66, § 3, provides that the Department may establish a program to lease or sell advertising on *non*-highway assets of the Department and to allow monetary sponsorship of facilities and other assets of the Department. The Department intends to implement and administer an Advertising and Sponsorship Program that will generate additional revenue for deposit into the state highway fund for use as authorized under A.R.S. § 28-6993. The additional revenue generated will assist the Department in providing other services critical to enhancing the safety and efficiency of Arizona highways. A.R.S. § 28-7316 also authorizes the Department to contract with a third party to administer and operate all or portions of its advertising and sponsorship program.

In establishing an Advertising and Sponsorship Program at the state level, the Department has worked closely with the FHWA to ensure compliance and consistency with all existing federal laws and programs

applicable to highway infrastructure funded, in whole or in part, with federal-aid. As required under FHWA Order 5160.1A, dated April 7, 2014, if federal-aid funds were used on a highway or facility for which a sponsored service is being provided, all monetary contributions received as part of that sponsorship agreement must be used for highway purposes. Sponsorship and acknowledgment opportunities will be made available on both highway and non-highway assets and facilities of the Department, while advertising opportunities under this program will be limited to *non*-highway assets and facilities of the Department or rest area facilities as prescribed under 23 U.S.C. 111.

Sponsorship

The Federal Highway Administration (FHWA) anticipates that sponsorship programs will grow in popularity and provide significant opportunities for highway agencies to secure the additional funding and critical support needed to build, operate, and maintain key highway facilities and services, including highway construction and maintenance activities, traffic management programs, rest area operation and maintenance, emergency service patrols, travel information services, parkway and interchange landscape maintenance, adopt-a-highway litter removal and other highway beautification programs.

Since the FHWA and A.R.S. § 28-7316 now provide the flexibility needed for the Department to pursue such innovative sources of financing for transportation system improvements, the Department anticipates that its advertising and sponsorship program will provide valuable benefits for the traveling public. Though not yet fully realized or quantifiable, a sponsor may provide a highway-related service, a monetary contribution toward a highway-related service, or a product that the Department or its contractor can use in providing a highway-related service. The funding source the Department would otherwise have used to provide that product or service is then made available for use in other critical transportation infrastructure projects.

One of the most common ways for the Department to recognize support provided by a sponsor is to arrange for the placement of an acknowledgment sign, which may display the name or logo of the sponsor to members of the public who may be interested in receiving information from or about the sponsor. Other options that can be used to recognize sponsors include acknowledgment on service patrol or maintenance vehicles, inclusion on outreach and educational materials, or identification on internet web sites or telephone messages such as those of 511 systems. The Department may use other opportunities for sponsor recognition or acknowledgment where possible, and appropriate, while minimizing the number of additional signs and informational load imposed on drivers.

Advertising

Advertising on *non*-highway assets and facilities of the Department may allow a sponsor to increase name recognition or commercial brand awareness by promoting motor vehicle- and motorist-related goods, services, and information directly to vehicle owners, operators, buyers, and sellers who are most likely interested in receiving such information.

Opportunities for advertising on Department designated non-highway assets and facilities are limited under

A.R.S. § 28-7316, and may provide unique opportunities for advertisers and sponsors to distribute promotional information or other consideration involving:

Motor vehicle-related goods or services, including the promotion of:

Arizona-licensed automobile dealers;

Automotive insurance;

Automotive parts;

Automotive repair;

Automotive towing companies;

Car wash and detailing services;

Motor clubs;

Roadside assistance; or

Specialty license plates issued by the Department; and

Motorist-related goods or services, including the promotion of:

Automobile clubs;

Campgrounds;

Convenience stores;

Department authorized third-party providers of title, registration, and driver license services;

Department programs, including Grand Canyon State Logo Signs;

Department publications, including *Arizona Highways Magazine*;

Gasoline and service stations;

Legal service providers for motorists;

Pharmacies open 24 hours;

Professional driver training schools licensed by the Department;

Public service announcements (organ donation/highway beautification);

Restaurants;

Road maps and Global Positioning System (GPS) services;

Telecommunications providers;

Tourist and community attractions; or

Vehicle-for-hire services (taxis, limousines, livery vehicles, and transportation network companies).

Costs incurred under the Department's advertising and sponsorship program will be paid under agreements negotiated between the Department and the advertisers or sponsors seeking to join the Department in providing motor vehicle- and motorist-related goods, services, and information directly to the motoring public throughout the state.

Additional administrative costs to the Department may result from sales, contracting, billing and payment processing, and program management. Operational costs for sign fabrication, sign construction and installation, sign repair, and sign removal will also be incurred. The Department anticipates that these costs

will be minimal, approximately equal to revenue (breakeven) for the first 12 to 18 months due to the initial infrastructure investment and then profitable thereafter, and no additional staffing is required.

Acknowledgment signs installed prior to the effective date of these rules will be subject only to the terms and conditions provided in any existing lease or agreement already in force between the Department and the advertiser or sponsor. Replacement of an existing acknowledgment sign for compliance with this Article is not required unless the currently installed acknowledgment sign is no longer serviceable or the advertiser or sponsor requests a modification of the sponsor name or logo that is consistent with these rules.

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

For clarification purposes, the definition of “highway-related services,” as provided under item 9, paragraph 1, was added to the definitions Section R17-1-701 and more examples were provided.

R17-1-704(B) was amended for clarification purposes by removing the phrase “in the sole discretion of the Department” from the introductory paragraph, since the phrase is not applicable to all of the listed items, and adding the phrase “as determined by the Department in its sole discretion” to the few listed items that actually require a determination to be made by the Department.

Additionally, minor grammatical and technical corrections were made at the request of the Governor’s Regulatory Review Council staff.

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

The Department received no public or stakeholder comments regarding this rulemaking.

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

The Department and the Federal Highway Administration are both obligated to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in interstate and primary highways, to promote the safety and recreational value of public travel, and to preserve Arizona’s natural beauty.

The Department is additionally responsible for balancing any new Advertising and Sponsorship Program requirements with all state and federal statutes, rules, and agreements currently in effect regarding Highway Beautification. The statutes and rules outlining the Department’s obligations under the federal Highway Beautification Act are provided under 23 U.S.C. 131, Control of Outdoor Advertising, Arizona Revised Statutes, Title 28, Chapter 23, Highway Beautification, and 17 A.A.C. 3, Article 5, Highway Encroachments and Permits and Article 7, Highway Beautification.

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:

If the Department utilizes a contractor to administer its advertising and sponsorship program, the

rules require the contractor to obtain an encroachment permit under 17 A.A.C. 3, Article 5, before installing, maintaining, or removing sponsorship content or copy from a highway-related facility or asset of the Department located along a state highway. The encroachment permit process allows the Department to closely analyze, monitor, approve, or disapprove placement of fixed or temporary sponsorship acknowledgment signs or plaques within a state highway right-of-way, or any activity requiring the temporary use of, or intrusion on, a state highway right-of-way. Issuance of a general permit for this purpose is not technically feasible, since some requirements for obtaining an encroachment permit are generally applicable to all encroachment activities while others are specific to the encroaching activity, the location under consideration, and the timing involved. Therefore, the Department believes that encroachment permits fall outside the criteria provided under A.R.S. § 41-1037 and are an exception to the general permit requirement.

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:

This rulemaking mirrors the most current FHWA policy directives, which serve to streamline and emphasize information pertaining to sponsorship acknowledgment, sponsorship of rest areas, and other sponsorship acknowledgment activities relative to any existing federal standards. The provisions in this rulemaking apply to new and modified installations of acknowledgment signs and are intended to promote a degree of national uniformity and consistency. Existing acknowledgment signs already installed will remain unchanged, except when a sponsor name or logo on an existing acknowledgment sign requires modification or the sign is no longer serviceable.

The Department and its contractor, as applicable, are obligated to follow all federal laws, rules, and guidelines relating to highways built or maintained with federal-aid funding. Although all of the following references apply to the subject matter of the rules, the rules are not more stringent than any of the federal laws, rules, or guidelines:

[Title 23, United States Code \(U.S.C.\), Section 109\(d\)](#), Standards for Federal-Aid Highways;

[23 U.S.C. 111\(b\)](#), Rest Areas;

[23 U.S.C. 131](#), Control of Outdoor Advertising;

[23 U.S.C. 156](#), Proceeds from the Sale or Lease of Real Property;

[23 U.S.C. 402](#), Highway Safety Programs;

[23 Code of Federal Regulations \(CFR\), Section 1.23\(b\)](#), Rights-of-way;

[Manual on Uniform Traffic Control Devices for Streets and Highways \(MUTCD\)](#), published by the Federal Highway Administration (FHWA) as prescribed under [23 CFR 655, Subpart E](#), Traffic Control Devices on Federal-Aid and Other Streets and Highways;

[23 CFR 655.603](#), Standards for Traffic Control Devices on Federal-Aid and Other Streets and Highways;

[23 CFR Part 750](#), Highway Beautification (for controlled routes);
[49 CFR 1.85](#), Delegations to Federal Highway Administrator; and
[FHWA Order 5160.1A](#), Policy on Sponsorship Acknowledgment and Agreements within the Highway Right-of-Way (April 7, 2014); and
[IRC Sec. 170\(c\)\(1\)](#) Charitable, etc., contributions and gifts.

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 to the Department.

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

This rulemaking incorporates no materials 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 rules were not previously made, amended, repealed or renumbered as an emergency rule.

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION
CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION
ARTICLE 7. ADVERTISING AND SPONSORSHIP PROGRAM

Section

- R17-1-701. Definitions
- R17-1-702. Program Administration
- R17-1-703. Request for Advertising or Sponsorship; Approval or Denial; Timeframes
- R17-1-704. Advertising or Sponsorship Approval; Agreement; Lease
- R17-1-705. Advertising or Sponsorship Acknowledgment; Content Approval
- R17-1-706. Advertising or Sponsorship Acknowledgment; Prohibited Content
- R17-1-707. Denial of a Request for Advertising or Sponsorship; Administrative Hearing; Timeframes
- R17-1-708. Program Administration; Pricing and Lease Procedures; Priority; Renewal
- R17-1-709. Acknowledgment Signs and Plaques; Design and Placement
- R17-1-710. Criteria for Highway-related Acknowledgment Signs and Plaques
- R17-1-711. Highway-related Sponsorship Restrictions and Allowances; Existing Leases or Agreements
- R17-1-712. Program Eligibility and Compliance
- R17-1-713. Advertising or Sponsorship Agreement or Lease Termination
- R17-1-714. Removal of Advertising or Sponsorship Content; Program Termination

ARTICLE 7. ADVERTISING AND SPONSORSHIP PROGRAM

R17-1-701. Definitions

In addition to the definitions provided under A.R.S. §§ 28-601, 28-7316, and 28-7901, the following terms apply to this Article:

“Acknowledgment plaque” means a sign panel intended only to inform the traveling public that a highway-related service, product, or monetary contribution was provided by the sponsor portrayed on the sign panel.

“Acknowledgment sign” means a sign intended only to inform the traveling public that a highway-related service, product, or monetary contribution was provided by the sponsor portrayed on the sign. Acknowledgment signs are a way of recognizing a company, business, or volunteer group that provides a highway-related service.

“Advertise” means to display or promote commercial brands, products, or services on authorized non-highway assets and facilities of the Department. Advertising may contain descriptive words or phrases providing information relating to promotional offers, location directions, amenity listings, telephone numbers, internet addresses (including domain names), slogans, or any other message essential in identifying the advertiser or sponsor, and informing the public of where the promoted products or services can be obtained.

“Advertiser” means a person, firm, or entity authorized to enter into a lease agreement with the Department or its contractor for providing a motor vehicle-, motorist-, or highway-related service or product to the

Department, or a monetary contribution to the state highway fund as provided under A.R.S. § 28-7316, in exchange for the ability to advertise on non-highway assets or facilities authorized by the Department.

“Advertising agreement” means a written lease agreement between an advertiser and the Department or its contractor allowing the advertiser to advertise on authorized non-highway assets and facilities of the Department.

“Contract” means a written agreement between a contractor and the Department, which describes the obligations and rights of both parties relative to the administration, operation, and maintenance of the advertising and sponsorship program, or an element thereof, when conducted on behalf of the Department.

“Contractor” means a person, firm, or entity that enters into a contract with the Department to administer, operate, and maintain on behalf of the Department the advertising and sponsorship program, or an element thereof, and that is responsible for conducting all aspects of the advertising and sponsorship program as outlined in the contract and this Article.

“Clear zone” means the unobstructed relatively flat area beyond the edge of a roadway that allows a driver to stop safely or regain control of a vehicle that leaves the main traveled way.

“Department” means the Arizona Department of Transportation as the owner of the highway on which signs are placed and the organization that directly receives the highway-related service, product, or monetary contribution from a sponsor, and to which the sponsorship policy and agreement applies.

“Driver distraction” means a driver’s inattention to the driving task at hand, resulting from internal or external events or actions.

“FHWA” means the Federal Highway Administration of the U.S. Department of Transportation.

“Highway” has the same meaning as prescribed in A.R.S. § 28-101, under “street or highway.”

“Highway-related service” means any activity customarily administered or delivered by the Department in the process of designing, building, operating, or maintaining key highway facilities, including, but not limited to, highway construction and maintenance activities, traffic management programs, rest area operation and maintenance, emergency response and service patrols, travel information services, parkway and interchange landscape maintenance, snow removal and ice control, dust abatement, or adopt-a-highway litter removal and other highway beautification programs.

“Highway right-of-way” means a strip of property, owned by the Department, within which a highway exists or is planned to be built. The highway right-of-way consists of all lands within the defined highway right-of-way limits, including the airspace above and below. This area typically includes: roadways; shoulders; sidewalks; rest areas; clear zones; and areas for drainage, utilities, landscaping, berms, and fencing.

“Interstate highway” or “Interstate highway system” has the meaning prescribed in A.R.S. § 28-7901, under “Interstate system.”

“Lease” or “Lease agreement” means a written agreement between the Department, or its contractor, and an advertiser or sponsor, which authorizes the advertiser or sponsor to advertise in, or otherwise sponsor, certain assets or facilities of the Department subject to the terms and conditions outlined in the agreement and this Article.

“MUTCD” means the most recent edition of the federal Manual on Uniform Traffic Control Devices for Streets and Highways, as published by the FHWA at www.mutcd.fhwa.dot.gov and amended by the Department in the Arizona Supplement to the Manual on Uniform Traffic Control Devices for Streets and Highways available on the Department’s web site at www.azdot.gov. The federal Manual on Uniform Traffic Control Devices for Streets and Highways is used by road managers nationwide for uniform installation and maintenance of traffic control devices.

“Primary highway” has the meaning prescribed in A.R.S. § 28-7901, under “Primary system.”

“Rest area” means an area or site established and maintained within, or adjacent to, the right-of-way of an interstate or primary highway under the supervision and control of the Department for the safety, recreation, and convenience of the traveling public.

“Serviceable” means an acknowledgment sign or plaque that is usable, in working order, and adequately fulfills its function.

“Sponsor” means a person, firm, or entity authorized to enter into a lease agreement with the Department or its contractor for sponsorship of a certain element of the Department’s operation of an asset or facility by providing a motor vehicle-, motorist-, or highway-related service or product to the Department, or a monetary contribution to the state highway fund as provided under A.R.S. § 28-7316, in exchange for placement of an acknowledgment sign or plaque to inform the public that a monetary contribution or a motor vehicle-, motorist-, or highway-related service or product was provided by the sponsor.

“Sponsorship agreement” means a written lease agreement between a sponsor and the Department or its contractor, which authorizes sponsorship of a certain element of the Department’s operation of an asset or facility.

R17-1-702. Program Administration

- A.** The Department may operate an advertising and sponsorship program, or may select a contractor to administer its advertising and sponsorship program, to generate additional revenue for the state highway fund as provided under A.R.S. § 28-7316.
- B.** If the Department utilizes a contractor to administer its advertising and sponsorship program, the Department shall solicit offers to select a contractor as provided under A.R.S. Title 41, Chapter 23, Arizona Procurement Code.
- C.** Use of highway right-of-way for advertising purposes is prohibited, except as provided in 23 U.S.C. 111(b), Rest Areas.
- D.** The Department or its contractor may provide opportunities for:

1. Advertisers to buy or lease advertising space or media on authorized non-highway assets and facilities of the Department;
2. Advertisers to buy or lease advertising space or media for conducting limited commercial activities at rest areas as permitted under 23 U.S.C. 111; and
3. Sponsors to provide monetary sponsorship of any element of the Department's operation of highway or non-highway assets and facilities by providing highway-related services or products to the Department, or monetary contributions to the state highway fund as provided under A.R.S. § 28-7316.

R17-1-703. Request for Advertising or Sponsorship; Approval or Denial; Timeframes

- A.** An advertiser or sponsor seeking to participate in the Department's advertising and sponsorship program by leasing or buying advertising on non-highway assets of the Department, or providing monetary sponsorship of highway-related facilities and assets of the Department, may complete and submit electronically to the Department or its contractor an online request form provided by the Department at www.azdot.gov.
- B.** The Department shall, within 10 calendar days of receiving a request under subsection (A) or (C), provide written notice to the advertiser or sponsor acknowledging receipt of the request:
 1. If the request is complete, the notice shall acknowledge receipt of a complete request and indicate the date the Department received the complete request; or
 2. If the request is incomplete, the notice shall indicate the current date and include an itemized list of all additional information the advertiser or sponsor must provide to the Department before the request can be considered complete and subsequently processed.
- C.** An advertiser or sponsor with an incomplete request shall respond to the notice provided by the Department under subsection (B)(2) within 15 calendar days after the date indicated on the notice or the Department may deny the request for advertising or sponsorship.
- D.** The Department shall render a decision on the request within 20 calendar days after the date on the notice the Department provided to the advertiser or sponsor under subsection (B)(1) acknowledging receipt of a complete request.
- E.** For the purpose of A.R.S. § 41-1073, the Department establishes the following time-frames:
 1. Administrative completeness review time-frame: 10 calendar days.
 2. Substantive review time-frame: 20 calendar days.
 3. Overall time-frame: 30 calendar days.
- F.** Advertisers and sponsors authorized by the Department or its contractor to participate in the Department's advertising and sponsorship program may lease or buy advertising on authorized assets or facilities of the Department, conduct limited commercial activities at rest areas, or provide monetary sponsorship of authorized facilities and assets of the Department if the advertiser or sponsor:
 1. Is a provider of motor vehicle- or motorist-related goods or services, as provided under A.R.S. § 28-7316;
 2. Is authorized to enter into a lease agreement with the Department or its contractor for:
 - a. Advertising on, or sponsorship of, non-highway assets or facilities of the Department;
 - b. Advertising on, or sponsorship of, rest area facilities as permitted under 23 U.S.C. 111; or

- c. Sponsorship of highway-related assets or facilities of the Department; and
3. Is otherwise eligible under this Article to participate in the Department's advertising and sponsorship program.

R17-1-704. Advertising or Sponsorship Approval; Agreement; Lease

- A. An advertiser or sponsor seeking to participate in the Department's advertising and sponsorship program shall first negotiate and enter into a written advertising or sponsorship agreement with the Department or its contractor.**
- B. An advertising or sponsorship agreement made between the Department, or its contractor, and the advertiser or sponsor may be of any duration up to five years and shall:**
 1. Provide economic viability and a net benefit to the public, in the discretion of the Department;
 2. Include provisions for maintenance and removal of physical elements of the advertising or sponsorship acknowledgment after the agreement expires or the advertiser or sponsor withdraws;
 3. Identify any specific highway sites, corridors, or operations supported by any monetary contribution provided by a sponsor, if the sponsor is making a monetary contribution;
 4. Be approved by the FHWA Division Administrator before it becomes effective, if the agreement involves the Interstate highway system;
 5. Require that the authorized advertiser or sponsor comply with all state laws prohibiting discrimination based on race, religion, color, age, sex, national origin, and other applicable laws;
 6. Include a termination clause, where applicable, based on:
 - a. Safety concerns, as determined by the Department in its sole discretion;
 - b. Interference with the free and safe flow of traffic, as determined by the Department in its sole discretion;
 - c. Construction activities approved or initiated by the Department in the area, which may pose conflicts with advertising or sponsorship activities, including construction and maintenance projects, road widening, detour, diversion, rebuilding, re-routing, temporary or permanent closure because of weather or other damage, land-use changes, changes in applicable federal or state laws, or any similar reason for termination of the agreement;
 - d. Payment default by the advertiser or sponsor;
 - e. Noncompliance with contractual terms or provisions of the agreement; or
 - f. A determination, made by the Department in its sole discretion, concluding that the agreement is not in the public interest;
 7. Include only the types of advertisers and sponsors deemed acceptable under applicable state and federal laws;
 8. Recommend that for assets and facilities on which federal-aid funds were not used, the advertising or sponsorship revenue or monetary contributions received as part of the agreement be used for highway purposes as permitted under state law;

9. Require that for assets and facilities on which federal-aid funds were used, the advertising or sponsorship revenue or monetary contributions received as part of the agreement be used only for highway purposes;
 10. Require that for rest areas authorized for limited commercial activities under 23 U.S.C. 111, the advertising or sponsorship revenue or monetary contributions received as part of the agreement be used to cover the costs of acquiring, constructing, operating, and maintaining rest areas;
 11. Require the advertiser or sponsor to certify that the advertiser or sponsor will comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and contractual requirements of the Department's advertising and sponsorship program and maintain content- and viewpoint-neutral standards as provided under this Article; and
 12. Require the advertiser or sponsor to acknowledge that it is the Department's intent to preserve the assets and facilities of the Department as a non-public forum, notwithstanding the placement in those locations of the advertising or sponsorship content referenced in the agreement.
- C.** The Department or its contractor shall provide a copy of any signed advertising or sponsorship agreement to the advertiser or sponsor if approved.
- D.** All advertising or sponsorship agreements under this Article are public records under A.R.S. Title 39, Chapter 1, Article 2, and A.R.S. Title 41, Chapter 1, Article 2.1. The Department or its contractor shall not agree with any advertiser or sponsor to keep confidential, or not to disclose upon receipt of a public record request, either the content of any written agreement under this Article, or the negotiations leading up to any agreement, nor the advertiser's proprietary or trade information disclosed to the Department or its contractor in the course of negotiating or executing such written agreement, without regard to whether such information, including a logo, slogan, or other commercial message is claimed to be confidential, proprietary, trademarked, copyrighted, or otherwise registered by the advertiser, sponsor, or agent with rights reserved.

R17-1-705. Advertising or Sponsorship Acknowledgment; Content Approval

- A.** An advertiser or sponsor authorized by the Department or its contractor to participate in the Department's advertising and sponsorship program shall obtain Department approval of all advertising or sponsorship content, in accordance with the standards provided under this Article and any other applicable law, before the advertising or sponsorship content appears on any asset or facility the Department designates for advertising or sponsorship opportunities under this Article or any other advertising or sponsorship agreement.
- B.** An advertiser or sponsor shall deliver to the Department or its contractor for installation, advertising content, images, or copy that meets all of the Department's content standards and technical specifications provided under this Article for the appropriate creation and display of advertising or sponsorship acknowledgment.
- C.** For advertising on, or sponsorship of, authorized assets and facilities of the Department, the Department or its contractor shall:
1. Review all advertising or sponsorship acknowledgment content for compliance with the standards provided under this Article and any other applicable law; and
 2. Ensure that advertising or sponsorship acknowledgment content does not interfere with the business activities of the Department and its customers.

D. For monetary sponsorship of an element of the Department's operation of any highway-related assets and facilities, the Department or its contractor shall additionally:

1. Ensure that the most current FHWA policy directives are followed when using signs to acknowledge the provision of highway-related services under both corporate and volunteer sponsorship programs;
2. Ensure that all signs are of reasonable size, as determined by the Department, and as specified in the provisions of the MUTCD and FHWA policy directives; and
3. Ensure that all sign message content is simple, brief, and minimizes driver distraction.

R17-1-706. Advertising or Sponsorship Acknowledgment; Prohibited Content

A. The Department shall deny a request for placement of advertising or sponsorship content if the content is not for a motor vehicle-, motorist-, or highway-related service, message, or product, unless otherwise authorized by law. The Department shall also deny a request for placement of advertising or sponsorship content if the content is likely to:

1. Conflict with other advertising or sponsored content for which the Department has an existing or pending agreement;
2. Conflict with the reasonable standards established by the Department under this Section;
3. Conflict with the time, place, manner, or duration of the Department's office or highway operations or security;
4. Create an unreasonable risk of injury to a person or risk of damage to property;
5. Interfere with the work of a Department employee or the business or mission of the Department; or
6. Result in non-compliance with other applicable statutes or rules.

B. The Department, in its sole discretion, may reject types of advertising or sponsorship content that the Department deems unacceptable for its advertising and sponsorship program. Content deemed unacceptable by the Department for its advertising and sponsorship program shall include any advertising or sponsorship content that:

1. Contains obscene, pornographic, indecent or explicit messages, or contains an offensive level of sexual overtone, innuendo, or double entendre, as determined by the Department in accordance with community standards in the vicinity of where the content would be displayed;
2. Contains profanity or vulgar language;
3. Creates non-compliance with federal and state nondiscrimination laws, regulations, and policies;
4. Denigrates a person, organization, or group based on gender, sexual orientation, religion, race, ethnic or political affiliations, or national origin;
5. Includes the name of a person, organization, or group that has historically advocated the denigration of other persons or groups based on gender, sexual orientation, religion, race, ethnic or political affiliations, or national origin;
6. Includes or concerns political or election campaign messaging, imagery, or symbolism;

7. Promotes, identifies, highlights, criticizes or endorses a political candidate, political party or movement, or any ballot measure circulated, submitted, or scheduled for consideration by the electorate of any jurisdiction, past, present, or future;
8. Promotes, identifies, highlights, suggests, or expresses an opinion for or against contraceptive products or services, or any services related to abortion, euthanasia, or counseling with regard to any of these products, services, procedures, or issues;
9. Promotes, identifies, highlights, suggests, or expresses an opinion for or against the use of alcohol, tobacco, marijuana or firearms;
10. Promotes, identifies, highlights, or suggests the use of a drug or other substance in violation of either federal or state law or regulations; or
11. Promotes, identifies, highlights, or suggests the use of products or services with sexual overtones such as massage parlors, escort services, or establishments for show or sale of X-rated, adult-only, or pornographic movies, products or services, or for establishments primarily featuring nude or semi-nude images or performances.

R17-1-707. Denial of a Request for Advertising or Sponsorship; Administrative Hearing; Timeframes

- A.** An advertiser or sponsor whose request for placement of advertising or sponsorship content is denied by the Department may request an administrative hearing in connection with the denial, or any other action taken by the Department in connection with the rules prescribed in this Article, as provided under A.R.S. Title 41, Chapter 6, Article 6, and Article 5 of this Chapter, as applicable.
- B.** If the Department denies a request for placement of advertising or sponsorship content, the Department or its contractor shall send written notification of the denial to the advertiser or sponsor within five calendar days of denying a request for placement of advertising or sponsorship content. Written notification of the denial shall state:
 1. The Department's reason for the denial, citing all applicable supporting statutes or rules;
 2. The advertiser's or sponsor's right to request a hearing under A.R.S. § 41-1065 to contest the Department's decision; and
 3. The time-frame for requesting a hearing with the Department's Executive Hearing Office as prescribed under A.R.S. § 41-1065 and Article 5 of this Chapter.
- C.** If an advertiser or sponsor requests a hearing, the Department shall hold the hearing according to the procedures provided under A.R.S. Title 41, Chapter 6, Article 6, this Article, and 17 A.A.C. 1, Article 5, as applicable. The Department shall:
 1. Schedule a hearing within 30 calendar days after receiving a written request for a hearing from an advertiser or sponsor;
 2. Provide to the advertiser or sponsor who requested a hearing, a notice of the scheduled date and time of the hearing at least 20 calendar days before the date set for the hearing, as prescribed under A.R.S. § 41-1061;
 3. Ensure that the presiding officer makes a written determination of the presiding officer's decision or order, including findings of fact and conclusions of law, within 10 calendar days after concluding the hearing; and

4. Mail a copy of the written determination to the advertiser or sponsor who requested the hearing.

D. The scope of the hearing shall be limited to a determination of whether the Department possessed grounds to take the action indicated in the notice of action provided by the Department in connection with the rules prescribed in this Article.

R17-1-708. Program Administration; Pricing and Lease Procedures; Priority; Renewal

A. For administration of the Department's advertising and sponsorship program, the Department or its contractor may use:

1. Rate schedules that are established and periodically adjusted by the Department; or
2. Competitive pricing established by one or more offers from potential or current advertisers or sponsors.

B. The Department or its contractor may use competitive pricing or rate schedules to determine the ranking order of potential or current advertisers or sponsors who may be awarded advertising and sponsorship opportunities at specific locations authorized by the Department for such activities.

C. In determining competitive pricing and rate schedules, the Department may consider the amount of space available for advertising and sponsorship activities, and one or more of the following additional factors:

1. The average annual daily traffic at, or adjacent to, the location of the Department's available asset or facility;
2. The population mix and relative distribution between all other advertisers or sponsors that meet all of the Department's advertising and sponsorship program requirements;
3. The ranking order determined by the Department or its contractor based on existing rate schedules or competitive pricing proposed or offered by potential or current advertisers or sponsors for each Department authorized location; or
4. The competitive market conditions, as well as economic, regulatory, logistical, and other related factors as determined by the Department or its contractor.

D. If any of the factors provided under subsection (C) are used in determining competitive pricing or rate schedules, the Department or its contractor shall make the information relevant to these factors available to advertisers and sponsors on the Department's or its contractor's website.

E. If a clear ranking order of preference for awarding a specific location cannot be determined using the factors provided under subsection (C), the Department or its contractor shall prioritize the remaining requests for advertising or sponsorship opportunities based on the following additional factors, in order:

1. The advertiser or sponsor having the closest business location to the Department facility or asset location requested;
2. The advertiser or sponsor providing the most business days and hours of service to the public; and
3. The advertiser or sponsor first requesting authorization to place advertising or sponsorship content on the Department authorized facility or asset at that location.

F. If a potential advertiser or sponsor requests placement of advertising or sponsorship content on a specific Department facility or asset where there are no available placements, a competitive bidding process may be

used to determine which potential advertiser will participate, assuming the Department determines in its sole discretion that the location may be made available for advertising or sponsorship.

- G.** The Department or its contractor may choose not to renew an existing advertising or sponsorship agreement, or an advertising or sponsorship agreement expiring within the next 60 calendar days, if another eligible advertiser or sponsor with a higher priority ranking requests placement of advertising or sponsorship content at that same location.
- H.** The Department or its contractor may collect all applicable taxes due from an advertiser or sponsor under the advertising or sponsorship agreement.
- I.** An advertiser or sponsor may request reimbursement of any pre-paid lease payments if, for a reason solely caused by the Department or its contractor, the Department or its contractor does not install the advertiser's or sponsor's content or copy within 90 calendar days after receiving the pre-paid lease payments.
- J.** The Department or its contractor shall refund any pre-paid lease payments to an advertiser or sponsor within 30 calendar days after the advertiser or sponsor requests reimbursement under subsection (I).
- K.** The Department may require an advertiser or sponsor who requests reimbursement of pre-paid lease payments to provide additional information if required by the State of Arizona for processing a refund.

R17-1-709. Acknowledgment Signs and Plaques; Design and Placement

- A.** The Department may acknowledge sponsors with acknowledgment signs or plaques. Acknowledgment signs and plaques shall meet all of the general principles and specific design and placement criteria prescribed in the MUTCD, Part 2, Signs, as supplemented by the most recent edition of the FHWA Standard Highway Signs and Markings Book:
 - 1. An acknowledgment sign is installed only as an independent sign assembly unless the acknowledgment sign is part of the Department's Adopt-a-Highway Volunteer Program; and
 - 2. An acknowledgment plaque is installed only in the same sign assembly below a primary sign that provides the road user specific information on accessing the service being sponsored. A plaque legend is displayed on a separate substrate from that of the sign below which it is mounted.
- B.** Acknowledgment signs and plaques shall:
 - 1. Be appropriately sized for the legibility needs of a bikeway or path user when located on a bikeway or shared-use path;
 - 2. Be placed near the site being sponsored, consistent with the purpose and principles of traffic control devices in the MUTCD, Part 1, General and Part 2, Signs;
 - 3. Be placed approximately one mile away from other acknowledgment signs or plaques associated with the same element of the Department's highway operation, such as Adopt-a-Highway, when facing the same direction, as consistent with the purpose and principles of traffic control devices in the MUTCD, Part 1, General and Part 2, Signs;
 - 4. Display no directional information or indicators;

5. Display no telephone numbers, internet addresses, or other legends prohibited by the MUTCD for the purpose of contacting the sponsor or to obtain information on the sponsorship program, such as how to become a sponsor at an available site, unless such information is part of the sponsor's official name; and
6. Remain in place only for the duration of the sponsorship agreement.

C. The Department or its contractor shall not place acknowledgment signs or plaques at key decision points where a driver's attention is more appropriately focused on traffic control devices, roadway geometry, or traffic conditions.

R17-1-710. Criteria for Highway-related Acknowledgment Signs and Plaques

A. For highway-related sponsorship opportunities, the Department or its contractor shall:

1. Ensure that acknowledgment signs and plaques take only the form of static, non-changeable, non-electronic legends to maintain the recognition value of official devices used for traffic control;
2. Ensure that messages on acknowledgment signs and plaques are not interspersed, combined, or alternated with other official traffic control messages, either in the same display space, by adjacency in the same assembly, or by adjacency of multiple assemblies whose longitudinal separation does not meet the placement criteria contained in the MUTCD, including when placed on opposite sides of the roadway facing the same direction of travel, except as provided for acknowledgment plaques under R17-1-711(B);
3. Ensure that the focus remains on the service provided rather than on the sponsor, and that the sponsor logo area on an acknowledgment sign or plaque is a horizontally oriented rectangle, consistent with the provisions on business logos in the MUTCD, Chapter 2J, Specific Service Signs. The width of the rectangle shall be at least approximately 1.67 times its height, the total area of which shall not exceed the maximum referenced or specified in this Article or the MUTCD. The word legend describing the activity, such as "SPONSORED BY," shall be composed of upper-case lettering of the FHWA standard alphabets at least three inches high on conventional roads and at least four inches high on expressways and freeways;
4. Ensure that any slogan displayed on an acknowledgment sign is a brief jurisdiction-wide slogan or that of a program name, such as "ADOPT-A-HIGHWAY." Slogans for companion, supplementary, or other programs unrelated to the service being sponsored shall not be displayed on any acknowledgment sign or plaque, in accordance with the MUTCD, Section 2H.08, Acknowledgment Signs.
5. Ensure that if a graphic business logo is used to represent a sponsor, instead of a word legend using the FHWA Standard Alphabets, the logo is the principal trademarked official logo that represents the business name of the sponsor. Secondary logos or representations, even if trademarked, copyrighted, or otherwise protected, are classified as promotional advertising and are not allowed as provided under the MUTCD, Section 1A.01, Purpose of Traffic Control Devices;
6. Ensure compliance with the following design guidelines if a graphic business logo is used to represent a sponsor:
 - a. Logos shall be as simple as possible and provide good readability during both daylight and nighttime hours;

- b. Logos may consist of a symbol, trademark, or a legend message identifying the name or abbreviation of a specific business;
 - c. Logos shall not contain a telephone or fax number, street name, e-mail or web address, or a direction indicator as part of the business logo unless such information is part of the sponsor's official name;
 - d. Logos shall not resemble an official traffic control device; and
 - e. Symbols or trademarks used alone for acknowledgment shall be simple and dignified and reproduced in the colors and general shape consistent with customary use, and any integral legend shall be in proportionate size.
7. Obtain an encroachment permit if applicable under 17 A.A.C. 3, Article 5, before installing, maintaining, or removing sponsorship content or copy from a highway-related facility or asset of the Department located along a state highway; and
8. Determine the best placement of sponsorship content or copy and cooperate with the sponsor to provide all appropriate information to the public as outlined in both the contract and the sponsorship agreement, while remaining in full compliance with any encroachment permit requirements, if the contractor requests an encroachment permit under 17 A.A.C. 3, Article 5.
- B.** For highway-related sponsorship opportunities, the Department or its contractor shall not:
- 1. Install acknowledgment signs or plaques overhead due to maximum overall size limitations and related safety considerations. Only roadside, post-mounted installations of acknowledgment signs and plaques are allowed;
 - 2. Allow promotional advertising on any traffic control device or its supports, as provided under the MUTCD, Section 1A.01, Purpose of Traffic Control Devices;
 - 3. Allow acknowledgment signs and plaques to contain an alternative business name that appears to have the sole or primary purpose of circumventing the MUTCD provisions. Such content or copy is considered promotional advertising rather than acknowledgment of a sponsor providing a highway-related service; and
 - 4. Allow sponsorship acknowledgment signs or plaques that include displays that mimic, or in the Department's sole discretion, attempt to mimic, imitate, or resemble advertising. The determination of whether a sign mimics or constitutes advertising lies solely with the Department, applying in good faith the relevant standards set forth by the FHWA.

R17-1-711. Highway-related Sponsorship Restrictions and Allowances; Existing Leases or Agreements

- A.** For sponsorship of rest areas, the Department or its contractor:
- 1. May install one acknowledgment sign for each direction of travel on the highway mainline;
 - 2. May place additional acknowledgment signs within a rest area, provided that the sign legends are not visible to the highway mainline traffic and do not pose safety risks to rest area users;
 - 3. Shall not append acknowledgment signs to any other sign, sign assembly, or other traffic control device; and
 - 4. Shall not place acknowledgment signs within 500 feet of other traffic control devices located on the highway mainline.

- B.** For sponsorship of travel service programs that are not site specific, such as 511 traveler information, radio-weather, radio-traffic, and emergency service patrol, the Department or its contractor may mount an acknowledgment plaque below a general service sign for that program in the same sign assembly. The acknowledgment plaque shall:
1. Be a horizontally oriented rectangle, with the horizontal dimension longer than the vertical dimension;
 2. Be of a size not to exceed approximately one-third of the area of the general service sign below which it is mounted or 24 square feet, whichever is less;
 3. Be of a size not to exceed approximately one-third of the area of the largest size prescribed in the MUTCD for the specific standard sign below which the acknowledgment plaque is mounted, even if the standard sign was enlarged under the MUTCD, Sections 2A.11, Dimensions and 2I.01, Sizes of General Service Signs, or was designated in the MUTCD as being oversized for its application; and
 4. Be of a size that is equivalent to the unmodified national standard for the sign, as provided in the MUTCD, even if the size of the standard sign is modified based on the Arizona supplement to the MUTCD, or other equivalent, and would result in a sign size larger than that of the standard sign prescribed in the MUTCD.
- C.** For sponsorship by way of providing highway-related services, products, or monetary contributions that result in a naming sponsorship granted by the Department, where the sponsor is allowed naming rights to an officially mapped, named or numbered highway, the Department or its contractor:
1. May use only acknowledgment signs to place an unofficial overlay or secondary designation in the name of the sponsor on the official highway name or number through proclamation, contract, agreement, or other means for acknowledgment within the highway right-of-way; and
 2. Shall not display on an acknowledgment sign a legend that states, either explicitly or by implication, that the highway is named for the sponsor.
- D.** For the purpose of protecting life or property, the Department may install on any highway or non-highway asset or facility under its jurisdiction a changeable message sign, traffic control device, or other official sign provided by a sponsor. The name of the sponsor who made placement of the item possible may be affixed to the official sign or device in a conspicuous location visible from the main traveled roadway, unless specifically prohibited by federal law, including on the sign base, apron, supports, or other structural member. No more than one sponsor's name may appear on any one official sign or device at any given time.
- E.** The Department or its contractor shall solely determine the placement of any new advertising or sponsorship content as new opportunities arise, whether a previously leased location is vacated, a waiting list exists, another advertiser or sponsor seeks to lease or sponsor a specific asset or facility, or a new location is identified and made available for advertising or sponsorship opportunities.
- F.** The provisions of this Article apply to new and modified acknowledgment sign installations in support of national uniformity and consistency. Acknowledgment signs installed prior to the effective date of this Section are subject only to the terms and conditions provided in any existing lease or other agreement already in effect between the Department and an advertiser or sponsor. Replacement of an existing acknowledgment sign for compliance with this Article is not required unless the currently installed acknowledgment sign is no longer

serviceable or the advertiser or sponsor requests a modification of the sponsor name or logo that is consistent with this Article.

R17-1-712. Program Eligibility and Compliance

- A.** An advertiser or sponsor participating in the Department's advertising and sponsorship program shall ensure compliance with A.R.S. § 28-7316 and all criteria established under this Article.
- B.** The Department or its contractor may choose not to enter into, or renew, an advertising or sponsorship agreement if the eligibility criteria provided under this Article is not met.
- C.** An advertiser or sponsor is ineligible to place advertising or sponsorship content on any asset or facility of the Department if:
 - 1. Thirty calendar days have elapsed since the Department or its contractor issued a notice of default to the advertiser or sponsor and the default remains uncured, or
 - 2. The advertiser or sponsor has defaulted on an advertising or sponsorship agreement made with the Department or its contractor.

R17-1-713. Advertising or Sponsorship Agreement or Lease Termination

- A.** If an advertiser or sponsor becomes ineligible to participate in the Department's advertising and sponsorship program, the Department or its contractor shall remove any existing content or copy from the Department asset or facility after notifying the ineligible advertiser or sponsor as provided in the advertising or sponsorship agreement.
- B.** An advertiser or sponsor who becomes ineligible to participate in the Department's advertising and sponsorship program may be held responsible for the costs involved with removal or reinstallation of advertising or sponsorship acknowledgment signs in accordance with the terms and conditions provided in the advertiser's or sponsor's written lease or other agreement with the Department or its contractor.

R17-1-714. Removal of Advertising or Sponsorship Content; Program Termination

- A.** If the Department temporarily requires removal of an acknowledgment sign or advertising or sponsorship content or copy from any Department facility or asset for construction activities in the area that may pose conflicts with the sponsorship, as provided under R17-1-704(B) (i.e. sign needs to be removed due to a road widening project), the Department or its contractor, in its sole discretion, may:
 - 1. Relocate the acknowledgment sign or advertising or sponsorship content or copy to a comparable site for the duration of the advertising or sponsorship agreement, if requested by the advertiser or sponsor and the acknowledgment sign or advertising or sponsorship content or copy is for a program that is not site-specific; or
 - 2. Re-erect the acknowledgment sign or advertising or sponsorship content or copy at its original location once the construction activities are completed, if possible, and revise the original advertising or sponsorship agreement to remain in place until the minimum lease obligations are fulfilled.
- B.** If the Department's advertising and sponsorship program is terminated, the Department or its contractor shall:
 - 1. Notify an advertiser or sponsor by mail, or a mutually agreed upon electronic communication method, of the program termination and the location where an advertiser or sponsor may claim its materials, if any;

2. Remove all advertising or sponsorship content or copy from any Department facilities or assets; and
3. Refund unused lease payments to each advertiser or sponsor on a prorated basis.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION

ADMINISTRATION

R17-1-701 through R17-1-714

A. Economic, small business and consumer impact summary

1. Identification of the rulemaking:

The Arizona Department of Transportation (ADOT) engages in this rulemaking to establish guidelines necessary for the implementation of [Laws 2016, Chapter 66 \(HB2250\)](#), specifically A.R.S. § 28-7316, which authorizes the Department to establish a program to:

Lease or sell advertising on non-highway assets of the Department; and

Allow monetary sponsorship of other facilities and other assets of the Department.

This rulemaking contains provisions relating to the operation, modification, and termination of the Department's Advertising and Sponsorship Program. The rules provide advertisers, sponsors, and other potential contractors clarification on the types of facilities the Department deems suitable for advertising and sponsorship activities, establish reasonable time, place, and manner restrictions necessary to protect the public health, peace, and safety, and ensure that the Department remains in compliance with the Federal Highway Administration's policies on sponsorship acknowledgment, sponsorship agreements, and outdoor advertising control.

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

The federal [Fixing America's Surface Transportation Act \("FAST Act"; P.L. 114-94\)](#), which became law on December 4, 2015, provided a total of [\\$225 billion](#) for federal surface transportation programs to be shared between all states in federal fiscal years 2016 through 2020. Although this funding represented an 11% increase over the previous authorization, the [Moving Ahead for Progress in the 21st Century Act \("MAP-21"; P.L. 112-141\)](#), which became law on July 6, 2012, future highway funding continues to be a concern since Congress did not address the long-term issue of declining revenues flowing into the federal Highway Trust Fund and federal aid provides the majority of funding for Arizona's transportation system.

Since the long-term funding outlook remains uncertain, the Department's ability to maintain, modernize, and expand Arizona's transportation system remains constrained and any reduction in future highway funding, federal or state, will directly affect or jeopardize the Department's ability to advance and fund, timely and within budget, many of the projects identified in the state's [Long-Range Transportation Plan 2016-2040](#).

As individual states and counties continue to experience a shortfall in highway construction and maintenance funding, the Federal Highway Administration (FHWA) and the Arizona legislature have authorized the Department to partner with the private sector in seeking new and innovative funding sources for future highway and infrastructure maintenance needs. This rulemaking supports the Department's pursuit of innovative sources of financing to generate additional revenue for deposit into the state highway fund, which may help offset an estimated 25-year highway capital funding gap of over \$30 billion for the preservation, modernization, and expansion of Arizona's state highway system.

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 Department will continue to face significant challenges in securing all of the funding needed for the preservation, maintenance, and day-to-day operating expenses of all state highways, parts of highways forming state routes, and highways under cooperative agreements with the United States.

The Department is currently responsible for maintaining, operating, and improving 18,488 miles of the state highway system, monitoring the conditions on all 7,826 bridges located on state and local roads throughout the state, and replacing, maintaining, and preserving the 4,811 state-owned bridges that are part of the state highway system.

If the rules are not made, the Department will miss unique opportunities to seek alternative funding sources that may help strengthen the state highway fund and help shield Arizonans from the effects of any anticipated reductions in future federal or state highway funding. Additionally, the Department may be unable to adequately acknowledge the efforts of individuals or business entities currently willing to make a significant monetary contribution, donate surplus resources, or invest additional resources into building and maintaining one of the best performing transportation systems in the nation.

One example of the amount of revenue the Department's advertising and sponsorship program can expect to generate through advertising or sponsorship rate negotiation under these rules was provided by the Department's Grand Canyon State Logo Sign program, which sets advertising rates based on average daily traffic counts and routinely posts the advertising rates to their website at GrandCanyonStateLogoSigns.com. In areas where logo sign demand exceeds the available space, businesses are invited to bid for priority placement. After the bidding, bid amounts are posted to let future bidders know what to expect. Just three companies bid for space on one Phoenix area sign in 2013. In 2016, 11 companies made bids. In 2017, there were 22. The total amount bid for the sign grew from \$12,400 to \$92,770 in just four years.

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

With this rulemaking, the Department intends to generate additional revenue for deposit into the state highway fund by implementing and administering an advertising and sponsorship program using existing assets and facilities, as authorized under A.R.S. § 28-7316. All additional revenue deposited into the state highway fund will be used as authorized under A.R.S. § 28-6993, for transportation

system improvements, assisting the Department in providing services that are critical to enhancing the safety and efficiency of Arizona highways (e.g., traffic congestion management, traveler information systems, hazardous materials response, etc.), and providing other valuable benefits for the traveling public.

The Federal Highway Administration (FHWA) anticipates that sponsorship programs will grow in popularity and provide significant opportunities for highway agencies to secure the additional funding and critical support needed to build, operate, and maintain key highway facilities and services, including highway construction and maintenance activities, traffic management programs, rest area operation and maintenance, emergency response programs, travel information services, parkway and interchange landscape maintenance, adopt-a-highway litter removal and other highway beautification programs.

The Department anticipates that an advertising and sponsorship program may eventually generate millions of dollars in alternative funding for deposit into the state highway fund as prescribed under A.R.S. § 28-7316. The state highway fund is the primary operating fund used for general operations of the Department, including road and bridge repairs, maintenance and construction, planning and development, engineering, and administration. Any monetary contributions or other monies received by the Department through its advertising and sponsorship program will help to free up other resources the Department can then use to advance and fund, timely and within budget, all of the projects identified in the state's long-range transportation plan.

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

To assist the growing number of states seeking to create their own advertising and sponsorship programs, the FHWA recently updated its policy on Sponsorship Acknowledgment and Sponsorship Agreements within Highway Rights-of-way ([FHWA Order 5160.1A, dated April 7, 2014](#)), which previously prohibited sponsorship acknowledgement and advertising on all highways where federal-aid funds were used.

As the nature of highway financing continues to evolve, private sector investment promises to be a significant source of revenue for individual states to meet their current and future highway construction and maintenance needs. Under these rules, the Department's advertising and sponsorship program will pursue new ways to connect with communities, where all parties enjoy diverse benefits and create meaningful partnership propositions that produce positive returns and alliances for the State of Arizona, ADOT, advertisers, sponsors, and other commercial partners.

Periodically, individuals and business owners actively seek opportunities to support their communities by making sizable and charitable tax-deductible contributions (as defined under [IRC Sec. 170\(c\)\(1\)](#) Charitable, etc., contributions and gifts) to the Department as an investment in the future of Arizona's transportation facilities and infrastructure needs. This rulemaking provides guidelines on how the Department may

publicly acknowledge receipt of such contributions to support the state highway fund, which may include monetary donations, gifts, bequests, proceeds, or property (e.g., vehicles, land, merchandise, services, etc.).

The Department intends to generate additional revenue for the state highway fund by designating certain non-highway assets and facilities as advertising venues. ADOT Motor Vehicle Division Customer Service Field Offices are uniquely positioned to provide such opportunities for the promotion of advertising and sponsorship materials that can reach consumers in every corner of the state. Under this rulemaking, the Department will enter into advertising and sponsorship agreements with individuals and businesses that provide information relating to motor vehicle- and motorist-related goods and services, which may be of value to Department customers and patrons or further promote the Department's efforts to enhance public safety.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: John Lindley, Administrative Rules
Address: Arizona Department of Transportation
Government Relations and Policy Development Office
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007
Telephone: (602) 712-8804
E-mail: jlindley@azdot.gov

B. Economic, small business and consumer impact statement

1. Identification of the rulemaking:

As provided under Laws 2016, Chapter 66 (HB2250), specifically A.R.S. § 28-7316, the Department may establish a program to:

- Lease or sell advertising on *non*-highway assets of the Department; and
- Allow monetary sponsorship of other facilities and other assets of the Department.

To establish an Advertising and Sponsorship Program at the state level, the Department has worked closely with the legislature and FHWA to ensure compliance and consistency with all existing state and federal laws and programs applicable to highway infrastructure funded, in whole or in part, by federal aid.

These rules: establish guidelines relating to the operation, modification, and termination of the Department's new advertising and sponsorship program; provide advertisers, sponsors, and other potential contractors with clarification on the types of facilities the Department deems suitable for advertising and sponsorship activities; establish reasonable time, place, and manner restrictions necessary to protect the public health, peace, and safety; and ensure that the Department remains in compliance with Arizona laws and FHWA policies on sponsorship acknowledgment, sponsorship agreements, and outdoor advertising control. The rules also provide potential advertisers and sponsors with detailed information regarding the Department's sponsorship agreements and how a sponsor may be acknowledged for providing a

contribution to the Department, or supporting or providing a service on behalf of the Department, under a sponsorship agreement.

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

Under this rulemaking, the agency identifies the following entities that may bear costs and receive benefits that may range from minimal to substantial:

Persons to bear costs	Persons to directly benefit
ADOT	ADOT
Advertisers	Advertisers
Arizona Department of Public Safety	Arizona Department of Public Safety
Local Businesses	Arizona’s motoring public
Sponsors	Consumers of Department products and services
	Local Businesses
	Political subdivisions
	Sponsors

3. Analysis of costs and benefits occurring in this state:

Cost-revenue scale. Annual costs or revenues are defined as follows:

- Minimal \$9,999 or less
- Moderate \$10,000 to \$59,999
- Substantial \$60,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the rulemaking:

The Department and the Federal Highway Administration are both obligated to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with national policies to protect the public investment in interstate and primary highways, to promote the safety and recreational value of public travel, and to preserve Arizona’s natural beauty. Therefore, any highway assets or facilities of the Department will be reserved for sponsorship acknowledgement activities only, but the Department’s *non*-highway assets and facilities will accommodate both advertising and sponsorship activities.

The Department’s Motor Vehicle Division Customer Service Field Offices are already uniquely positioned to provide opportunities for the promotion of advertising and sponsorship materials that can

reach consumers in every corner of the state. Therefore, any costs required for implementation of this rulemaking will be minimal.

The Department anticipates a moderate increase in costs relating to the selling of advertising or the provision of adequate acknowledgement for monetary or other contributions provided by individuals or the business community in support of the state highway fund. Administrative costs will also include contracting, billing, and payment processing. However, all costs incurred under the program will be paid under agreements negotiated between the Department and the advertisers or sponsors.

Operational costs for sign fabrication, sign construction and installation, sign repair, and sign removal will also be incurred. The Department anticipates that these costs will be moderate, approximately equal to revenue (breakeven) for the first 12 to 18 months due to the initial infrastructure investment and then profitable thereafter, and no additional staffing is required.

Implementation of this rulemaking may eventually benefit the Arizona Department of Public Safety, since supporting the state highway fund provides added assurance that certain portions of future highway patrol costs can be adequately funded as required under A.R.S. § 28-6993.

While many states rely on the expertise of external marketing contractors to manage signage programs, the Department's own Arizona Highways magazine, through its Grand Canyon State Logo Sign program, has netted about \$5 million for the state highway fund since 2012. The long-established and immensely successful Arizona Highways Magazine already has the systems, processes, and resources needed to manage, market, and measure sales of advertising space throughout the state. Using those well-established methods, the Department will continue to build on that success with the implementation of its advertising and sponsorship program. The Department already has in place all of the resources needed for implementation and enforcement of the advertising and sponsorship program.

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

The State Transportation Board recently approved an annual update to ADOT's [Five-year Transportation Facilities Construction Program \(2018-2022\)](#), which includes projects in Greater Arizona and the Maricopa County and Pima County regions. Projects like repaving highways, repairing or reconstructing bridges, and extending the life of existing pavement all help to preserve the highway system and keep it functioning as it should.

Since the FHWA and A.R.S. § 28-7316 now provide the flexibility needed for the Department to pursue innovative sources of financing for transportation system improvements, the Department anticipates that its advertising and sponsorship program, once fully implemented, will generate a significant amount of funding to help offset an estimated 25-year highway capital funding gap of over \$30 billion for the preservation, modernization, and expansion of Arizona's state highway system, and to provide other valuable benefits for the traveling public. Though not yet fully realized or quantifiable,

a sponsor may provide a highway-related service, a monetary contribution toward a highway-related service, or a product that the Department or its contractor can use in providing a highway-related service. The funding source the Department would otherwise have used to provide that product or service is then made available for use in other critical transportation infrastructure projects, while advertisers and sponsors are happy to know that the money or advertising dollars they spend will actually be used to support the state highway system.

ADOT has been able to help fund and accelerate some major expansion projects for the Greater Arizona regions (Maricopa County and Pima County) because of federal funding increases, grants, and state budget appropriations previously received for the long-term planning of key commerce corridors like Interstate 10, State Route 189, US 93 and Interstate 17, which will all see capacity improvements over the next five years. Other funding for the Department's current five-year program is generated by the users of transportation services, primarily through gasoline and diesel fuel taxes and the vehicle license tax and both the Maricopa and Pima county regions have independent revenue streams established through voter-approved sales tax increases that allow for more expansion projects to take place.

Though the Maricopa Association of Governments (MAG) and the Pima Association of Governments (PAG) will be the first to benefit from any additional money collected for the state highway fund under these rules, if the Department's advertising and sponsorship program proves successful, all other Arizona counties, cities, and towns will benefit by the added assurance of full funding for all highway construction and maintenance projects outlined in the state's long-range transportation plan 2016-2040. The ability to move planned projects forward without unnecessary delay provides significant savings for taxpayers due to the inevitable inflation and other cost increases generally associated with project delays, including labor and materials.

c. Probable costs and benefits to businesses directly affected by the rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking:

These rules do not require eligible businesses to participate in the Department's advertising and sponsorship program, however, several unique opportunities will be provided for participating businesses seeking to gain more visibility and generate more business revenue within their own communities.

According to the U.S. Small Business Administration, companies invest between one and ten percent of their gross sales in advertising. However, the average amount spent will vary by the type of business, industry, and advertising strategy.

While advertising opportunities under this program will be limited to *non*-highway assets and facilities of the Department, or rest area facilities as prescribed under [23 U.S.C. 111\(b\)](#), sponsorship and

acknowledgment opportunities will be made available on both highway and non-highway assets and facilities of the Department. Advertising on non-highway assets and facilities of the Department will allow an advertiser or sponsor to increase name recognition and commercial brand awareness while promoting motor vehicle- and motorist-related goods, services, and information directly to vehicle owners, operators, buyers, and sellers who are most likely interested in receiving such information.

Opportunities for advertising on Department designated non-highway assets and facilities are limited under A.R.S. § 28-7316, and may provide unique opportunities for advertisers and sponsors to distribute promotional information or other consideration involving:

Motor vehicle-related goods or services, including the promotion of:

- Arizona-licensed automobile dealers;
- Automotive insurance;
- Automotive parts;
- Automotive repair;
- Automotive towing companies;
- Car wash and detailing services;
- Motor clubs;
- Roadside assistance; or
- Specialty license plates issued by the Department; and

Motorist-related goods or services, including the promotion of:

- Automobile clubs;
- Campgrounds;
- Convenience stores;
- Department authorized third-party providers of title, registration, and driver license services;
- Department programs, including Grand Canyon State Logo Signs;
- Department publications, including *Arizona Highways Magazine*;
- Gasoline and service stations;
- Legal service providers for motorists;
- Pharmacies open 24 hours;
- Professional driver training schools licensed by the Department;
- Public service announcements (organ donation/highway beautification);
- Restaurants;
- Road maps and Global Positioning System (GPS) services;
- Telecommunications providers;
- Tourist and community attractions; or
- Vehicle-for-hire services (taxis, limousines, livery vehicles, and transportation network companies).

All costs incurred by small businesses participating in the Department's advertising and sponsorship program will be paid under agreements negotiated between the Department or its contractor and the advertisers or sponsors, as required under A.R.S. § 28-7316. Costs for small businesses participating in the Department's advertising and sponsorship program are voluntary and not readily quantifiable. The advertising budgets of small businesses are proprietary in nature and significantly vary based on a level of competition, or how much a business owner is willing to set aside for such purposes, so the Department does not anticipate any new costs to small businesses as a result of this rulemaking.

Since this rulemaking neither requires, nor prohibits, any action on the part of any small business, the rules impose no direct or indirect costs on small businesses. The Department anticipates no direct economic impact on small businesses as a result of this rulemaking. However, the benefits for small businesses participating in the Department's advertising and sponsorship program should be substantial over time, due to the added recognition and additional sales their brands should receive with increased exposure to the high volume of consumers waiting to conduct business with the Department.

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:

Laws 2016, Ch. 66, § 3, provides that the Department may establish a program to lease or sell advertising on *non*-highway assets of the Department and to allow monetary sponsorship of facilities and other assets of the Department. A.R.S. § 28-7316, as added by Laws 2016, Ch. 66, § 3, also authorizes the Department to contract with a third party to administer and operate all or portions of its advertising and sponsorship program. If the Department chooses to contract with a third party to administer or operate any portion of its advertising and sponsorship program, the duties and obligations of the private contractor would be the same as required of the Department under subsection (B)(3)(a) above.

Connectivity and reliability are crucial for an ever-expanding state highway system like Arizona's, especially as the population continues to grow and businesses choose to relocate here. Since federal law requires that if federal-aid funds were used on a highway or facility for which a sponsored service is being provided, all monetary contributions received as part of that sponsorship agreement must be used for highway purposes, the Department anticipates an increased ability to ensure full funding for all highway construction and maintenance projects identified in its 2018-2022 five-year program.

The Department anticipates a minimal impact on public or private employment by this rulemaking. Advertisers and sponsors will enjoy diverse benefits and create meaningful partnership propositions that can produce positive returns and community alliances.

5. Statement of the probable impact of the rulemaking on small businesses:

The Department anticipates that this rulemaking will have no significant economic impact on entities that meet the definition of a small business under A.R.S. § 41-1001. The rulemaking will not significantly affect the competitive position of small businesses in relation to large entities, impede the cash flow, liquidity, or

ability of small businesses to remain in the market, or impose new recordkeeping requirements on small businesses.

Although some persons or business entities actively seeking advertising opportunities at or on the Department's non-highway facilities represent national or multi-national corporate entities that do not meet the definition of a small business under A.R.S. § 41-1001, they do promote easily-recognizable major brands and likely represent several locally owned and operated franchise locations that may fall under the definition of a small business. However, the Department anticipates that any costs incurred by a participating small business relating to technology, staffing, enforcement, maintenance, or training activities associated with these rules would be attributable to other non-discretionary statutory provisions or their own advertising or sponsorship policies and not this rulemaking. Any net impact as a result of this rulemaking is expected to be minimal and affect only a small number of eligible individuals and businesses.

Advertising rates are subjective and will vary by location, season of the year, etc., but will always be commensurate with the generally accepted industry standards for determining advertising or lease rates. The Department intends to accommodate all small businesses seeking to participate in the advertising and sponsorship program.

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

The Department is committed to helping Arizona's small businesses succeed. Small businesses subject to these rules, as defined under A.R.S. § 41-1001(20), include those with fewer than 100 employees or less than \$4 million in annual receipts that offer motor vehicle- and motorist-related goods and services, which may be of value to Department customers and patrons or further promote the Department's efforts to enhance public safety.

The Department's advertising and sponsorship program will identify strategic alliances and cultivate charitable relationships with benevolent donors and businesses that welcome the opportunity to partner with the Department in creating added value for its customers and communities.

These rules provide guidelines for use by corporations with innovative and generous charitable programs seeking to provide monetary donations or information on motor vehicle- or motorist-related goods or services that may be of value to the Department's customers or further promote the Department's ongoing efforts to promote public safety. Here are just a few examples of the type of promotions sponsors may provide:

Esurance and the Scott Brothers: [Hail to the Tread](#); and [Everything is Brighter](#); or

State Farm Insurance: Currently invests heavily in other states to support service patrol, roadside assistance, hazardous materials, and incident response teams.

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

Advertisers and sponsors seeking to partner with the Department in providing motor vehicle- and motorist-related goods, services, and information to consumers on an ongoing basis may enter into an advertising or sponsorship agreement with the Department.

The anticipated economic impact to small businesses seeking to provide motor vehicle- and motorist-related goods, services, and information to consumers of Department products and services will be minimal and may include the costs associated with completing the application process, providing the Department with copies of all advertising copy, media, or other materials. Eligible sponsors and advertisers may experience an unquantifiable benefit since the rules may enable new and unique opportunities for advertising and sponsorship recognition at previously underutilized prime Department locations.

c. Description of the methods that ADOT may use to reduce the impact on small businesses:

Since this rulemaking neither requires, nor prohibits, any action on the part of any small business, the rules impose no other direct or indirect costs on small businesses. Therefore, the Department anticipates no direct economic impact on small businesses as a result of this rulemaking, and reduction of impact is not necessary.

All small businesses, private persons, and consumers whether directly or indirectly affected by the rulemaking will benefit from the Department's ability to accelerate highway and bridge repairs, highway maintenance and construction, highway facility planning and development, engineering, and administration.

ADOT recognizes that in some urban areas with many qualified, eligible businesses, the business demand for advertising will exceed the available space on certain highway or non-highway assets of the Department. Alternative solutions to the demand issue were considered. To maximize the program benefits to the state highway fund and transaction privilege tax (TPT) beneficiaries, and to make the program available to all qualified businesses in an area, competitive bidding was chosen. Alternative solutions that were considered included setting a fixed market rate and using proximity to the highway as a tie-breaker. However, ADOT quickly determined that using proximity to a highway as a factor would unfairly affect businesses located farther away from highway exits. For most urban locations ADOT will use competitive bidding to set the market rate for businesses.

Acknowledgment signs installed prior to the effective date of these rules will be subject only to the terms and conditions provided in any existing lease or agreement already in force between the Department and the advertiser or sponsor. Replacement of an existing acknowledgment sign for compliance with this rulemaking is not required unless the currently installed acknowledgment sign is no longer serviceable or the advertiser or sponsor requests a modification of the sponsor name or logo that is consistent with these rules.

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

The Department anticipates no new economic impact to private persons or business entities as a result of this rulemaking. The rulemaking imposes no direct or indirect costs and neither requires, nor prohibits, any action on the part of any private person or consumer.

One of the most common ways for the Department to recognize support provided by a sponsor is to create and place an acknowledgment sign that displays the name or logo of the sponsor to members of the public who may be interested in receiving information from or about the sponsor. Effective sponsorship acknowledgement can be accomplished by the tasteful and well-designed placement of a sponsor's name or logo on an ADOT fleet, emergency response, or maintenance vehicle using the partial vehicle wrap technique. Other options for sponsorship acknowledgement may involve the placement of a logo on ADOT outreach and educational materials or the inclusion of a name or logo on ADOT web sites or telephone messages such as those of 511 systems. The Department may use other opportunities for sponsor recognition or acknowledgment where possible, and appropriate, while minimizing the number of additional signs and informational load imposed on drivers.

The Department anticipates that this rulemaking will benefit individuals, businesses, and consumers throughout the state. The rules allow the Department to:

- Generate additional funding for the state highway fund as provided under A.R.S. § 28-7316;
- Promote economic development by providing businesses with new and unique opportunities for the direct marketing of motor vehicle- and motorist-related goods, services, and safety information relevant to the motoring public;
- Preserve the public health, peace, and safety by establishing and enforcing reasonable standards for appropriate content and viewpoint-neutral advertising and sponsorships that will not create a forum for public discourse or the exchange of viewpoints on any issue, subject matter, or topic;
- Maintain compliance with state and federal requirements; and
- Ensure continued eligibility for future federal-aid highway grant funding.

Although not readily quantifiable, Arizona's general public and businesses benefit by enjoying one of the best performing transportation systems in the nation. Highways, transit systems, airports, local roads, and bicycle/pedestrian facilities all come together to form Arizona's statewide transportation network, which is essential for supporting economic prosperity and quality of life, providing access to jobs, education, and recreation, and enhancing the productivity and market access for all.

If the Department's advertising and sponsorship program becomes profitable over time, as anticipated, the public and businesses will substantially benefit with assured highway preservation, increased structural integrity of highway facilities, and minimized highway tax expenditures for the repair and maintenance of highway structures and facilities going forward.

While the benefits for Arizona's motoring public are not readily quantifiable, the Department believes that these rules maximize overall safety and are in the best interest of all highway users. The Department anticipates that the public and businesses will benefit from the clear framework provided by the rules. This framework establishes controls to ensure that the public is not overwhelmed by advertising media when conducting business with the Department.

Group Affected	Increased Cost	Decreased Cost
Description of Effect	Decreased Revenue	Increased Revenue
ADOT or its Contractor	Substantial for the initial administrative and operating costs incurred	Substantial due to the statutory ability for the Department to negotiate reimbursement
Political subdivisions	Minimal, if any	Minimal, if any
Businesses or consumers	Minimal to substantial depending on budget priorities and expense allocations for advertising related activities	Not quantifiable depending on business nature and intended purpose
Arizona's motoring public	No direct cost	Not readily quantifiable in public safety and assured repair and maintenance cost avoidance to highway facilities and structures

For sponsorship acknowledgement, the Department may now post a stationary highway sign within an area of high-traffic volume to acknowledge a sponsor that makes a significant monetary contribution, a large donation of surplus resources of value, or a noteworthy investment of other resources in support of the Department's efforts to secure alternative funding for Arizona's transportation system.

Sponsorship acknowledgement signs can help fund highway improvements while offering businesses a cost-effective way to promote themselves. The greatest benefit for any sponsor being acknowledged by the Department is the added market exposure. The Department has access to an immense, diverse, and mobile audience. Whether appearing on the Department's website, on a freeway sign, or in the lobby of a Motor Vehicle Division field office, the name or business logo of an advertiser or sponsor can reach hundreds of thousands of people and will vary depending on the locations available for advertising or sponsorship acknowledgement.

6. Statement of the probable effect on state revenues:

Since the advertising and sponsorship program is just getting started, the Department cannot provide any solid figures to illustrate the anticipated revenue this program is likely to generate. Since all costs incurred by businesses participating in the Department's advertising and sponsorship program will be paid under agreements negotiated between the Department or its contractor and the advertisers or sponsors, as required under A.R.S. § 28-7316, the Department anticipates that costs will be minimal, approximately equal to revenue (breakeven) for the first 12 to 18 months due to the initial infrastructure investment and then profitable thereafter, and no additional staffing is required.

The Department anticipates that the participation level of the Arizona business community will meet or exceed the level of participation the Department has experienced through its Grand Canyon State Logo Sign program, which has operated since 2012 through the Department's Arizona Highways magazine and has thus far netted about \$5 million for the state highway fund. This year alone, the Grand Canyon State Logo Sign program anticipates raising as much as \$2.5 million for the state highway fund.

However, the Department is responsible for balancing any new Advertising and Sponsorship Program requirements with all state and federal statutes, rules, and agreements currently in effect regarding Highway Beautification. The statutes and rules outlining the Department's obligations under the federal Highway Beautification Act are provided under 23 U.S.C. 131, Control of Outdoor Advertising, Arizona Revised Statutes, Title 28, Chapter 23, Highway Beautification, and 17 A.A.C. 3, Article 5, Highway Encroachments and Permits and Article 7, Highway Beautification.

The Department's advertising and sponsorship program will generate substantial revenue and net cash flow to the state highway fund. Based on current assumptions, the Department estimates that an annual net cash flow of several million dollars will be generated for the state highway fund. These proceeds will be used for highway construction, maintenance, and other state transportation purposes authorized by law, thus benefitting the motoring public and all businesses that typically depend on uninterrupted access to Arizona highways. This revenue will be generated without increasing existing taxes or imposing new taxes on the public.

All monetary charitable contributions or donations are accepted by the Department as unconditional, with the understanding that they are non-refundable, carry no time limit or expiration date, and create no corresponding obligation on the part of the State of Arizona, its agencies, divisions or departments or agents and employees thereof, except that a donor may specify the facility or facilities the donor expects to benefit from such a donation.

Real or personal property (including charitable monetary donations) or non-personal services donated pursuant to A.R.S. § 28-7316, may be used in addition to any other appropriation or funding source, property, or services made available to the Department for the same purpose.

All charitable contributions or donations, other than cash, may be sold for a profit or otherwise disposed of or utilized in a manner consistent with ADOT's advertising and sponsorship program.

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

In rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. See (B)(5)(c) above.

ADOT remains committed to protecting Arizona's nearly \$21 billion investment in the state highway system through dedicated preservation funding of \$260 million per year, as outlined in the Department's current five-year transportation facilities construction program (2018 - 2022), which prioritizes the highway projects needed to: help move people, goods, and services; generate commerce and economic activity through investments in major freight and travel corridors; and deliver on the Department's commitment to not only maintain but improve the quality of pavement, bridges, and other infrastructure.

Over the next 25 years, the Department anticipates that about \$923 million will be made available in annual highway capital funding from state and federal sources. On average, the Phoenix and Tucson regions are expected to receive \$512 million annually. Of that, \$223 million comes from voter-approved regional programs in those two metropolitan areas dedicated largely to highway expansion. ADOT's recommended investment choice calls for all of the remaining annual average of \$411 million to go toward preserving and modernizing highways in Greater Arizona, and the added revenue generated by the Department's advertising and sponsorship program will help ensure that these funding goals are reached.

8. Description of any data on which the rulemaking is based with a detailed explanation of how the data was obtained and why the data is acceptable. "Acceptable data" means empirical, replicable, and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

Since the costs and expenditures for small business advertising and promotion often vary by company size, industry, region and local media rates, the Department is unable to anticipate, with any degree of certainty, a fair market value for advertising placed on Department assets and facilities. Small businesses should determine their own advertising strategy within a marketing plan and select the media that can best promote their products or services.

Since the advertising and sponsorship program is just getting started, the Department cannot provide any solid figures to illustrate the anticipated revenue this program is likely to generate. However, the rates charged by the Department for advertising and sponsorship activities will be based on average daily customer counts as posted on the Department's website at www.azdot.gov. In areas where demand exceeds available space, advertisers are invited to bid for placement and all bid amounts will be posted to the website after the bidding so future bidders will know what to expect.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if

explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

As discussed above, since the advertising and sponsorship program is just getting started, the Department cannot provide any solid figures to illustrate the anticipated revenue this program is likely to generate. However, the Department can provide the following testimony based on the amazing success of its logo sign program, which also cultivates relationships with businesses throughout Arizona:

“Dollar for dollar, the blue freeway sign program is one of the most-affordable programs there is in the market,” said Jason Kveton, who operates Culver’s franchises in the Phoenix area. “I don’t think there will ever be a year we do not try to stay on the sign.”

Bob Borenstein, of Chompie’s Deli and Bakery, said he likes having his company’s name on the signs and also likes that proceeds go to the state highway fund.

“It’s great to know that the money we’re spending is actually going to the construction of new roads or upkeep of these roads,” Borenstein said.

**STATUTES AND DEFINITIONS FOR
NOTICE OF FINAL RULEMAKING**

**TITLE 17. TRANSPORTATION
CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION
ARTICLE 7. ADVERTISING AND SPONSORSHIP PROGRAM**

General Authorizing Statutes

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-7045. Director; state highway and route use; rules

The director shall exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes and adopt rules regarding the use as the director deems necessary to prevent the abuse and unauthorized use of these highways and routes.

Specific Statutes

A.R.S. § 28-7059. Rest area sponsorship sign program; rules; revenue sharing agreement; program termination

A. The department may establish a rest area sponsorship sign program. Notwithstanding sections 28-648, 28-7048 and 28-7053, the department may contract with a third party to install, maintain and replace rest area sponsorship signs at rest areas located in the public right-of-way of the interstate or state highway system. The third party shall agree in the contract to lease sponsor recognition space and to furnish, install, maintain and replace signs for the benefit of business or organizational sponsors.

B. The department shall adopt rules to implement and operate the rest area sponsorship sign program. Costs incurred under the program shall be paid under agreements negotiated between the third party and the business or organizational sponsors.

C. The department may enter into a revenue sharing agreement with the third party. The department shall deposit, pursuant to sections 35-146 and 35-147, all monies received from the revenue sharing agreement in a subaccount of the state highway fund for the purpose of rest area maintenance, operations and repairs.

D. The rest area sponsorship sign program established pursuant to this section ends on July 1, 2019 pursuant to section 41-3102.

A.R.S. § 28-7316. Assets and facilities advertising and sponsorship program; program termination; definitions

A. In addition to the urban and rural logo sign program established by section 28-7311, the department may establish a program to lease or sell advertising on nonhighway assets of the department and to allow monetary sponsorship of facilities and other assets of the department. The advertising and sponsorship program established pursuant to this section shall be limited to motor vehicle and motorist-related goods and services. The department may adopt rules to implement and administer this section. The department may:

1. Operate, modify or terminate any advertising and sponsorship program.
2. Generate revenue from any advertising and sponsorship program.
3. Contract with a third party to perform any or all aspects of the advertising and sponsorship program authorized pursuant to this section.

B. The department or a third party may negotiate and execute leases for variable terms, set lease rates, establish lease terms and prescribe forms for leases.

C. If the department contracts with a third party, the third party shall agree in the contract to:

1. The contractor's duties, including:

(a) Furnishing, installing, maintaining and replacing the advertising and sponsorship space or media on the authorized assets and facilities of the department.

(b) Promoting and negotiating the leasing of advertising and sponsorship space or media on the authorized assets and facilities of the department.

2. Compensation.

D. Costs incurred under the program established pursuant to this section shall be paid under agreements negotiated between the department or the third party and the advertisers or sponsors.

E. The department may enter into a revenue sharing agreement with the third party. The department shall deposit, pursuant to sections 35-146 and 35-147, revenues generated from the advertising and sponsorship program, minus program operating costs, in the state highway fund established by section 28-6991.

F. The program established pursuant to this section ends on July 1, 2026 pursuant to section 41-3102.

G. For the purposes of this section:

1. "Advertising" means signage or electronic media on department assets that display or promote commercial brands, products or services through a logo, message, slogan or other information.

2. "Assets" means buildings, transportation infrastructure, vehicles, signage, equipment, internet or other electronic media or other facilities or items of value that are owned, maintained or managed by the department.

3. "Facility" means a building, room, center or space or another location in or on an asset that is owned, leased or controlled by the department and that the department deems suitable for sponsorship.

4. "Sponsorship" means the act of sponsoring an element of the department's operation of an asset through highway-related services, products or monetary contributions.

A.R.S. § 28-7913. Advertising displays; safety rest areas; information centers

To provide information in the specific interest of the traveling public, the director may authorize advertising displays at safety rest areas and at information centers.

Definitions of Terms Used in the Rules

A.R.S. § 28-101. Definitions

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. "Alcohol concentration" if expressed as a percentage means either:
 - (a) The number of grams of alcohol per one hundred milliliters of blood.
 - (b) The number of grams of alcohol per two hundred ten liters of breath.
3. "All-terrain vehicle" means either of the following:
 - (a) A motor vehicle that satisfies all of the following:
 - (i) Is designed primarily for recreational nonhighway all-terrain travel.
 - (ii) Is fifty or fewer inches in width.
 - (iii) Has an unladen weight of one thousand two hundred pounds or less.
 - (iv) Travels on three or more nonhighway tires.
 - (v) Is operated on a public highway.
 - (b) A recreational off-highway vehicle that satisfies all of the following:
 - (i) Is designed primarily for recreational nonhighway all-terrain travel.
 - (ii) Is sixty-five or fewer inches in width.
 - (iii) Has an unladen weight of one thousand eight hundred pounds or less.
 - (iv) Travels on four or more nonhighway tires.
4. "Authorized emergency vehicle" means any of the following:
 - (a) A fire department vehicle.
 - (b) A police vehicle.
 - (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
 - (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.
5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.
7. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
 - (a) Two tandem wheels, either of which is more than sixteen inches in diameter.
 - (b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.
8. "Board" means the transportation board.

9. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
10. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.
11. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
12. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
13. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.
14. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.
15. "Conviction" means:
- (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
 - (b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
 - (c) A plea of guilty or no contest accepted by the court.
 - (d) The payment of a fine or court costs.
16. "County highway" means a public road that is constructed and maintained by a county.
17. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.
18. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.
19. "Digital network or software application" has the same meaning prescribed in section 28-9551.
20. "Director" means the director of the department of transportation.
21. "Drive" means to operate or be in actual physical control of a motor vehicle.
22. "Driver" means a person who drives or is in actual physical control of a vehicle.
23. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
24. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.
25. "Farm" means any lands primarily used for agriculture production.
26. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

27. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.
28. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.
29. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.
30. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:
- (a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.
 - (b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.
31. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.
32. "Livery vehicle" means a motor vehicle that:
- (a) Has a seating capacity not exceeding fifteen passengers including the driver.
 - (b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.
 - (c) Is available for hire on an exclusive or shared ride basis.
 - (d) May do any of the following:
 - (i) Operate on a regular route or between specified places.
 - (ii) Offer prearranged ground transportation service as defined in section 28-141.
 - (iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.
33. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.
34. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

35. "Moped" means a bicycle that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

36. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower.

37. "Motor vehicle":

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a motorized wheelchair, an electric personal assistive mobility device or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

38. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

39. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor and a moped.

40. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:

(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle seats at least eight passengers, including the driver.

(d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.

(e) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.

(g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.

(h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

41. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

- (a) The vehicle is emission free.
 - (b) The vehicle has at least four wheels in contact with the ground.
 - (c) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.
42. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.
43. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.
44. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.
45. "Owner" means:
- (a) A person who holds the legal title of a vehicle.
 - (b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.
 - (c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.
46. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.
47. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.
48. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.
49. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.
50. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.
51. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property

on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

52. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:

(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

53. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

54. "State" means a state of the United States and the District of Columbia.

55. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.

56. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.

57. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.

58. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

59. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.

60. "Traffic survival school" means a school that offers educational sessions to drivers who are required to attend and successfully complete educational sessions pursuant to this title that are designed to improve the safety and habits of drivers and that are approved by the department.

61. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

62. "Transportation network company" has the same meaning prescribed in section 28-9551.

63. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.

64. "Transportation network service" has the same meaning prescribed in section 28-9551.

65. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

66. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

67. "Vehicle" means a device in, on or by which a person or property is or may be transported or drawn on a public highway, excluding devices moved by human power or used exclusively on stationary rails or tracks.

68. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

A.R.S. § 28-601. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial motor vehicle" means a motor vehicle or combination of vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise, that is a commercial motor vehicle as defined in section 28-5201 and that is not exempt from gross weight fees as prescribed in section 28-5432, subsection B.

2. "Controlled access highway" means a highway, street or roadway to or from which owners or occupants of abutting lands and other persons have no legal right of access except at such points only and in the manner determined by the public authority that has jurisdiction over the highway, street or roadway.

3. "Crosswalk" means:

(a) That part of a roadway at an intersection included within the prolongations or connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in absence of curbs, from the edges of the traversable roadway.

(b) Any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian crossing by lines or other markings on the surface.

4. "Escort vehicle" means a vehicle that is required pursuant to rules adopted by the department to escort motor vehicles or combinations of vehicles that require issuance of a permit pursuant to article 18 or 19 of this chapter for operation on the highways of this state.

5. "Explosives" means any chemical compound, mixture or device that is commonly used or intended for the purpose of producing an explosion and that is defined in 49 Code of Federal Regulations part 173.

6. "Flammable liquid" means any liquid that has a flash point of less than one hundred degrees Fahrenheit and that is defined in 49 Code of Federal Regulations section 173.120.

7. "Gross weight" means the weight of a vehicle without a load plus the weight of any load on the vehicle.

8. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in

conflict. If a highway includes two roadways thirty or more feet apart, each crossing of each roadway of the divided highway by an intersecting highway is a separate intersection. If the intersecting highway also includes two roadways thirty or more feet apart, each crossing of two roadways of the highways is a separate intersection.

9. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state that pertain to the licensing of persons to operate motor vehicles.

10. "Low emission and energy efficient vehicle" means a vehicle that has been certified by the United States environmental protection agency administrator in accordance with 23 United States Code section 166 or that is part of a federally approved pilot program.

11. "Motorized wheelchair" means any self-propelled wheelchair that is used by a person for mobility.

12. "Official traffic control device" means any sign, signal, marking or device that is not inconsistent with this chapter and that is placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic.

13. "Park", if prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

14. "Photo enforcement system" means a device substantially consisting of a radar unit or sensor linked to a camera or other recording device that produces one or more photographs, microphotographs, videotapes or digital or other recorded images of a vehicle's license plate for the purpose of identifying violators of articles 3 and 6 of this chapter.

15. "Pneumatic tire" means a tire in which compressed air is designed to support the load.

16. "Pole trailer" means a vehicle that is all of the following:

(a) Without motive power.

(b) Designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle.

(c) Used ordinarily for transporting long or irregularly shaped loads such as poles, pipes or structural members capable generally of sustaining themselves as beams between the supporting connections.

17. "Police officer" means an officer authorized to direct or regulate traffic or make arrests for violations of traffic rules or other offenses.

18. "Private road or driveway" means a way or place that is in private ownership and that is used for vehicular travel by the owner and those persons who have express or implied permission from the owner but not by other persons.

19. "Railroad" means a carrier of persons or property on cars operated on stationary rails.

20. "Railroad sign or signal" means a sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

21. "Railroad train" means a steam engine or any electric or other motor that is with or without cars coupled to the steam engine or electric or other motor and that is operated on rails.

22. "Roadway" means that portion of a highway that is improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, roadway refers to any such roadway separately but not to all such roadways collectively.

23. "Safety zone" means the area or space that is both:

(a) Officially set apart within a roadway for the exclusive use of pedestrians.

(b) Protected or either marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

24. "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for the use of pedestrians.

25. "Stop", if required, means complete cessation from movement.

26. "Stop, stopping or standing", if prohibited, means any stopping or standing of an occupied or unoccupied vehicle, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic control sign or signal.

27. "Through highway" means a highway or portion of a highway at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing and when stop signs are erected as provided in this chapter.

28. "Traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using a highway for purposes of travel.

29. "Traffic control signal" means a device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

30. "Truck" means a motor vehicle that is designed, used or maintained primarily for the transportation of property.

A.R.S. § 28-7316. Assets and facilities advertising and sponsorship program; program termination; definitions

A. In addition to the urban and rural logo sign program established by section 28-7311, the department may establish a program to lease or sell advertising on nonhighway assets of the department and to allow monetary sponsorship of facilities and other assets of the department. The advertising and sponsorship program established pursuant to this section shall be limited to motor vehicle and motorist-related goods and services. The department may adopt rules to implement and administer this section. The department may:

1. Operate, modify or terminate any advertising and sponsorship program.
2. Generate revenue from any advertising and sponsorship program.
3. Contract with a third party to perform any or all aspects of the advertising and sponsorship program authorized pursuant to this section.

B. The department or a third party may negotiate and execute leases for variable terms, set lease rates, establish lease terms and prescribe forms for leases.

C. If the department contracts with a third party, the third party shall agree in the contract to:

1. The contractor's duties, including:
 - (a) Furnishing, installing, maintaining and replacing the advertising and sponsorship space or media on the authorized assets and facilities of the department.
 - (b) Promoting and negotiating the leasing of advertising and sponsorship space or media on the authorized assets and facilities of the department.
2. Compensation.

D. Costs incurred under the program established pursuant to this section shall be paid under agreements negotiated between the department or the third party and the advertisers or sponsors.

E. The department may enter into a revenue sharing agreement with the third party. The department shall deposit, pursuant to sections 35-146 and 35-147, revenues generated from the advertising and sponsorship program, minus program operating costs, in the state highway fund established by section 28-6991.

F. The program established pursuant to this section ends on July 1, 2026 pursuant to section 41-3102.

G. For the purposes of this section:

1. "Advertising" means signage or electronic media on department assets that display or promote commercial brands, products or services through a logo, message, slogan or other information.
2. "Assets" means buildings, transportation infrastructure, vehicles, signage, equipment, internet or other electronic media or other facilities or items of value that are owned, maintained or managed by the department.
3. "Facility" means a building, room, center or space or another location in or on an asset that is owned, leased or controlled by the department and that the department deems suitable for sponsorship.
4. "Sponsorship" means the act of sponsoring an element of the department's operation of an asset through highway-related services, products or monetary contributions.

A.R.S. § 28-7901. Definitions

In this article, unless the context otherwise requires:

1. "Business area" means an area that is outside municipal limits, that embraces all of the land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied for such activity, its parking, storage and service areas, its driveways and its established front, rear and side yards, that constitutes an integral part of such activity and that is zoned, under authority of law, primarily to permit industrial or commercial activity. If one or more commercial or industrial activities are located within one thousand feet of a freeway interchange, the business area shall extend three thousand feet measured in each direction parallel to the freeway from the center line of the crossroad but shall not extend beyond the limits of the established commercial or industrial zone.
2. "Comprehensive development" means an activity if all of the following apply:
 - (a) The activity is comprised primarily of individual commercial or industrial activities.
 - (b) The activity is located on land that is only on one side of the highway.
 - (c) The lots or parcels within the development are contiguous except for roadways or driveways, whether public or private, that provide access to the development.
 - (d) The relevant county, city or town has approved the boundaries of the activity as a unified development with a common identity and an interrelated plan for public and private improvements, either as originally planned or as amended.
 - (e) The activity has common areas such as parking, amenities and landscaping.
 - (f) The activity has a scheme of common ownership that actively provides for the management and maintenance of common areas within the development.
 - (g) The premises includes all land used or to be used or occupied for the activity. Uses of land that serve no reasonable or integrated purpose related to the activity, other than an attempt to qualify the land for signing purposes, are not part of the comprehensive development. For the purposes of this subdivision, "premises" includes:

- (i) Buildings.
 - (ii) Parking.
 - (iii) Storage and service areas.
 - (iv) Streets.
 - (v) Driveways.
 - (vi) Land used and reasonably necessary for landscaped front, rear and side yards.
3. "Electronic outdoor advertising" means signs, displays and devices with sign faces that are comprised of matrices of light or light-emitting devices that are static or capable of changing messages electronically by remote or automatic means.
4. "Freeway" means a divided arterial highway on the interstate or primary system with full control of access and with grade separations at intersections.
5. "Information center" means a site that is established and maintained at a safety rest area to inform the public of places of interest in this state and that provides other information the board considers desirable.
6. "Interstate system" means the portion of the national system of interstate and defense highways located in this state that are officially designated by the board and approved by the United States secretary of transportation pursuant to 23 United States Code.
7. "Main traveled way":
- (a) Means the portion of a roadway for the movement of vehicles, excluding shoulders, on which through traffic is carried.
 - (b) In the case of a divided highway, means the traveled way of each of the separated roadways for traffic in opposite directions.
 - (c) Does not include facilities such as frontage roads or parking areas.
8. "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other thing that is designed, intended or used to advertise or inform and the message of which is visible from any place on the main traveled way of the interstate, secondary or primary systems.
9. "Primary system" means that portion of connected main highways located in this state that are officially designated by the board and approved by the United States secretary of transportation pursuant to 23 United States Code.
10. "Safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right-of-way of the interstate or primary systems.
11. "Scheme of common ownership" means an ownership scheme in which the owners have recorded irrevocable rights to use common areas.
12. "Secondary system" means that portion of connected highways located in this state that are officially designated by the board and approved by the United States secretary of transportation pursuant to 23 United States Code.
13. "Tourist related advertising display" means any outdoor advertising that advertises a specific public or private facility, accommodation, goods or service, at a particular location or site, including an overnight lodging, campsite, food service, recreational facility, tourist attraction, educational or historical site or feature and automotive service facility or garage.

14. "Unzoned commercial or industrial area" means an area that is not zoned under authority of law and in which land use is characteristic of that generally permitted only in areas that are actually zoned commercial or industrial under authority of state law, that embraces all land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied by this activity, its parking, storage and service areas, its driveways and its established front, rear and side yards, and that constitutes an integral part of this activity.

As used in this paragraph, commercial or industrial activities do not include:

- (a) Outdoor advertising structures.
- (b) Agricultural, forestry, grazing, farming and related activities.
- (c) Transient or temporary activities, including wayside fresh produce stands.
- (d) Activities not visible from the main traveled way.
- (e) Activities conducted in a building principally used as a residence.
- (f) Railroad tracks and minor sidings and aboveground or underground utility lines.

DEPARTMENT OF ADMINISTRATION (R-18-0302)

Title 2, Chapter 1, Article 6, Adjusted Work Hours; Article 8, Reimbursement for Public and Private Transportation; Article 9, Reimbursement for Van Pool Transportation

Amend: Article 8; R2-1-801; R2-1-802; R2-1-803; R2-1-804; R2-1-805

Repeal: Article 6, R2-1-601; R2-1-603; R2-1-805; Article 9; R2-1-901; R2-1-902;
R2-1-903; R2-1-904; R2-1-905

Renumber: R2-1-602; R2-1-805



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: March 6, 2018

AGENDA ITEM: F-2

TO: Members of the Governor's Regulatory Review Council

FROM: Council Staff

DATE: February 20, 2018

SUBJECT: DEPARTMENT OF ADMINISTRATION (R-18-0302)
Title 2, Chapter 1, Article 6, Adjusted Work Hours; Article 8, Reimbursement for Public and Private Transportation; Article 9, Reimbursement for Van Pool Transportation

Amend: Article 8; R2-1-801; R2-1-802; R2-1-803; R2-1-804; R2-1-805

Repeal: Article 6, R2-1-601; R2-1-603; R2-1-805; Article 9; R2-1-901;
R2-1-902; R2-1-903; R2-1-904; R2-1-905

Re-number: R2-1-602; R2-1-805

SUMMARY OF THE RULEMAKING

This rulemaking from the Arizona Department of Administration (Department) repeals eight rules, amends five rules, and renumbers two rules in A.A.C. Title 2, Chapter 1, Articles 6, 8, and 9. The rules in Article 6 relate to adjusted work hours and require the Department's director to utilize travel reduction survey data to determine the percentage of state employee work schedules that comply with the requirements. The rules in Article 8 relate to travel reimbursement subsidy for private and public providers. The rules in Article 9 relate to reimbursement for vanpool transportation.

The Department is engaging in this rulemaking to eliminate unnecessary and antiquated rules. Currently, the rules address the different means of travel such as public or private provider or vanpool. However, the Department indicates that the rules should focus on reducing travel by any means of commuter transportation, which does not only include public or private providers and vanpool but also includes travel by light rail and bicycle. Moreover, the Department is proposing to consolidate the rules in the three Articles into one Article.

This rulemaking relates, in part, to a five-year-review report approved by the Council on February 7, 2017. The rules were last amended at various times between 2000 and 2011. The Department received an exemption from the moratorium on July 7, 2017.

Proposed Action

- **Article 6 – *Adjusted Work Hours***: The Article is being repealed and the relevant requirements are incorporated into Article 8.
- **R2-1-601 – *Definitions***: The rule is being repealed.
- **R2-1-602 – *Requirements***: The rule is being renumbered.
- **R2-1-603 – *Monitoring***: The rule is being repealed.
- **Article 8 – *Reimbursement for Public or Private Transportation***: The heading is changed to “Travel Reduction Programs.”
- **R2-1-801 – *Definitions***: Terms are being modified to reflect updates to the other rules. “Transportation provider” is being defined as an incorporated city or town, a regional public transportation authority, a commercial enterprise, or an Arizona state agency.
- **R2-1-802 – *Transportation Program Reimbursement Subsidy Eligibility***: The title is being changed to “Eligibility for Commuter Transportation Reimbursement Subsidy.” The rule is rewritten to clarify that an eligible employee must complete an application and use commuter transportation to travel to or from their office. In addition, subsection (B) is added to list conditions and uses of a transportation card issued by the State.
- **R2-1-803 – *Transportation Program Reimbursement Subsidy Amount***: The title is being changed to “Commuter Transportation Reimbursement Subsidy Amount.” References to public or private transportation is replaced by commuter transportation. Clarifying changes are made throughout the rule.
- **R2-1-804 – *Transportation Program Reimbursement Subsidy Procedure***: The title is being changed to “Commuter Transportation Reimbursement Subsidy Procedure.” Clarifying changes are made and references are updated.
- **R2-1-805 – *Transportation Program Reduced Cost Procedure***: The current text of the rule is being replaced with section 602, related to adjusted work hours. The rule requires state agencies to provide work schedule options so at least eight-five percent of employees in certain areas are on adjusted work hours. Adjusted work hours are defined as: (1) workdays beginning on or before 7:30 am, or on or after 8:30 am, and ending on or before 4:30 pm, or on or after 5:30 pm; (2) four-day, 40-hour work week; or (3) allow an employee to telework.
- **Article 9 – *Reimbursement for Vanpool Transportation***: The Article is being repealed.
- **R2-1-901 – *Definitions***: The rule is being repealed.
- **R2-1-902 – *Vanpool Reimbursement Subsidy Eligibility***: The rule is being repealed.
- **R2-1-903 – *Vanpool Reimbursement Subsidy Amount***: The rule is being repealed.
- **R2-1-904 – *Vanpool Reimbursement Subsidy Procedure***: The rule is being repealed.
- **R2-1-905 – *Vanpool Reduced Cost Procedure***: The rule is being repealed.

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

Yes. As for general authority, A.R.S. § 41-703(3) authorizes the director to “[a]dopt rules the director deems necessary or desirable to further the objectives and programs of the [D]epartment.”

As for specific authority, the Department cites to the following two statutes:

- A.R.S. § 41-710.01, which authorizes the director to adopt rules to provide for the reimbursement of up to one hundred percent of the cost to state employees for public transportation or telecommuting connectivity.
- A.R.S. § 41-796.01, which authorizes the director to adopt rules to require adjusted work hours for at least eighty-five percent of state employees with offices located in certain areas to reduce the level of carbon monoxide concentrations caused by motor vehicles.

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:

This rulemaking primarily improves current rules; therefore, there are minimal economic impacts. Additionally, participation in travel reduction programs is voluntary. The travel reduction programs utilize 6 transportation providers:

- 2 transit providers (one each in Maricopa and Pima counties)
- 1 van pool provider
- 1 bike share provider
- 2 emergency ride providers

The Department estimates that there are approximately 18,600 eligible employees for the services from travel reduction programs. The Department estimates that 1,674 (9%) of these employees utilize these services.

The total cost of travel reduction programs was \$712,400 in FY2017. Benefits of these programs in FY2017 included:

- 17,150,769 miles not driven
- 779,580 gallons of gasoline not used
- 191 tons of air pollution avoided

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. This rulemaking will improve the quality of the rules related to travel reduction programs. It imposes minor administrative costs on stakeholders that voluntarily participate in the programs. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Department, transportation providers, and eligible employees.

The Department has incurred minimal administrative costs related to promulgating these rules. The Department will benefit from having rules that are more clear, concise, and understandable.

Transportation providers will be impacted by this rulemaking. All of these providers, with the exception of GRID Bike Share, are not classified as small businesses. GRID Bike Share is a small business, but it is impacted in the same manner as all transportation providers.

Transportation providers are required to report the quantity and cost of rides taken by eligible employees. Aside from requiring technology that collects this information, generally from a machine that requires card swipes, this rulemaking minimally impacts transportation businesses. Participation in these programs is voluntary for transportation providers, so they have individually determined that their private benefits exceed their private costs.

Eligible employees benefit from this rulemaking by receiving subsidized transportation services. Participation in these programs is voluntary for eligible employees.

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 rules and no one attended the oral proceeding held on January 8, 2018.

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

No. Only minor technical changes were made between the proposed and final rules at the request of Council staff.

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 law is directly applicable to the subject of 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 that it did not review or rely on any study for this 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



Craig C. Brown
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

**OFFICE OF GRANTS AND FEDERAL RESOURCES
100 NORTH 15th AVENUE, SUITE 305
PHOENIX, ARIZONA 85007**

January 11, 2018

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

**Re: A.A.C. Title 2. Administration
Chapter 1. Department of Administration**

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:

- A. Close of record date: The rulemaking record was closed on January 8, 2018, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a five-year-review report approved by the Council on February 7, 2017.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify that the preamble accurately discloses that the Department did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:

1. Cover letter signed by the Az Department of Administration Assistant Director;
2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
3. Economic, Small Business, and Consumer Impact Statement

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Hanson". The signature is written in a cursive, flowing style.

Matthew Hanson, Assistant Director
AZ Department of Administration

NOTICE OF FINAL RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 1. DEPARTMENT OF ADMINISTRATION
PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

Article 6	Repeal
R2-1-601	Repeal
R2-1-602	Renumber
R2-1-603	Repeal
Article 8	Amend
R2-1-801	Amend
R2-1-802	Amend
R2-1-803	Amend
R2-1-804	Amend
R2-1-805	Repeal
R2-1-805	Renumber
R2-1-805	Amend
Article 9	Repeal
R2-1-901	Repeal
R2-1-902	Repeal
R2-1-903	Repeal
R2-1-904	Repeal
R2-1-905	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. § 41-703(3)

Implementing statute: A.R.S. §§ 41-710.01 and 41-796.01

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the 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. Citation 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: 23 A.A.R. 2386, September 1, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 3303, December 1, 2017

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

Name: Karen Ziegler, Project Manager, AZPSBN

Address: 100 N. 15th Avenue, Suite 305

Phoenix, AZ 85007

Telephone: (602) 542-6032

E-mail: Karen.ziegler@azdoa.gov

Web site: <https://doa.az.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:

This rulemaking was undertaken to address the Governor's request that agencies eliminate rules that are antiquated, redundant, or otherwise unnecessary. The Department determined the rules, as they currently exist, are antiquated and redundant because they focus on the means of transportation, by a public or private provider or by vanpool, rather than on reducing travel by any means of transportation. The amended rules focus on reducing travel by any means of commuter transportation. This includes not only public and private providers and vanpool but also some means, such as light rail and bicycle, which were not addressed in the existing rules.

The rulemaking relates, in part, to a five-year-review report approved by the Council on February 7, 2017. An exemption from Executive Order 2017-02 was provided for this rulemaking by Mara Mellstrom, Policy Advisor in the Governor's Office, in an e-mail dated July 7, 2017.

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 a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The rulemaking does not change the substance of the rules regarding travel reduction. As a result, the economic impact is minimal. There will be minimal, if any, economic impact on employees or transportation providers. The Department incurred the cost of making the rules but will have the benefit of complying with the Governor's request.

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

In response to comments by GRRC staff, minor word-choice changes were made in R2-1-801(4), R2-1-803(B)(1) and (2), and R2-1-804(A). Also, a more detailed explanation of the Department's reasons for the rulemaking was added to item 6 of the Preamble.

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

No comments were received regarding the rulemaking. No one attended the oral proceeding on January 8, 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:

No rule in the rulemaking involves 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:

No federal law is directly applicable to the subject of any rule in this rulemaking

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

No analysis was submitted.

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

None

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

No rule in the rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION
CHAPTER 1. DEPARTMENT OF ADMINISTRATION
ARTICLE 6. ~~ADJUSTED WORK HOURS~~ REPEALED

Section

- R2-1-601. ~~Definitions~~ Repealed
- R2-1-602. ~~Requirements~~ Renumbered
- R2-1-603. ~~Monitoring~~ Repealed

~~ARTICLE 8. REIMBURSEMENT FOR PUBLIC OR PRIVATE TRANSPORTATION TRAVEL~~
REDUCTION PROGRAMS

Section

- R2-1-801. Definitions
- R2-1-802. Eligibility for Commuter Transportation Program Reimbursement Subsidy ~~Eligibility~~
- R2-1-803. Commuter Transportation Program Reimbursement Subsidy Amount
- R2-1-804. Commuter Transportation Program Reimbursement Subsidy Procedure
- ~~R2-1-602~~ R2-1-805. Transportation Program Reduced Cost Procedure Adjusted Work Hours

~~ARTICLE 9. REIMBURSEMENT FOR VAN POOL TRANSPORTATION~~ REPEALED

Section

- R2-1-901. ~~Definitions~~ Repealed
- R2-1-902. ~~Vanpool Reimbursement Subsidy Eligibility~~ Repealed
- R2-1-903. ~~Vanpool Reimbursement Subsidy Amount~~ Repealed
- R2-1-904. ~~Vanpool Reimbursement Subsidy Procedure~~ Repealed
- R2-1-905. ~~Vanpool Reduced Cost Procedure~~ Repealed

ARTICLE 6. ~~ADJUSTED WORK HOURS~~ REPEALED

R2-1-601. Definitions Repealed

In this Article, unless the context otherwise requires:

1. ~~“Agency head” means the head of each department, agency, board and commission of this state.~~
2. ~~“Area A” has the same meaning in A.R.S. § 49-541(1).~~
3. ~~“Area B” has the same meaning in A.R.S. § 49-541(2).~~
4. ~~“Director” means the Director of the Department of Administration or the Director’s designee.~~
5. ~~“Employee” means any person elected or appointed to a state position, or employed on a part time or full time basis by a department, agency, board, or commission of this state.~~
6. ~~“Period” means October 1 through the following April 1.~~
7. ~~“Travel Reduction Survey Data” means information collected pursuant to A.R.S. § 49-588, Pima County Ordinance 1988-72, and Pinal County Ordinance 121300-AQ1.~~

R2-1-602. Requirements Renumbered

R2-1-603. Monitoring Repealed

~~The Director shall utilize existing travel reduction survey data to determine the percentage of employee work schedules that are in compliance with R2-1-602(A).~~

**ARTICLE 8. ~~REIMBURSEMENT FOR PUBLIC OR PRIVATE TRANSPORTATION~~ TRAVEL
REDUCTION PROGRAMS**

R2-1-801. Definitions

In this Article, unless otherwise specified:

1. ~~“Bus” means a motor vehicle designed to carry 16 or more passengers, including the driver.~~
“Agency head” means the head of each department, agency, board, and commission of this state.
2. ~~“Commuter” means travel to and from an employee’s place of employment.~~ “Area A and Area B” have the same meaning in A.R.S. § 49-541.
3. “Commuter transportation” means a mode of transportation used by an eligible employee to travel to or from the eligible employee’s place of employment and made available to the eligible employee by a transportation provider under contract with the state of Arizona.

- 3.4. ~~“Director” means the chief executive officer~~ Director of the Department of Administration or the director’s designee.
- 4.5. ~~“Eligible employee” means an individual who is employed by the state of Arizona~~ employee, in pay status, and lives or works in a ~~vehicle emissions control area, as defined in A.R.S. § 49-541~~ Area A or Area B, except a university employee ~~or an employee of the State Compensation Fund under A.R.S. § 23-981.01.~~
6. “Employee” means an individual elected or appointed to a state position, or employed on a part-time or full-time basis by a department, agency, board, or commission of this state.
- 5.7. ~~“Pay status” has the meaning in R2-5A-101.~~
6. 8. ~~“Private transportation” means the conveyance of passengers, by a commercial enterprise, on scheduled routes by bus for which an individual passenger pays a fare. “Period” means October 1 through the following April 1.~~
7. ~~“Public transportation” has the meaning in A.R.S. § 41-710.01(B).~~
- 8.9. ~~“Reduced cost” means an eligible employee’s share~~ the portion of the total cost of ~~public or private~~ commuter transportation that is paid by an eligible employee ~~remains after the reimbursement subsidy is paid.~~
- 9.10. ~~“Reimbursement subsidy” means the portion of the total cost of public or private~~ commuter transportation that is paid on behalf of an eligible employee to a transportation provider through a contract with the state of Arizona ~~on behalf of an eligible employee under A.R.S. § 41-710.01.~~
10. ~~“Transportation card” means the evidence of an eligible employee’s participation in a transportation program, issued to the employee by the Department of Administration.~~
11. ~~“Transportation program” means a system for reimbursement or subsidy of public or private transportation expenses under A.R.S. § 41-710.01. “Telework” has the same meaning as at 5 U.S.C. 6501.~~
12. “Transportation provider” means:
- a. An incorporated city or town.
 - b. A regional public transportation authority established under A.R.S. § 48-5102,
 - c. A regional transportation authority established under A.R.S. § 48-5302,
 - d. A commercial enterprise, or
 - e. An Arizona state agency.

R2-1-802. Eligibility for Commuter Transportation Program Reimbursement Subsidy Eligibility

A. The Director shall pay a reimbursement subsidy on behalf of an eligible employee who:

1. ~~Commutes by public or private transportation;~~ Completes an application, using a form available from the Department of Administration, for authorization to pay the reduced cost for commuter transportation; and
2. ~~Is enrolled in a transportation program; and~~ Uses commuter transportation to travel to or from the eligible employee's place of employment.
3. ~~Has authorized payroll deductions under A.R.S. § 38-612(B)(9).~~

B. An eligible employee who uses public or private bus or light rail as a means of commuter transportation shall:

1. Authorize payroll deduction under A.R.S. § 38-612(B)(9) of the reduced cost; and
2. As a condition of being authorized to pay the reduced cost for commuter transportation and being issued a transportation card, agree:
 - a. Not to allow anyone else to use the transportation card;
 - b. To use the transportation card only for commuter transportation unless the eligible employee incurs the transportation provider's maximum monthly charge;
 - c. To maintain payroll deduction authorization;
 - d. To notify the Department of Administration if the transportation card is lost or stolen;
 - e. To pay \$5 on a payroll deduction to replace a lost, damaged, or stolen transportation card;
 - f. To surrender the transportation card upon termination of employment with the state; and
 - g. That use of the transportation card after receiving notice of a change to the terms of using the transportation card constitutes agreement to the change.

R2-1-803. Commuter Transportation Program Reimbursement Subsidy Amount

A. The Director shall determine the amount of reimbursement subsidy, up to 100% of the actual cost of ~~public or private~~ commuter transportation, based upon:

1. The number of eligible employees ~~participating in the program~~ authorized under R2-1-802 to pay reduced cost for commuter transportation;
2. The cost of ~~public or private~~ the commuter transportation; and
3. The amount of state funds appropriated by the Legislature for reimbursement subsidy purposes.

B. The Director shall notify an eligible employee of:

1. The initial percentage of reimbursement subsidy before the employee ~~enrolls in the program~~ applies under R2-1-802(A)(1); and
2. Any change in ~~that percentage~~ the amount of reimbursement subsidy at least 30 days before the effective date of the change.

R2-1-804. Commuter Transportation Program Reimbursement Subsidy Procedure

- A.** ~~The A transportation provider of public or private transportation shall submit a monthly invoice to the Director that itemizes each public or private~~ the total commuter transportation ride taken by costs incurred by each eligible employee.
- B.** ~~The Director shall subtract from the total amount due the percentage of pay the transportation provider~~ the reimbursement subsidy amount for each eligible employee.
- C.** ~~The eligible employee shall pay the reduced cost to the transportation provider either directly or, if required under R2-1-802(B), through payroll deduction.~~

~~R2-1-602.~~ **R2-1-805. Transportation Program Reduced Cost Procedure Adjusted Work Hours**

- A.** ~~An eligible employee seeking to pay a reduced cost shall complete, sign, and submit an application and payroll deduction authorization form to the office designated by the Department of Administration. The application form shall contain the following: During the period, each agency head shall provide work schedule options so a minimum of 85 percent of employees whose offices are located in Area A or Area B are on adjusted work hours. Adjusted work hours are schedules that:~~
 - 1. ~~The employee's name and employee identification number; Begin the workday on or before 7:30 a.m., or on or after 8:30 a.m., and conclude the workday on or before 4:30 p.m., or on or after 5:30 p.m.;~~
 - 2. ~~The name and mailing address of the state agency compensating the employee; Adjust work hours into a four-day, 40-hour work week. Employees shall avoid a workday that begins between 7:30 a.m. and 8:30 a.m. or concludes between 4:30 p.m. and 5:30 p.m., whenever possible; or~~
 - 3. ~~For public transportation, the type of public transportation card requested; and Allow the employee to telework.~~
 - 4. ~~The employee's agreement to comply with the conditions in subsection (B).~~
- B.** ~~As a condition of receiving a transportation card, an eligible employee shall agree: Notwithstanding the requirements of subsection (A), each agency shall comply with A.R.S. § 38-401 requiring state offices to be open from 8:00 a.m. until 5:00 p.m.~~
 - 1. ~~Not to allow anyone else to use the transportation card;~~
 - 2. ~~To use the transportation card only for trips to and from work with a state agency, board, or commission, unless the employee incurs the maximum monthly charge in commuting;~~
 - 3. ~~To be responsible for charges incurred with the transportation card;~~
 - 4. ~~To notify the office designated by the Department of Administration if the transportation card is lost or stolen;~~

5. ~~To pay \$5 on a payroll deduction to replace a lost, damaged, or stolen transportation card;~~
6. ~~To surrender the transportation card upon termination of employment with the state; and~~
7. ~~That use of the transportation card after receiving notice from the Department of Administration of change in the transportation program policies constitutes the employee's agreement to the change.~~

ARTICLE 9. ~~REIMBURSEMENT FOR VAN POOL TRANSPORTATION~~ REPEALED

R2-1-901. ~~Definitions~~ Repealed

In this Article, unless otherwise specified, the following terms apply:

1. ~~“Commute” means travel to and from an employee’s place of employment.~~
2. ~~“Director” means the chief executive officer of the Department of Administration or the Director’s designee.~~
3. ~~“Eligible employee” means an individual who is employed by the state of Arizona, in pay status, and lives or works in a vehicle emissions control area, as defined in A.R.S. § 49-541, except a university employee or an employee of the State Compensation Fund under A.R.S. § 23-981.01.~~
4. ~~“Pay status” has the meaning in R2-5A-101.~~
5. ~~“Reduced cost” means an eligible employee’s share of the total cost of vanpool transportation that remains after the reimbursement subsidy is paid.~~
6. ~~“Reimbursement subsidy” means the portion of the total cost of vanpool transportation that is paid, on behalf of an eligible employee, to a regional transit authority or state agency through a contract with the state of Arizona.~~
7. ~~“Regional transit authority” means a regional transportation authority established under A.R.S. § 48-5302 or regional public transportation authority established under A.R.S. § 48-5102 that operates or licenses a vanpool program.~~
8. ~~“State agency” means an agency that administers a vanpool program in an area not served by a regional transit authority.~~
9. ~~“Vanpool” means seven or more persons who commute in a van sponsored by a regional transit authority or in a van that is part of a vanpool administered by a state agency.~~

R2-1-902. ~~Vanpool Reimbursement Subsidy Eligibility~~ Repealed

~~The Department shall pay to a regional transit authority or a state agency on behalf of an eligible employee in a pay status who:~~

1. ~~Commutes in a vanpool operated by the regional transit authority or administered by a state agency, and~~
2. ~~Has completed the vanpool transportation subsidy application form.~~

R2-1-903. Vanpool Reimbursement Subsidy Amount Repealed

~~The Director shall determine the amount of reimbursement subsidy, up to 100% of the actual cost of vanpool transportation, according to the following: the number of eligible employees participating in the program, the cost of vanpooled transportation, and the amount of state funds appropriated by the legislature for reimbursement subsidy purposes. The Director shall notify employees of the initial percentage of subsidy prior to enrollment of the employee in the program and of any change in that percentage prior to the change taking effect.~~

R2-1-904. Vanpool Reimbursement Subsidy Procedure Repealed

~~The regional transit authority or state agency shall submit to the Director an invoice that itemizes each eligible employee and the eligible employee's monthly vanpool reimbursement subsidy amount. The Director shall pay the reimbursement subsidy amount upon receipt of the invoice from the regional transit authority or the state agency. The employee shall pay the reduced cost to the regional transit authority or the state agency.~~

R2-1-905. Vanpool Reduced Cost Procedure Repealed

~~An eligible employee seeking to pay a reduced cost shall complete the vanpool transportation subsidy application form and submit it to the Department of Administration Travel Reduction Program. The application form shall contain the following:~~

1. ~~The employee's name and employee identification number,~~
2. ~~The name and mailing address of the state agency compensating the employee, and~~
3. ~~The employee's signature.~~

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

1. Identification of the rulemaking:

This rulemaking is undertaken to address the Governor's request that agencies eliminate rules that are antiquated, redundant, or otherwise unnecessary.

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

Until the rulemaking is completed, the Department will continue to have rules that are antiquated, redundant, or otherwise unnecessary.

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:

Antiquated, redundant, or otherwise unnecessary rules confuse those who must comply with the rules and make enforcement difficult.

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

When the rulemaking is completed, two Articles comprising eight Sections will be repealed and only one Article comprising five Sections will remain. This is a 61.5 percent reduction in the number of rules addressing travel reduction programs.

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

Because this rulemaking does not change the substance of the rules regarding travel reduction, the economic impact will be minimal. There will be minimal, if any, economic impact on employees or transportation providers. The Department will incur the cost of making the rules but will have the benefit of complying with the Governor's request.

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: Karen Ziegler, Project Manager, AZPSBN

Address: 100 N. 15th Avenue, Suite 305

Phoenix, AZ 85007

Telephone: (602) 542-6032

E-mail: Karen.ziegler@azdoa.gov

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms.

Web site: <https://doa.az.gov>

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

Persons that will be directly affected by, bear the costs of, and directly benefit from the rulemaking are transportation providers, eligible employees, and the Department. There are currently six transportation providers: two transit providers (one each in Maricopa and Pima counties), one van pool provider, one bike share provider, and two emergency ride providers. Transportation providers are required to track which eligible employees use commuter transportation so reimbursement can be made. They benefit from potentially having additional users as a result of the travel reduction programs.

There are approximately 18,600 eligible employees in Maricopa County. According to those who completed a survey in 2017, less than nine percent use commuter transportation. Less than one percent of eligible employees in Pima County reported using commuter transportation.

A.R.S. § 41-796.01 requires adjusted work hours be an option for eligible employees. Data are not available indicating how many eligible employees actually work adjusted hours.

The current reimbursement subsidy percentage is 50 percent. In FY2017, the Department reimbursed \$406,600 in commuter transportation costs. The total cost of the travel reduction programs, including the subsidy, was \$712,400. Funds for the programs come from the Air Quality Fund established under A.R.S. § 49-551.

The ultimate objective of the travel reduction programs is to improve air quality and benefit the health of all who live in Areas A and B. During FY2017, the programs resulted in 17,150,769 miles not driven, 779,580 gallons of gasoline costing approximately \$1,606,575 saved, and 191 tons of air pollution avoided.

The Department incurred the cost of making these rules and will have the benefit of addressing the governor's request that antiquated, redundant, or otherwise unnecessary rules be repealed.

(A.R.S. § 41-1055(C)).

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:

Under R2-1-805(A), each agency head is required to provide work schedule options so at least 85 percent of eligible employees are on adjusted work hours. The rule requires only that options be made available so cost of compliance is minimal. The benefit of compliance is improving air quality and public health.

No agency, including the Department, will need an additional full-time employee to implement and enforce these rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Maricopa and Pima counties are political subdivisions directly affected by this rulemaking through their transit providers, Valley Metro and Sun Tran. Their costs and benefits are described in item 4.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Uber, Lyft, and GRID Bike Share are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:

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

7. Impact on small businesses²:

- a. Identification of the small business subject to the rulemaking:

GRID Bike Share, which is the dba of CycleHop LLC, is a small business. The other transportation providers are not. Valley Metro in Maricopa County is a regional public transportation authority and Sun Tran in Pima County is a regional transportation authority. Uber and Lyft do not meet the definition of a small business.

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

Transportation providers are required under R2-1-804(A) to submit a monthly invoice that itemizes the total commuter transportation costs incurred by each eligible employee. A record of each employee using commuter transportation and the amount incurred is created automatically when the employee swipes a transportation card.

The transportation provider must incur the expense of having a machine capable of reading card swipes but once the machine is purchased, it is minimally costly to provide the required invoice. The invoice enables the Department to pay timely the transportation provider the costs incurred.

c. Description of methods that may be used to reduce the impact on small businesses:

The only compliance requirement is for transportation providers to submit a monthly invoice to the state. This requirement is in the contract between transportation providers and the state so it is not possible to change this requirement in rule to reduce impact on GRID Bike Share, the only small business impacted by the requirement. Invoicing by client is a standard business practice and does not constitute an undue burden.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private persons or consumers are directly affected by the rulemaking. However, the public is indirectly affected by cleaner air and improved health.

9. Probable effects on state revenues:

The rulemaking will have no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

No less intrusive or less costly alternative method will enable to Department to fulfill its responsibility to operate travel reduction programs.

² Small business has the meaning specified in A.R.S. § 41-1001(21).

centage of monies on deposit in the fund. Payment shall be made directly to the vendors identified in the 9-1-1 service plan.

4. If the combined statewide 9-1-1 service costs exceed the available monies in the fund, monies shall be allocated by the Assistant Director on a percentage basis determined by the ratio of revenue to expenses for the state as a whole.

Historical Note

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

ARTICLE 5. EXPIRED

R2-1-501. Expired

Historical Note

Adopted effective October 9, 1985 (Supp. 85-5). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3475, effective July 16, 2001 (Supp. 01-3).

R2-1-502. Expired

Historical Note

Adopted effective October 9, 1985 (Supp. 85-5). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3475, effective July 16, 2001 (Supp. 01-3).

R2-1-503. Expired

Historical Note

Adopted effective October 9, 1985 (Supp. 85-5). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3475, effective July 16, 2001 (Supp. 01-3).

R2-1-504. Expired

Historical Note

Adopted effective October 9, 1985 (Supp. 85-5). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3475, effective July 16, 2001 (Supp. 01-3).

R2-1-505. Expired

Historical Note

Adopted effective October 9, 1985 (Supp. 85-5). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 3475, effective July 16, 2001 (Supp. 01-3).

ARTICLE 6. ADJUSTED WORK HOURS

R2-1-601. Definitions

In this Article, unless the context otherwise requires:

1. "Agency head" means the head of each department, agency, board and commission of this state.
2. "Area A" has the same meaning in A.R.S. § 49-541(1).
3. "Area B" has the same meaning in A.R.S. § 49-541(2).
4. "Director" means the Director of the Department of Administration or the Director's designee.
5. "Employee" means any person elected or appointed to a state position, or employed on a part-time or full-time basis by a department, agency, board, or commission of this state.
6. "Period" means October 1 through the following April 1.

7. "Travel Reduction Survey Data" means information collected pursuant to A.R.S. § 49-588, Pima County Ordinance 1988-72, and Pinal County Ordinance 121300-AQ1.

Historical Note

Adopted as an emergency effective October 2, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-4). Emergency expired. Readopted as an emergency effective February 2, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired.

New Section R2-1-601 adopted as a permanent rule effective May 3, 1989 (Supp. 89-2). Amended by final rulemaking at 17 A.A.R. 422, effective April 30, 2011 (Supp. 11-1).

R2-1-602. Requirements

- A. During the period, each agency head shall provide work schedule options so that a minimum of 85% of employees whose offices are located in Area A or Area B are on adjusted work hours to reduce carbon monoxide concentration levels caused by vehicular travel. Adjusted work hours are schedules that:

1. Begin the workday on or before 7:30 a.m., or on or after 8:30 a.m., and conclude the workday on or before 4:30 p.m., or on or after 5:30 p.m.;
2. Adjust work hours into a four-day, 40-hour work week. Employees shall avoid a workday that begins between 7:30 a.m. and 8:30 a.m. or concludes between 4:30 p.m. and 5:30 p.m., whenever possible; or
3. Allow the employee to telework, commute by public transit, carpool, vanpool, bicycling, or walking. Employees who carpool or vanpool shall avoid a workday that begins between 7:30 a.m. and 8:30 a.m., or concludes between 4:30 p.m. and 5:30 p.m., whenever possible.

- B. Notwithstanding the requirements of subsection (A), each agency shall comply with A.R.S. § 38-401 requiring state offices to be open from 8:00 a.m. until 5:00 p.m.

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). Amended by final rulemaking at 17 A.A.R. 422, effective April 30, 2011 (Supp. 11-1).

R2-1-603. Monitoring

The Director shall utilize existing travel reduction survey data to determine the percentage of employee work schedules that are in compliance with R2-1-602(A).

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). Section repealed; new Section made by final rulemaking at 17 A.A.R. 422, effective April 30, 2011 (Supp. 11-1).

R2-1-604. Repealed

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). Section repealed by final rulemaking at 17 A.A.R. 422, effective April 30, 2011 (Supp. 11-1).

R2-1-605. Repealed

Historical Note

Adopted effective May 3, 1989 (Supp. 89-2). Section repealed by final rulemaking at 17 A.A.R. 422, effective April 30, 2011 (Supp. 11-1).

R2-1-726. Repealed**Historical Note**

Adopted effective May 7, 1990 (Supp. 90-2). Repealed effective January 8, 1998 (Supp. 98-1).

R2-1-727. Repealed**Historical Note**

Adopted effective May 7, 1990 (Supp. 90-2). Repealed effective January 8, 1998 (Supp. 98-1).

R2-1-728. Repealed**Historical Note**

Adopted effective May 7, 1990 (Supp. 90-2). Repealed effective January 8, 1998 (Supp. 98-1).

R2-1-729. Repealed**Historical Note**

Adopted effective May 7, 1990 (Supp. 90-2). Repealed effective January 8, 1998 (Supp. 98-1).

R2-1-730. Repealed**Historical Note**

Adopted effective May 7, 1990 (Supp. 90-2). Repealed effective January 8, 1998 (Supp. 98-1).

R2-1-731. Repealed**Historical Note**

Adopted effective May 7, 1990 (Supp. 90-2). Repealed effective January 8, 1998 (Supp. 98-1).

R2-1-732. Repealed**Historical Note**

Adopted effective May 7, 1990 (Supp. 90-2). Repealed effective January 8, 1998 (Supp. 98-1).

ARTICLE 8. REIMBURSEMENT FOR PUBLIC OR PRIVATE TRANSPORTATION

R2-1-801. Definitions

In this Article, unless otherwise specified:

1. "Bus" means a motor vehicle designed to carry 16 or more passengers, including the driver.
2. "Commute" means travel to and from an employee's place of employment.
3. "Director" means the chief executive officer of the Department of Administration or the director's designee.
4. "Eligible employee" means an individual who is employed by the state of Arizona, in pay status, and lives or works in a vehicle emissions control area, as defined in A.R.S. § 49-541, except a university employee or an employee of the State Compensation Fund under A.R.S. § 23-981.01.
5. "Pay status" has the meaning in R2-5A-101.
6. "Private transportation" means the conveyance of passengers, by a commercial enterprise, on scheduled routes by bus for which an individual passenger pays a fare.
7. "Public transportation" has the meaning in A.R.S. § 41-710.01(B).
8. "Reduced cost" means an eligible employee's share of the total cost of public or private transportation that remains after the reimbursement subsidy is paid.
9. "Reimbursement subsidy" means the portion of the total cost of public or private transportation that is paid through a contract with the state of Arizona on behalf of an eligible employee under A.R.S. § 41-710.01.

10. "Transportation card" means the evidence of an eligible employee's participation in a transportation program, issued to the employee by the Department of Administration.

11. "Transportation program" means a system for reimbursement or subsidy of public or private transportation expenses under A.R.S. § 41-710.01.

Historical Note

Adopted effective May 31, 1991 (Supp. 91-2). Section repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 4579, effective February 5, 2008 (Supp. 07-4). Corrected rule reference to R2-5A-101 in subsection (5) due to Personnel Reform rules made in 2012; statutory citations updated in subsections (7), (9) and (11) according to Laws 2012, Ch. 321, correction letter M15-192 filed by agency (Supp. 14-2).

R2-1-802. Transportation Program Reimbursement Subsidy Eligibility

The Director shall pay a reimbursement subsidy on behalf of an eligible employee who:

1. Commutes by public or private transportation;
2. Is enrolled in a transportation program; and
3. Has authorized payroll deductions under A.R.S. § 38-612(B)(9).

Historical Note

Adopted effective May 31, 1991 (Supp. 91-2). Section repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1).

R2-1-803. Transportation Program Reimbursement Subsidy Amount

A. The Director shall determine the amount of reimbursement subsidy, up to 100% of the actual cost of public or private transportation, based upon:

1. The number of eligible employees participating in the program;
2. The cost of public or private transportation; and
3. The amount of state funds appropriated by the Legislature for reimbursement subsidy purposes.

B. The Director shall notify an employee of:

1. The initial percentage of subsidy before the employee enrolls in the program; and
2. Any change in that percentage at least 30 days before the effective date of the change.

Historical Note

Adopted effective May 31, 1991 (Supp. 91-2). Section repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1).

R2-1-804. Transportation Program Reimbursement Subsidy Procedure

The provider of public or private transportation shall submit a monthly invoice to the Director that itemizes each public or private transportation ride taken by each eligible employee. The Director shall subtract from the total amount due the percentage of subsidy. The eligible employee shall pay the reduced cost through payroll deduction.

Historical Note

Adopted effective May 31, 1991 (Supp. 91-2). Section

repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1).

R2-1-805. Transportation Program Reduced Cost Procedure

- A. An eligible employee seeking to pay a reduced cost shall complete, sign, and submit an application and payroll deduction authorization form to the office designated by the Department of Administration. The application form shall contain the following:
1. The employee's name and employee identification number;
 2. The name and mailing address of the state agency compensating the employee;
 3. For public transportation, the type of public transportation card requested; and
 4. The employee's agreement to comply with the conditions in subsection (B).
- B. As a condition of receiving a transportation card, an eligible employee shall agree:
1. Not to allow anyone else to use the transportation card;
 2. To use the transportation card only for trips to and from work with a state agency, board, or commission, unless the employee incurs the maximum monthly charge in commuting;
 3. To be responsible for charges incurred with the transportation card;
 4. To notify the office designated by the Department of Administration if the transportation card is lost or stolen;
 5. To pay \$5 on a payroll deduction to replace a lost, damaged, or stolen transportation card;
 6. To surrender the transportation card upon termination of employment with the state; and
 7. That use of the transportation card after receiving notice from the Department of Administration of change in the transportation program policies constitutes the employee's agreement to the change.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 4579, effective February 5, 2008 (Supp. 07-4).

ARTICLE 9. REIMBURSEMENT FOR VAN POOL TRANSPORTATION

R2-1-901. Definitions

In this Article, unless otherwise specified, the following terms apply:

1. "Commute" means travel to and from an employee's place of employment.
2. "Director" means the chief executive officer of the Department of Administration or the Director's designee.
3. "Eligible employee" means an individual who is employed by the state of Arizona, in pay status, and lives or works in a vehicle emissions control area, as defined in A.R.S. § 49-541, except a university employee or an employee of the State Compensation Fund under A.R.S. § 23-981.01.
4. "Pay status" has the meaning in R2-5A-101.
5. "Reduced cost" means an eligible employee's share of the total cost of vanpool transportation that remains after the reimbursement subsidy is paid.
6. "Reimbursement subsidy" means the portion of the total cost of vanpool transportation that is paid, on behalf of an

eligible employee, to a regional transit authority or state agency through a contract with the state of Arizona.

7. "Regional transit authority" means a regional transportation authority established under A.R.S. § 48-5302 or regional public transportation authority established under A.R.S. § 48-5102 that operates or licenses a vanpool program.
8. "State agency" means an agency that administers a vanpool program in an area not served by a regional transit authority.
9. "Vanpool" means seven or more persons who commute in a van sponsored by a regional transit authority or in a van that is part of a vanpool administered by a state agency.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 10, effective February 5, 2008 (Supp. 07-4). Corrected rule reference to R2-5A-101 in subsection (4) due to Personnel Reform rules made in 2012, correction letter M15-192 filed by agency (Supp. 14-2).

R2-1-902. Vanpool Reimbursement Subsidy Eligibility

The Department shall pay to a regional transit authority or a state agency on behalf of an eligible employee in a pay status who:

1. Commutes in a vanpool operated by the regional transit authority or administered by a state agency, and
2. Has completed the vanpool transportation subsidy application form.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 10, effective February 5, 2008 (Supp. 07-4).

R2-1-903. Vanpool Reimbursement Subsidy Amount

The Director shall determine the amount of reimbursement subsidy, up to 100% of the actual cost of vanpool transportation, according to the following: the number of eligible employees participating in the program, the cost of vanpooled transportation, and the amount of state funds appropriated by the legislature for reimbursement subsidy purposes. The Director shall notify employees of the initial percentage of subsidy prior to enrollment of the employee in the program and of any change in that percentage prior to the change taking effect.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3).

R2-1-904. Vanpool Reimbursement Subsidy Procedure

The regional transit authority or state agency shall submit to the Director an invoice that itemizes each eligible employee and the eligible employee's monthly vanpool reimbursement subsidy amount. The Director shall pay the reimbursement subsidy amount upon receipt of the invoice from the regional transit authority or the state agency. The employee shall pay the reduced cost to the regional transit authority or the state agency.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3).

R2-1-905. Vanpool Reduced Cost Procedure

An eligible employee seeking to pay a reduced cost shall complete the vanpool transportation subsidy application form and submit it to the Department of Administration Travel Reduction Program. The application form shall contain the following:

1. The employee's name and employee identification number,
2. The name and mailing address of the state agency compensating the employee, and
3. The employee's signature.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4).
Amended effective September 11, 1997 (Supp. 97-3).
Amended by final rulemaking at 14 A.A.R. 10, effective
February 5, 2008 (Supp. 07-4).

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.
2. Provide assistance to the governor and legislature as requested.
3. Adopt rules the director deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.
6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.
8. Accept and disburse grants, gifts, donations, matching monies and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
9. Establish and maintain separate financial accounts as required by federal law or regulations.
10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

41-710.01. Reimbursement of transportation and telecommuting costs; definition

A. The director shall adopt rules to provide for the reimbursement of up to one hundred per cent of the cost to state employees of either:

1. Public transportation, vanpool or private bus service to and from their place of employment.
2. Telecommuting connectivity.

B. For the purposes of this section, "public transportation" means local transportation of passengers by means of a public conveyance operated or licensed by an incorporated city or town or a regional public transportation authority.

41-796.01. Adjusted work hours

The director by rule shall require adjusted work hours for at least eighty-five per cent of state employees with offices located in area A or area B as defined in section 49-541 each year beginning October 1 and ending April 1 in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

49-541. Definitions

In this article, unless the context otherwise requires:

1. "Area A" means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east

Township 7 north, range 2 west through range 5 east

Township 6 north, range 5 west through range 6 east

Township 5 north, range 5 west through range 7 east
Township 4 north, range 5 west through range 8 east
Township 3 north, range 5 west through range 8 east
Township 2 north, range 5 west through range 8 east
Township 1 north, range 5 west through range 7 east
Township 1 south, range 5 west through range 7 east
Township 2 south, range 5 west through range 7 east
Township 3 south, range 5 west through range 1 east
Township 4 south, range 5 west through range 1 east

(b) In Pinal county:

Township 1 north, range 8 east and range 9 east
Township 1 south, range 8 east and range 9 east
Township 2 south, range 8 east and range 9 east
Township 3 south, range 7 east through range 9 east

(c) In Yavapai county:

Township 7 north, range 1 east and range 1 west through range 2 west
Township 6 north, range 1 east and range 1 west

2. "Area B" means the area delineated in Pima county as township 11 and 12 south, range 12 through 14 east; township 13 through 15 south, range 11 through 16 east; township 16 south, range 12 through 16 east, excluding any portion of the Coronado national forest and the Saguaro national park.

3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of section 49-546 and has passed inspection.

4. "Certificate of waiver" means a uniquely numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.

5. "Conditioning mode" means either a fast idle test or a loaded test.

6. "Curb idle test" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.

7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.

8. "Fast idle test" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.

9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.

11. "Gross weight" has the same meaning prescribed in section 28-5431.

12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to section 49-545.

13. "Loaded test" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.

14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.

15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.

16. "Vehicle" means any automobile, truck, truck tractor, motor bus or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.

17. "Vehicle emissions control area" means area A or area B.

49-551. Air quality fee; air quality fund; purpose

A. Every person who is required to register a motor vehicle in this state pursuant to section 28-2153 shall pay, in addition to the registration fee, an annual air quality fee at the time of vehicle registration of one dollar fifty cents. Unless and until the United States environmental protection agency grants a waiver for diesel fuel pursuant to section 211(c)(4) of the clean air act, every person who is required to register a diesel powered motor vehicle in this state with a declared gross weight as defined in section 28-5431 of more than eight thousand five hundred pounds and every person who is subject to an apportioned fee for diesel powered motor vehicles collected pursuant to title 28, chapter 7, articles 7 and 8 shall pay an additional apportioned diesel fee of ten dollars.

B. The registering officer shall collect the fees and immediately deposit, pursuant to sections 35-146 and 35-147, the air quality fees in the air quality fund established pursuant to subsection C of this section and shall deposit the diesel fees in the voluntary vehicle repair and retrofit program fund established pursuant to section 49-474.03.

C. An air quality fund is established consisting of monies received pursuant to this section, gifts, grants and donations, and monies appropriated by the legislature. The department of environmental quality shall administer the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. Interest earned on monies in the fund shall be credited to the fund. Monies in the air quality fund shall be used, subject to legislative appropriation, for:

1. Air quality research, experiments and programs conducted by or for the department for the purpose of bringing area A or area B into or maintaining area A or area B in attainment status, improving air quality in areas of this state outside area A or area B and reducing emissions of particulate matter, carbon monoxide, oxides of nitrogen, volatile organic compounds and hazardous air pollutants throughout the state.

2. Monitoring visible air pollution and developing and implementing programs to reduce emissions of pollutants that contribute to visible air pollution in counties with a population of four hundred thousand persons or more.

3. Developing and adopting rules in compliance with sections 49-426.03, 49-426.04, 49-426.05 and 49-426.06.

D. The department shall transfer four hundred thousand dollars from the air quality fund to the department of administration for the purposes prescribed by section 49-588 in eight installments in each of the first eight months of a fiscal year.

E. This section does not apply to an electrically powered golf cart or an electrically powered vehicle.

48-5102. Regional public transportation authority in counties with population of one million two hundred thousand or more persons; establishment

A. Beginning January 1, 1986, a regional public transportation authority is established in a county that has a population of one million two hundred thousand or more persons and that approves a transportation excise tax.

B. An authority is a tax levying public improvement district for all purposes of article XIII, section 7, Constitution of Arizona, and has the powers, privileges and immunities specifically granted by law. The authority's property, bonds, debts and other obligations and interest on and transfer of its bonds and obligations are free from taxation.

C. The authority may operate both within and outside the corporate limits of the member municipalities.

48-5301. Definitions

In this chapter, unless the context otherwise requires:

1. "Arterial street or highway" means a street or highway that is used primarily for through traffic such that vehicular traffic from intersecting streets and highways is required by law to stop or yield before entering or crossing the street or highway.
2. "Authority" means a regional transportation authority organized under this chapter.
3. "Board" means the board of directors of a regional transportation authority established pursuant to section 48-5303.
4. "Controlled access highway" has the same meaning prescribed in section 28-601.
5. "County" means a county with a population of less than one million two hundred thousand persons in which a regional transportation authority is established pursuant to section 48-5302.
6. "Fiscal agent" means a bank or trust company authorized to do business in this state or the county treasurer as designated by the board.
7. "Municipality" means an incorporated city or town.
8. "Population" means the population determined in the most recent United States decennial census or the most recent special census as provided in section 28-6532.
9. "Public transportation" means local transportation of passengers by means of a public conveyance, including para-transit.

5 U.S. Code § 6501 - Definitions

§ 6501.

Definitions

In this chapter:

(1)Employee.—

The term “[employee](#)” has the meaning given that term under section 2105.

(2)Executive agency.—

Except as provided in section 6506, the term “[executive agency](#)” has the meaning given that term under section 105.

(3)Telework.—

The term “telework” or “teleworking” refers to a work flexibility arrangement under which an [employee](#) performs the duties and responsibilities of such [employee](#)’s position, and other authorized activities, from an approved worksite other than the location from which the [employee](#) would otherwise work.

(Added [Pub. L. 111–292](#), § 2(a), Dec. 9, 2010, [124 Stat. 3165](#).)

DEPARTMENT OF REVENUE (R-18-0303)

Title 15, Chapter 5, Article 6, Prime Contracting Classification

Amend: R15-5-601



**GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M**

MEETING DATE: March 6, 2018

AGENDA ITEM: F-3

TO: Members of the Governor's Regulatory Review Council

FROM: Council Staff

DATE: February 20, 2018

SUBJECT: DEPARTMENT OF REVENUE (R-18-0303)
Title 15, Chapter 5, Article 6, Prime Contracting Classification

Amend: R15-5-601

SUMMARY OF THE RULEMAKING

The Department of Revenue (Department) is established to “[f]ormulate policies, plans and programs to effectuate the missions and purposes of the department...[p]rovide information and advice within the scope of its duties...[and] [p]rovide an integrated, coordinated and uniform system of tax administration and revenue collection for the state.” A.R.S. § 42-1004(A)(1), (6), and (9).

This rulemaking amends one rule in A.A.C. Title 15, Chapter 5, Article 6, related to prime contracting classification. According to A.R.S. § 42-5006, all new businesses that are taxable under the prime contracting statute are required to have a bond in place for the first two years after being issued a Transaction Privilege Tax (TPT) license. Section 601 sets forth the bond amounts based upon the contractor's business activity. Currently, the bond amounts are \$2,000, \$7,000, \$17,000, \$22,000, and \$102,000.

The Department is engaging in this rulemaking because the Arizona Registrar of Contractors (ROC) revised their license structure and started issuing contracting licenses without a TPT license. After the changes were made by ROC, general contractors were applying for TPT licenses that required a \$102,000 bond. Even though the contractors could do construction work on bridges, tunnels, or elevated highways, they did not intend to do so. Since most of the businesses required to get this type of bond are new businesses, and most of the businesses getting bids to do construction work on bridges, tunnels, or elevated highways are existing businesses, the Department recognized that the \$102,000 bond requirement is a financial burden to new businesses in the prime contracting business.

The rule was last amended in 2016. The Department received an exemption from the moratorium on September 20, 2017.

Proposed Action

The Department proposes to amend Section 601 to eliminate the \$102,000 bond amount and incorporate bridge, tunnel, and elevated high-way construction under the \$22,000 bond amount.

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

Yes. As for general authority, A.R.S. § 42-1005(A)(1) authorizes the director to “[m]ake such administrative rules as he deems necessary and proper to effectively administer and enforce this [T]itle and [T]itle 43.” In addition, the Department cites to A.R.S. § 42-5006 as specific authority for the rule, as it allows the Director to establish classes of expected tax liability.

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 eliminating the highest category of surety bond required for heavy construction contractors. The Department notes that very few contractors currently hold a \$102,000 surety bond. This rulemaking will have a moderate positive impact on a very small number of stakeholders.

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 costs of this rulemaking are minimal administrative costs borne by the Department. This rulemaking will benefit some heavy construction contractors with the lower cost of a surety bond. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Department and heavy construction contractors.

The Department will incur some minimal administrative costs as a result of this rulemaking.

Heavy construction contractors that build bridges, tunnels, and elevated highways will benefit by having a much lower surety bond requirement. These businesses will have their surety bond requirements reduced from \$102,000 to \$22,000. This reduction reduces economic barriers for construction contractors.

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 technical changes were between the proposed and final rule, at the request of Council staff.

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 law is directly applicable 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?

No. The Department indicates that it did not review or rely on any study for this rulemaking.

11. Conclusion

The Department requests the usual 60-day delayed effective date for the rule. Council staff recommends approval of the rulemaking.



Douglas A. Ducey
Governor

David Briant
Director

January 16, 2018

Ms. Nicole A. Ong Colyer
Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Room 402
Phoenix, Arizona 85007

Re: Notice of Final Rulemaking – Amendment 15 A.A.C. 5 Rule 601

Dear Ms. Ong Colyer:

The Department submits the enclosed Notice of Final Rulemaking amending the following rule for the Council's consideration and approval:

A.A.C. R15-5-601. Taxpayer Bonds for Contractors

The Notice of Rulemaking Docket Opening and Notice of Proposed Rulemaking were published in the 2017 Arizona Administrative Register Volume 23 Issue 42 on October 20, 2017. The close of record date was December 1, 2017. The Department did not receive any comments concerning the rules.

This rulemaking activity does not relate to a five year review report. Additionally, the rules do not establish any new fees or include any fee increases.

The Department did not receive any study relevant to the rules. Accordingly, the Department certifies that the preamble discloses no reference to any study, and it did not rely on any study in its evaluation of, or justification for, the rules. The Department does *not* believe that it will be necessary to engage any additional full-time employees to implement and enforce the rules.

The Department is requesting a normal effective date, sixty days after filing with the Secretary of State.

The following documents are enclosed:

- The Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking and the text of the rule;
- Economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;

Ms. Nicole A. Ong
Chairperson
Governor's Regulatory Review Council
January 16, 2018
Page 2

- Reference materials: authorizing and implementing statutes; the A.A.C. rules.
- E-mail approving the Department's request for an exception to the rulemaking moratorium.

If you have any questions, please contact Lisa Querard, Attorney III, Taxpayer Services Section at 602-716-6813 or via email at LQuerard@azdor.gov. Thank you for your consideration.

Sincerely,



Grant Nülle
Deputy Director
Arizona Department of Revenue

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE – TRANSACTION PRIVILEGE TAX

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
R15-5-601. Taxpayer Bonds for Contractors	Amend

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

Authorizing statute: A.R.S. § 42-1005(A)(1).

Implementing statute: A.R.S. § 42-5006.

3. The effective date of the rule:

Pursuant to A.R.S. § 41-1032, the rule becomes effective sixty days after filing with the Secretary of State.

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

The Notice of Docket Opening and Notice of Proposed Rulemaking were filed in the 2017 Arizona Administrative Register (“A.A.R.”) as follows:

Notice of Docket Opening, 23 A.A.R. 2953, October 20, 2017

Notice of Proposed Rulemaking, 23 A.A.R. 2893, October 20, 2017.

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

Name: Christie Comanita

Address: 1600 W. Monroe St. Mail Code 1300, Phoenix, AZ 85007

Telephone: (602) 716-6791

Fax: (602) 716-7996
E-mail: ccomanita@azdor.gov
Web site: <http://www.azdor.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 Department's justifications and reasons for making or amending the rule addressed by this Notice are as follows:

A.R.S. § 42-5006 currently requires all new businesses taxable under the Prime Contracting statute (A.R.S. § 42-5075) to have in a bond in place for the first two years after getting a Transaction Privilege Tax (TPT) license. The statute also requires the same type of bond for prime contracting businesses that have a poor history of filing or paying TPT. As prescribed by statute, the Department promulgated *R15-5-601* that set the bond amounts based upon the contractor's business activity. The bond amounts currently are; \$2,000, \$7,000, \$17,000, \$22,000, and \$102,000. The \$102,000 bond is rarely used, and is a financial burden to new businesses in the prime contracting business.

The rule has been in place since 1984, and was last reviewed in 2016. The proposed amendment to the rule became necessary when the Arizona Registrar of Contractors (AROC) revised their license structure and started issuing contracting licenses without the need of a TPT license. After the changes made by AROC, the Department started receiving TPT license requests from general contractors that require a \$102,000 bond that do not intend to work on bridges, tunnels, or elevated highways, but their contracting license allows them to do this type of work. Because most of the businesses that are required to get this type of bond are new businesses, and most of the businesses getting bids on this type of work are established businesses, the requirement for the \$102,000 bond is overstated. As a result, the Department is amending the rule to eliminate the highest bond amount and incorporating the activity under a lower bond amount.

7. A reference to any study relevant to the rule that the agency reviewed and either re-

lied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable.

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

Not applicable.

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

Data used in preparation of the economic, small business, and consumer impact statement includes figures based on current bond requests received at the time a business applies for a transaction privilege tax license. It is expected that the benefits of the amendment to the rule will be greater than the costs.

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

Technical changes were made at the request of Council staff.

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

Oral proceedings were not held for this rulemaking. The Department did not receive any stakeholder comments about the rulemaking.

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

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

The rule does not require a permit.

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

No federal laws directly apply to the rule.

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

No such analysis was submitted.

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

Not applicable.

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 changed between the emergency and the final rulemaking packages:

Not applicable.

15. The full text of the rule follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE – TRANSACTION PRIVILEGE TAX

ARTICLE 6. PRIME CONTRACTING CLASSIFICATION

Section

R15-5-601. Taxpayer Bonds for Contractors

ARTICLE 6. PRIME CONTRACTING CLASSIFICATION

R15-5-601. Taxpayer Bonds for Contractors

A. For the purpose of this rule:

1. The principal place of business shall be Arizona if the licensee has continuously operated a facility with at least one full-time employee in Arizona for 12 consecutive months preceding the determination.

2. A surety bond shall include a bond issued by a company authorized to execute and write bonds in Arizona as a surety or composed of securities or cash which are deposited with the Department of Revenue.

B. The businesses subject to these bonds are grouped in accordance with the standard industry classifications by average business activity. The business classes and bond amounts are as follows:

1. Two thousand dollars for:

a. General contractors of residential buildings other than single family;

b. Operative builders;

c. Plumbing, air conditioning, and heating, except electric;

d. Painting, paper hanging;

e. Decorating;

f. Electrical work;

g. Masonry stonework and other stonework;

- h. Plastering, drywall, acoustical and insulation work;
 - i. Terrazzo, tile, marble and mosaic work;
 - j. Carpentry;
 - k. Floor laying and other floor work;
 - l. Roofing and sheet metal work;
 - m. Concrete work;
 - n. Water well drilling;
 - o. Structural steel erection;
 - p. Glass and glazing work;
 - q. Excavating and foundation work;
 - r. Wrecking and demolition work;
 - s. Installation and erection of building equipment;
 - t. Special trade contractors; and
 - u. Manufacturers of mobile homes.
2. Seven thousand dollars for:
- a. General contractors of single family housing;
 - b. Water, sewer, pipeline, communication and powerline construction.
3. Seventeen thousand dollars for:
- a. General contractors of industrial buildings and warehouses;
 - b. General contractors of nonresidential buildings other than single family;
 - c. Highways and street construction except elevated highways.
4. Twenty-two thousand dollars for:
- a. Heavy construction;
 - b. Bridge construction;
 - c. Tunnel construction; and
 - d. Elevated highway construction.
- ~~5. One hundred two thousand dollars for bridge, tunnel and elevated highway construction.~~

C. Except as provided in subsection (D) of this rule, any applicant whose principal place of business is outside Arizona or who has conducted business in Arizona for less than one year shall post a bond before the transaction privilege tax license shall be issued.

D. Any taxpayer subject to bonding requirements may submit a written request to the Director of the Department of Revenue for an exemption from the bond. The exemption request shall provide at least one of the following:

1. Any taxpayer who has been actively engaged in business for at least two years immediately preceding the exemption request may submit statements from an authorized state employee from each state in which the business has been licensed in the last two years verifying that the taxpayer has, for at least two years immediately preceding the date of the statement, made timely payment of all sales taxes and other transaction privilege taxes incurred.

2. Two-year reporting history as described above in subsection (D)(1) and an explanation of good cause for late or insufficient payment of the tax;

3. Documentation which verifies that no potential for Arizona tax liability exists;

4. Bond for a previously issued Arizona transaction privilege license that adequately covers the licensee's expected transaction privilege tax liability for Arizona for both the previously issued license and for this license.

E. The bond shall not expire prior to two years after the transaction privilege license is issued. Upon lapse or forfeiture of any bond by any licensee, the licensee shall deposit with the Department another bond within five business days of the licensee's receipt of written notification by the Department.

F. Any licensee, who has had a bond posted for at least two years and fulfills any exception listed in subsection (D), or whose principal place of business becomes Arizona, may request a written waiver and that the bond be returned.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT (“EIS”)

NOTICE OF FINAL RULEMAKING

1. An identification of the rulemaking:

<u>Section Affected</u>		<u>Rulemaking Action</u>
R15-5-601.	Taxpayer Bonds for Contractors	Amend

2. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

The Department anticipates that the parties who will be directly affected by, bear the costs of, or directly benefit from this rulemaking are as follows:

- The Department; and
- Current and prospective taxpayers that engage in certain prime contracting activities.

3. A cost benefit analysis:

The Department’s responses in this analysis are limited by the data available to it through its various divisions and sections. Any probable cost ranges referenced in this section are as follows:

- Minimal costs = less than \$1,000
- Moderate costs = \$1,000 to \$10,000
- Substantial costs = more than \$10,000

Where such ranges are not referenced, the Department characterizes the probable or anticipated impacts below in qualitative terms, pursuant to A.R.S. § 41-1055(C).

a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking:

As a result of the Arizona Registrar of Contractors (AROC) revising their license structure, the Department also reviewed its bonding procedures for certain prime contractors and discovered that the requirement for the \$102,000 bond is overstated. The Department is amending R15-5-602 and requiring those taxpayers who were required to obtain \$102,000 bonds to now obtain \$22,000 bonds because the \$102,000 bond is rarely used, and is a financial burden to new businesses in the prime contracting business.

The implementing agency costs will be minimal since the administrative structure and bonding procedures for the bond review, acceptance and maintenance has been in place for several decades. The number of taxpayers requiring \$102,000 bonds will decrease to zero and the number of taxpayers requiring \$22,000 bonds will increase by a similar number. There will be no net change in the number of taxpayers obtaining bonds, however, the category of bonds administered by the Department will be reduced. Although not currently quantifiable, the Department expects to experience time savings as a result of the changes.

The Department does not anticipate that it will be necessary to hire any new full-time employees to implement or enforce the amendment to the rules and it

believes the benefits of implementing the rule will outweigh any associated costs.

There are no other agencies directly impacted by the implementation and enforcement of this rulemaking.

b. The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rulemaking:

The Department does not anticipate that the implementation and enforcement of this rulemaking will directly affect the any of the state’s political subdivisions.

c. The probable costs and benefits to businesses directly affected by the rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking:

Current and prospective taxpayers that engage in prime contracting activities will likely be affected by this rulemaking. The amended rules will require certain prime contracting taxpayers that currently obtain \$102,000 bonds to now obtain \$22,000 bonds. Such taxpayers will likely experience reduced costs as a result of obtaining lower bond amounts. The Department expects only *minimal* impact to businesses affected by the rulemaking in terms of staffing levels, cash flow and barriers to industry entry.

4. 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:

Except as outlined above, the Department does not anticipate that any private or public employment (whether direct or indirect) in businesses, agencies, and political subdivisions of this state will be directly affected by this rulemaking.

5. A statement of the probable impact of the rulemaking on small businesses:

A.R.S. § 41-1001 defines a small business as a concern, including its affiliates, that is independently owned and operated, not dominant in its field, and employs fewer than 100 full-time employees or that had gross annual receipts of less than \$4,000,000 in its last fiscal year.

a. An identification of the small businesses subject to the rulemaking:

For small businesses, the same category of persons—that is, current and prospective taxpayers—as for mid- to large-sized businesses is potentially subject to this rulemaking. However, as noted, those taxpayers will not be negatively impacted.

b. The administrative and other costs required for compliance with the rulemaking:

As this rulemaking does not introduce any novel requirements for compliance beyond those already required by existing rules, the Department does not anticipate additional administrative or other costs required for compliance, other than costs associated with reviewing the rules themselves. In fact, as noted, the costs for complying with the new rules will likely result in lower costs to obtain the required bonds. The Department cannot, however, currently quantify such costs.

Because the amendments to the rules do not impose any additional reporting or compliance requirements for small businesses, businesses will not have to employ any additional personnel or engage any additional outside services such as legal or consulting fees as a result of the rule changes.

c. A description of the methods prescribed in 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 to use each method:

Small businesses will not be impacted negatively by the rules, so the rules cannot be further simplified, reduced, or exempted pursuant to A.R.S. § 41-1035.

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

The Department does not anticipate that private persons other than current and prospective taxpayers, as outlined above, will be directly affected by this rulemaking.

6. A statement of the probable effect on state revenues:

As the matters covered by the rules reflect current statutory requirements and existing rules, the Department does not anticipate any effect on state revenues from this rulemaking, but the Department cannot currently quantify this effect.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:

The methods by which the Department achieves its purposes in this rulemaking are statutorily set; consequently, the Department is not authorized to develop, through rulemaking, alternative methods as suggested, and has not attempted to do so.

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

Not applicable

ARTICLE 6. PRIME CONTRACTING CLASSIFICATION

R15-5-601. Taxpayer Bonds for Contractors

- A.** For the purpose of this rule:
1. The principal place of business shall be Arizona if the licensee has continuously operated a facility with at least one full-time employee in Arizona for 12 consecutive months preceding the determination.
 2. A surety bond shall include a bond issued by a company authorized to execute and write bonds in Arizona as a surety or composed of securities or cash which are deposited with the Department of Revenue.
- B.** The businesses subject to these bonds are grouped in accordance with the standard industry classifications by average business activity. The business classes and bond amounts are as follows:
1. Two thousand dollars for:
 - a. General contractors of residential buildings other than single family;
 - b. Operative builders;
 - c. Plumbing, air conditioning, and heating, except electric;
 - d. Painting, paper hanging;
 - e. Decorating;
 - f. Electrical work;
 - g. Masonry stonework and other stonework;
 - h. Plastering, drywall, acoustical and insulation work;
 - i. Terrazzo, tile, marble and mosaic work;
 - j. Carpentry;
 - k. Floor laying and other floor work;
 - l. Roofing and sheet metal work;
 - m. Concrete work;
 - n. Water well drilling;
 - o. Structural steel erection;
 - p. Glass and glazing work;
 - q. Excavating and foundation work;
 - r. Wrecking and demolition work;
 - s. Installation and erection of building equipment;
 - t. Special trade contractors; and
 - u. Manufacturers of mobile homes.
 2. Seven thousand dollars for:
 - a. General contractors of single family housing;
 - b. Water, sewer, pipeline, communication and power- line construction.
 3. Seventeen thousand dollars for:
 - a. General contractors of industrial buildings and warehouses;
 - b. General contractors nonresidential buildings other than single family;
 - c. Highways and street construction except elevated highways.
 4. Twenty-two thousand dollars for heavy construction.
 5. One-hundred two thousand dollars for bridge, tunnel and elevated highway construction.
- C.** Except as provided in subsection (D) of this rule, any applicant whose principal place of business is outside Arizona or who has conducted business in Arizona for less than one year shall post a bond before the transaction privilege tax license shall be issued.
- D.** Any taxpayer subject to bonding requirements may submit a written request to the Director of the Department of Revenue for an exemption from the bond. The exemption request shall provide at least one of the following:
1. Any taxpayer who has been actively engaged in business for at least two years immediately preceding the exemption request may submit statements from an authorized state employee from each state in which the business has been licensed in the last two years verifying that the taxpayer has, for at least two years immediately preceding the date of the statement, made timely payment of all sales taxes and other transaction privilege taxes incurred.
 2. Two-year reporting history as described above in subsection (D)(1) and an explanation of good cause for late or insufficient payment of the tax;
 3. Documentation which verifies that no potential for Arizona tax liability exists;
 4. Bond for a previously issued Arizona transaction privilege license that adequately covers the licensee's expected transaction privilege tax liability for Arizona for both the previously issued license and for this license.
- E.** The bond shall not expire prior to two years after the transaction privilege license is issued. Upon lapse or forfeiture of any bond by any licensee, the licensee shall deposit with the Department another bond within five business days of the licensee's receipt of written notification by the Department.
- F.** Any licensee, who has had a bond posted for at least two years and fulfills any exception listed in subsection (D), or whose principal place of business becomes Arizona, may request a written waiver and that the bond be returned.

42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.

2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.

3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.

4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.

5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.

6. Provide such assistance to the governor and the legislature as they may require.

7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

42-5006. Taxpayer bonds; out of state licensed contractors and manufactured building dealers

A. Notwithstanding section 42-1102, the department shall require a surety bond for each taxpayer who is required to be licensed under title 32, chapter 10 or who is regulated under title 41, chapter 37, article 3, if the taxpayer's principal place of business is outside this state or if the taxpayer has conducted business in this state for less than one year. The department shall prescribe the form of the bond. The bond shall be maintained for a period of at least two years.

B. The bond, duly executed by the applicant as principal and with a corporation duly authorized to execute and write bonds in this state as surety, shall be payable to this state and conditioned on the payment of all transaction privilege taxes incurred and imposed on the taxpayer by this state and its political subdivisions. The bond shall be in such amount, but not less than two thousand dollars, as will assure the payment of the transaction privilege taxes which may reasonably be expected to be incurred by the licensed establishment for a period of one hundred fifty days.

C. The director, by rule, may establish classes of expected tax liability in five thousand dollar increments, beginning with the minimum bond amount prescribed in subsection B of this section. The bond shall provide that after notice and a hearing the director may order forfeited to this state and any affected political subdivision part or all of the bond for nonpayment of taxes, interest and penalties.

D. A licensee on application for a new license covered by subsection A of this section, renewal of a license covered by subsection A of this section or transfer of a license covered by subsection A of this section is exempt from posting a bond if the licensee has for at least two years immediately preceding the application made timely payment of all transaction privilege taxes incurred.

E. If a licensee is not exempt from this section, the director may exempt the licensee if the director finds that the surety bond is not necessary to insure payment of such taxes to the state and any affected political subdivision or the licensee had good cause for the late or insufficient payment of the transaction privilege tax and affiliated excise taxes incurred.

DEPARTMENT OF HEALTH SERVICES (R-18-0304)

Title 9, Chapter 10, Article 1, General

Amend: R9-10-120



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: March 6, 2018

AGENDA ITEM: F-4

TO: Members of the Governor's Regulatory Review Council

FROM: Council Staff

DATE: February 20, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (R-18-0304)
Title 9, Chapter 10, Article 1, General

Amend: R9-10-120

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Department of Health Services (Department), seeks to amend one rule in A.A.C. Title 9, Chapter 10, Article 1, related to opioid prescribing and treatment. The Governor's Office provided an exemption from Executive Order 2017-02 on August 22, 2017.

The rule was first established as an emergency rule, effective July 28, 2017. The purpose of the rulemaking is to comply with the Governor's June 2017 Declaration of Emergency related to the Opioid Overdose Epidemic. The Department indicates that by providing licensed health care institutions with comprehensive requirements related to the prescription and use of opioids in treatment, impacts are anticipated on opioid prescribing practices, the number of unnecessary opioid prescriptions, and overdose-related events.

Proposed Action

- Subsection (A) provides definitions applicable to the rule.
- Subsection (B) requires administrators of health care institutions where opioids are prescribed or ordered as part of treatment to:
 - Establish, document, and implement policies and procedures for prescribing, ordering, or administering opioids as part of treatment;
 - Include specific processes related to opioids in a licensed health care institution's quality management program;
 - Notify the Department of the death of a patient from an opioid overdose; and

- Ensure that informed consent required from a patient or the patient’s representative includes certain required elements.
- Subsection (C) requires administrators of health care institutions where opioids are prescribed or ordered as part of treatment to ensure that a medical practitioner authorized by policies and procedures to prescribe an opioid in treating a patient:
 - Takes precautions prior to prescribing an opioid for a patient; and
 - Includes certain information in a patient’s medical record, existing treatment plan, or new treatment plan developed for the patient.
- Subsection (D) requires administrators of health care institutions where opioids are ordered for Department to a patient as part of treatment to ensure that a medical practitioner authorized by policies and procedures to order an opioid in treating a patient:
 - Takes precautions prior to ordering an opioid for a patient; and
 - Includes certain information in a patient’s medical record, existing treatment plan, or new treatment plan developed for the patient.
- Subsection (E) sets forth requirements for administrators, managers, or providers in health care institutions where opioids are administered as part of treatment or where patients are provided assistance in the self-administration of medication for a prescribed opioid, including health care institutions in which an opioid may be prescribed or ordered as part of treatment.
- Subsection (F) exempts medical practitioners, authorized by a health care institution’s policies and procedures to order an opioid in treating a patient, from the requirements in subsection (D) if certain conditions are met.
- Subsection (G) lists circumstances under which the requirements in subsections (C), (D), and (E)(4) do not apply to a health care institution.

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. § 36-132(A)(17), under which the Department is required to license and regulate health care institutions.

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 2016, there were 790 individuals who died in Arizona of an opioid overdose, which was a 74% increase since 2012. The Department created an emergency rule to combat this crisis by establishing distribution requirements for individuals and licensed health care institutions. This rulemaking revises the emergency rule to address stakeholder concerns and improve the rule’s effectiveness.

Key stakeholders affected by the rulemaking include the Department, licensed health care institutions, medical practitioners prescribing or ordering an opioid on behalf of a licensed health

care institution, personnel members administering an opioid to a patient on behalf of a licensed health care institution or providing assistance in the self-administration of medication for a patient's prescribed opioid, patients of licensed health care institutions and their families, and the general public.

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 analyzed the costs and benefits of the rule revisions on stakeholders, and reported that while there were costs and benefits ranging from 'none' to 'substantial', there were no less intrusive or costly alternatives for achieving the purpose of the rule. The Department will not need additional staff to implement the changes.

5. What are the economic impacts on stakeholders?

The Department significantly benefits from the rulemaking by having a mechanism to specifically address opioid prescribing and treatment in licensed health care institutions and thereby assess whether a licensed health care institution is adequately addressing the opioid epidemic. The Department believes that the Arizona Health Care Cost Containment System (AHCCCS) will significantly benefit due to the reduction in hospitalizations or emergency department visits, and therefore, from the costs associated with those visits.

The Department believes licensed health care institutions will incur minimal to moderate costs while changing their policies and procedures to address opioids. Additional costs may be incurred if the institution has many opioid related deaths and must change policies and actions to fix the issue. Other costs may be incurred while reporting deaths to the Department. The Department believes that health care institutions will receive significant benefits in the form of increased clarity and specificity of their documentation, which could lead to fewer opioid-related adverse reactions.

The rule affects medical practitioners who work for licensed health care institutions through requirements imposed on these licensed health care institutions. The Department believes that the rule may cause an affected medical practitioner to incur minimal-to-moderate additional costs, depending on the number of patients for whom the medical practitioner orders, prescribes, or administers opioids. The medical practitioners will obtain significant benefits from being able to provide better care to patients. The Department anticipates that patients and their families may receive significant benefits from institutions implementing the clarified rules. If a licensed health care institution passes on any increases in cost due to the rule, a patient could incur a minimal cost increase. The Department also anticipates that the public will receive significant benefits from the rule.

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 public comments, as well as one comment at the oral proceeding held on December 18, 2017. A summary of the comments,

along with the Department's responses, can be found on pages 6-10 of the Notice of Final Rulemaking. Council staff believes that the Department has adequately addressed the written and oral 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 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?

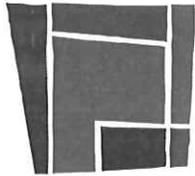
Yes. The Department indicates that it based the need for this rulemaking on the following two documents:

- The Department's "2016 Arizona Opioid Report," available at <http://azdhs.gov/documents/audiences/clinicians/clinical-guidelines-recommendations/prescribing-guidelines/arizona-opioid-report.pdf>; and
- The U.S. Centers for Disease Control and Prevention's Morbidity and Mortality Weekly Report (MMWR) "Vital Signs: Changes in Opioid Prescribing in the United States, 2006-2015," published July 7, 2017, available at https://www.cdc.gov/mmwr/volumes/66/wr/mm6626a4.htm?s_cid=mm6626a4_w.

The Department indicates that both documents present factual data describing the extent of the opioid epidemic in Arizona and the United States, respectively.

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)(1) and (A)(4) as the rule is necessary to protect public health and safety and is less burdensome than the emergency rule currently in effect. Council staff recommends approval of the rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

January 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. 10, Article 1 (R9-10-120) Department of Health Services – Health Care Institutions:
Licensing

Dear Ms. Colyer:

Enclosed is the administrative rule package 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 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. R1-6-104:

1. The close of record:
The close of record was December 18, 2017. 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 September 15, 2017. A Notice of Proposed Rulemaking was filed with the Office of the Secretary of State and published in the *Arizona Administrative Register* on November 17, 2017. The Department held one oral proceeding on December 18, 2017. The Department received two written comments about the proposed rule and one oral comment.
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 10, Article 1 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 rulemaking does not contain a fee.

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

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 Department is requesting an immediate effective date for this rulemaking.
7. A list of all items enclosed:
 - a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule; and
 - b. Economic, Small Business, and Consumer Impact Statement.

The Department is requesting that the rules be heard at the Council meeting on March 6, 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:rms

Enclosures

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

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**
R9-10-120 New Section
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(G)
Implementing statutes: A.R.S. §§ 36-132(A)(17), 36-405(A) and (B)
- 3. The effective date of the rules:**
The Arizona Department of Health Services (Department) requests an immediate effective date for this rule under A.R.S. § 41-1032 (A)(1) and (4). This rule is necessary to protect public health and safety and is less burdensome than the emergency rule currently in effect. Therefore, implementing the rule earlier than the usual 60-day time period will provide a benefit to both the regulated entities and the public. No additional penalties are assessed for a violation of this rule compared with the emergency rule.
- 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 Emergency Rulemaking: 23 A.A.R. 2203, August 18, 2017
Notice of Rulemaking Docket Opening: 23 A.A.R. 2491, September 15, 2017
Notice of Proposed Rulemaking: 23 A.A.R. 3201, November 17, 2017
- 5. The agency's contact person who can answer questions about the rulemaking:**
Name: Colby Bower, Assistant Director
Address: Department of Health Services
Public Health Licensing Services
150 N. 18th Ave., Suite 510
Phoenix, AZ 85007
Telephone: (602) 542-6383
Fax: (602) 364-4808
E-mail: Colby.Bower@azdhs.gov
or

Name: Robert Lane, Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-405 requires the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure public health, safety, and welfare. In Arizona Administrative Code (A.A.C.) Title 9, Chapter 10, Article 1, the Department has implemented requirements related to this statute that are applicable to more than one class or subclass of health care institution.

In the last 15 years, prescription opioid sales in the United States have risen by 300%, resulting in more than 33,000 opioid overdose deaths in 2015 nationwide. In Arizona, 790 individuals died in 2016 of an opioid overdose, a 74% increase since 2012. This figure represents over half of all drug overdoses in Arizona in 2016. In response to this epidemic, Governor Doug Ducey, on June 5, 2017, issued a Declaration of Emergency (Opioid Overdose Epidemic). In compliance with the Governor's Declaration of Emergency and after obtaining an exception from the rulemaking moratorium established by Executive Order 2017-02, the Department has adopted a rule in 9 A.A.C. 10, Article 1 for licensed health care institutions through emergency rulemaking. The emergency rule, effective July 28, 2017, requires licensed health care institutions to establish, document, and implement policies and procedures for prescribing, ordering, or administering opioids as part of treatment; to include specific processes related to opioids in a licensed health care institution's quality management program; and to notify the Department of the death of a patient from an opioid overdose. The Department also specified requirements with which an individual will need to comply before prescribing opioids, ordering opioids, or administering opioids in the treatment of a patient. To reduce the burden on licensed health care institutions, the Department exempted the prescription, ordering, or administration of opioids as part of treatment for a patient with a terminal condition.

Concurrent with this emergency action, the Department initiated a regular rulemaking to address opioid-related activities in licensed health care institutions. As part of this rulemaking, the Department is revising what is in the emergency rulemaking to address stakeholder concerns and improve the effectiveness of the rule. These changes are described in paragraph 14. By providing licensed health care institutions with comprehensive requirements related to the prescription and use of opioids in treatment, the Department anticipates an immediate effect on opioid prescribing practices, a decrease in the number of unnecessary opioid prescriptions, and an attendant reduction in overdose-related events thereafter. The 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 based the need for this rulemaking on the following two documents:

- a. The Department’s “2016 Arizona Opioid Report,” available at <http://azdhs.gov/documents/audiences/clinicians/clinical-guidelines-recommendations/prescribing-guidelines/arizona-opioid-report.pdf>; and
- b. The U.S. Centers for Disease Control and Prevention’s Morbidity and Mortality Weekly Report (MMWR) “Vital Signs: Changes in Opioid Prescribing in the United States, 2006-2015,” published July 7, 2017, available at https://www.cdc.gov/mmwr/volumes/66/wr/mm6626a4.htm?s_cid=mm6626a4_w.

Both documents present factual data describing the extent of the opioid epidemic in Arizona and the United States, respectively.

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:

Annual cost/revenue changes are designated as minimal when \$10,000 or less, moderate when between \$10,000 and \$50,000, and substantial when \$50,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. The Department anticipates that persons affected by the rulemaking include the Department, licensed health care institutions, medical practitioners prescribing or ordering an

opioid on behalf of a licensed health care institution, personnel members administering an opioid to a patient on behalf of a licensed health care institution or providing assistance in the self-administration of medication for a patient's prescribed opioid, patients of licensed health care institutions and their families, and the general public.

The Department will receive a significant benefit from having a rule that specifically addresses opioid prescribing and treatment in licensed health care institutions by being better able to, and more easily, assess whether a licensed health care institution is adequately addressing the opioid epidemic occurring in Arizona. Since AHCCCS pays for a large proportion of health care costs in Arizona, the Department believes that AHCCCS may receive up to a substantial cost savings through a reduction in the number of hospitalizations or emergency department visits from individuals suffering an opioid overdose as a result of opioids prescribed, ordered, or administered as part of treatment in licensed health care institutions. Other third-party payors may also receive up to a substantial cost savings, depending on the number of subscribers who are spared from an opioid overdose because of the rule.

For most licensed health care institutions, the Department believes that making changes to their policies and procedures to specifically address opioids would cause the licensed health care institution to incur a minimal cost, although there may be a few with extensive ordering, prescribing, or medication administration policies and procedures that could incur a moderate cost. Having these policies and procedures in place may provide a significant benefit to a licensed health care institution from the clarity and specificity of the requirements, which may lead to fewer opioid-related adverse reactions or other negative outcomes for a patient. The Department anticipates that specific processes related to opioids could be incorporated into a licensed health care institution's existing quality management program and, for most licensed health care institutions, believes that including these processes may cause the licensed health care institution to incur minimal costs. If a licensed health care institution identifies a larger number of opioid-related adverse reactions or other negative patient outcomes through their revised quality management program, and then investigates and makes changes or takes action as a result of the identification of a concern, the cost incurred by the licensed health care institution may be higher. As stated above, having specific processes related to opioids as part of a licensed health care institution's quality management program may provide a significant benefit to the licensed health care institution from the clarity and specificity of the requirements, which may lead to fewer opioid-related adverse reactions or other negative outcomes for patients. The Department anticipates that licensed health care institutions not already reporting deaths to the Department may incur a minimal-to-moderate increase in costs for reporting these deaths, depending on the

number of opioid-related deaths being reported. The rule also specifies some clinical requirements that the administrator of a licensed health care institution is required to ensure take place. These requirements may impose minimal-to-substantial increased costs on a health care institution depending on what practices the health care institution is currently employing. The requirements in the rule related to the administration of an opioid to a patient or to providing assistance in the self-administration of medication for a prescribed opioid may cause a licensed health care institution to incur at most a minimal increased cost.

The rule affects medical practitioners (physicians, physician assistants, and registered nurse practitioners) who work for licensed health care institutions through requirements imposed on these licensed health care institutions. The Department believes that the rule may cause an affected medical practitioner to incur minimal-to-moderate additional costs, depending on the number of patients for whom the medical practitioner orders, prescribes, or administers opioids, and to receive a significant benefit from providing better care to a patient. The Department estimates that the requirements in subsection (E) may cause a personnel member to incur at most a minimal cost and to receive a significant benefit from providing better care to a patient.

Since the requirements in the rule were designed to improve the health and safety of patients receiving an opioid medication as part of treatment in a licensed health care institution, the Department anticipates that patients and their families may receive a significant benefit from the requirements in the rule. If a licensed health care institution passes on any increases in cost due to the rule, a patient could incur a minimal increase in the cost of services provided by the licensed health care institution. The Department anticipates that the general public will receive a significant benefit from the rule, which was developed to help combat the opioid overdose epidemic and reduce the number of opioid overdose deaths.

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

The following changes were made to the rule between the proposed rulemaking and the final rulemaking:

- Clarifying the definition of “prescribe”;
- Replacing the definition of “substance use risk assessment” with a definition of “substance use risk” and changing subsections (B)(1)(c)(ii) and (g)(ii), (C)(1)(c), and (D)(1)(c) to use the phrase “assessment of the patient’s substance use risk”;
- Clarifying that the policies and procedures required in subsection (B)(1) may include in what situations informed consent would not be obtained before an opioid is prescribed or ordered for a patient;

- Correcting the typographical error and clarifying that the exceptions in (B)(3) and (E)(3) on reporting deaths apply only to subsection (G)(1);
- Clarifying that the exception in subsection (F) applies to subsection (D);
- Adding “patient’s representative” to subsections (C)(1)(d) and (D)(1)(d);
- Clarifying that a physical examination conducted at a referring health care institution, but not necessarily by the referring medical practitioner at the health care institution, could be reviewed and used in lieu of a health care institution conducting a new physical examination of a patient;
- Clarifying that requirements in subsection (E) are also applicable to health care institutions in which an opioid is prescribed or ordered as part of treatment; and
- Correcting typographical or grammatical errors.

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

The Department received two written comments during the public comment period. The Department held an oral proceeding for the proposed rule on December 18, 2017, which one stakeholder, who had also submitted a written comment, attended and provided a summarized version of the concerns identified in the written comment.

A summary of the comments received and the Department’s responses follows:

Comment	Department’s Response
<p>In a written comment submitted by a representative of the Arizona Hospital and Health Care Association, several statements of support and several concerns were expressed:</p> <ul style="list-style-type: none"> - Support for the informed consent requirement in subsection (C) was expressed. 	<p>The Department thanks the commenter for the support.</p>
<ul style="list-style-type: none"> - The commenter expressed opposition to the inclusion of a requirement for informed consent for an opioid ordered for administration to a patient within a facility, citing that the “risk of addiction associated with opioid treatment in an inpatient setting is not well-documented” and that “[p]atients are very closely monitored” . . . “by and under the supervision of a team of qualified medical professionals.” 	<p>The Department believes that there is a risk of addiction associated with an opioid begun as part of treatment in an inpatient setting. There are also other risks for a patient administered an opioid as part of treatment in an acute inpatient setting. According to a 2012 publication of the Joint Commission, opioids were among the medications most often associated with adverse reactions, with 47% of the opioid-related adverse reactions reported to The Joint Commission due to “wrong dose medication errors” and 29% related to “improper monitoring of the patient.” In addition, since so many individuals have been prescribed opioids, constituting an opioid epidemic, many have developed a substance use</p>

	<p>disorder. If efforts to reduce the opioid epidemic in Arizona result in more individuals with a substance use disorder obtaining treatment and beginning recovery, it would be counterproductive to have an individual in recovery be admitted to an acute, inpatient setting for a non-emergency situation and be administered an opioid without having an opportunity to ask if there were alternatives to an ordered opioid and giving informed consent for the opioid to be administered. The rule contains exceptions in subsections (F), and (G)(1), (3), and (4), which should cover situations in which obtaining informed consent would be impossible, overly burdensome without a benefit to patients, or against requirements of good medical practice. These exceptions should be included in the policies and procedures required by subsection (B)(1)(c)(v). The Department believes that a patient, under usual circumstances, should have a right to know of the risks, benefits, and alternatives to an opioid and give informed consent for the opioid to be administered. The Department is not changing the rule based on this comment.</p>
<p>- Support for the inclusion in the rule of R9-10-120(B)(2)(a), requiring review of opioid-related adverse reactions through the health care institution’s quality management program was expressed.</p>	<p>The Department thanks the commenter for the support.</p>
<p>- The commenter expressed concern that subsection (D)(1)(a)(ii) may disrupt transitions of care to less acute settings if the physical examination from the referring health care institution were conducted by a different medical practitioner from the one who discharges the patient and refers the patient to the receiving health care institution.</p>	<p>It was the Department’s intent to ensure a smooth transition of care by including this subsection in the proposed rule. However, a patient may also be referred for admission to a health care institution by the patient’s medical practitioner in private practice, rather than by another health care institution. To address the commenter’s concern, the Department intends to clarify the requirement as follows: <u>Within the previous 30 calendar days, at a health care institution transferring the patient to the health care institution or by the medical practitioner who referred the patient for admission to the health care institution;</u></p>
<p>- The commenter suggested that subsection (D)(1)(c) could also be changed “to specifically allow a receiving HCI to meet the substance use risk assessment requirements by reviewing documentation from an assessment conducted by a medical practitioner at a health care institution that transferred the patient for admission to the healthcare institution.”</p>	<p>Subsection (D)(1)(c), as proposed, allowed the assessment to be done by any individual licensed under A.R.S. Title 32 and authorized by policies and procedures to conduct an assessment. This is broader than the suggested change in that an individual other than a medical practitioner could conduct the assessment, and the assessment would not need to have been from the referring health care institution. A health care institution could specify in policies and procedures from whom an assessment would be accepted, as long as the health and safety of a patient was protected. The Department is not changing the rule based on this comment.</p>
<p>- The commenter suggested the addition of a new subsection in (D), requiring that a new physical examination and risk</p>	<p>Many of the Articles in 9 A.A.C. 10 specific to a class of health care institutions already contain requirements for when a physical examination must be conducted for a patient of the</p>

<p>assessment be conducted within 48 hours after admission to the receiving health care institution if the receiving health care institution relied on the documentation from the transferring health care institution.</p>	<p>health care institution. These include: within 48 hours of admission for a hospital; within 72 hours for a behavioral health inpatient facility; within 30 calendar days before or seven calendar days after for a behavioral health residential facility; and within 30 calendar days before or 48 hours after for an outpatient treatment center authorized to provide dialysis services. Therefore, the Department does not believe there is need for an additional, and potentially conflicting, requirement to be imposed on a health care institution. The Department is not changing the rule based on this comment.</p>
<p>- The commenter requested clarification about the applicability of subsection (E) to health care institutions where opioids are prescribed or ordered.</p>	<p>In all classes of health care institution, medication may be administered or assistance in the self-administration of medication may be provided to a patient. Therefore, although subsections (B), (C), and (D) do not apply to a health care institution that does not prescribe or order an opioid, and only administers an opioid or provides assistance in the self-administration of medication for a prescribed opioid, subsection (E) applies to all health care institutions, including a health care institution that prescribes or orders an opioid. The Department is changing the rule as follows to clarify this requirement: <u>For a health care institution where opioids are administered as part of treatment or where a patient is provided assistance in the self-administration of medication for a prescribed opioid, including a health care institution in which an opioid may be prescribed or ordered as part of treatment, an administrator, a manager as defined in R9-10-801, or a provider, as applicable to the health care institution, shall:</u></p>
<p>In a written comment and oral comments submitted by a representative of the Health System Alliance of Arizona, several concerns were expressed:</p> <p>- The commenter suggested that the definition of “prescribe” be revised to read: “‘Prescribe’ means to issue written or electronic instructions to a pharmacist to dispense directly to a patient a specific dose of a specific medication in a specific quantity and route of administration.”</p>	<p>This wording would imply that a child’s prescribed opioid could not be dispensed to the child’s parent and that an adult child could not pick up the opioid prescription for an invalid parent. To better clarify the distinction between “prescribe” and “order,” the Department is changing the rule as follows: <u>“Prescribe” means to issue written or electronic instructions to a pharmacist to deliver to the ultimate user, or another individual on the ultimate user’s behalf, a specific dose of a specific medication in a specific quantity and route of administration.</u></p>
<p>- The commenter expressed concern that the use of the term “co-occurring behavioral health issues” in subsection (B)(1)(d)(iii) “may be overly broad” and that the Department should be more specific as to what should be screened for.</p>	<p>The intent of the Department is not to dictate the practice of medicine, but to leave up to medical judgement what additional risks different behavioral health issues may pose to a patient for whom an opioid may be prescribed or ordered, balanced against the benefits to the patient. Since other behavioral health issues, such as schizophrenia, depression, or bipolar disorder, may increase a patient’s risk, even in the absence of a “history of overdose or suicide attempts,” the Department is not changing</p>

	<p>the rule but would expect a health care institution to develop policies and procedures, to protect the health and safety of a patient, specific to the scope of services provided, the method of delivery of these services, and the patient population served.</p>
<p>- The commenter expressed concern about the requirement for informed consent in an acute, inpatient treatment setting, citing situations where obtaining informed consent would be impractical or not in the best interests of a patient, and stating that patients in these settings “are under continuous medical supervision.” The commenter requested that subsection (G) be changed to exempt acute inpatient hospital settings.</p>	<p>As stated above, the rule contains exceptions in subsections (F), and (G)(1), (3), and (4), which should cover situations in which obtaining informed consent would be impossible, overly burdensome without a benefit to patients, or against requirements of good medical practice. The Department believes that a patient, under usual circumstances, should have a right to know of the risks, benefits, and alternatives to an opioid and is not changing the exemptions based on this comment. However, the Department is changing subsection (B)(1)(c)(v) as follows to clarify that situations in which informed consent may not be obtained can be included in a health care institution’s policies and procedures:</p> <p><u>Informed consent is obtained from a patient or the patient’s representative and, if applicable, in what situations, described in subsection (F) or (G), informed consent would not be obtained before an opioid is prescribed or ordered for a patient;</u></p>
<p>- The commenter expressed concern that the use of the term “episode of care” in subsection (C)(1)(C) is unclear and suggested establishing in rule a time frame during which a risk assessment must be conducted. The commenter also expressed concerns about not using “a recognized and reliable risk assessment tool” and liability for selecting an inappropriate tool.</p>	<p>The definition of “episode of care” is similar to the definition for this term in A.A.C. R9-11-101 for hospitals submitting health care institution facility data, but allows for a different ending time for the episode of care to accommodate other classes of health care institutions. As such, a hospital should be very familiar with the duration of an episode of care as it applies to its class of health care institution. Because the duration of an episode of care varies with the class of health care institution, the Department believes that establishing a specific time period in rule would impose an undue burden on some classes of health care institution, without improving patient health or safety, and the Department is not changing the rule based on this comment. Although a hospital assesses the physical, psychological, or behavioral health condition of patients on a continual basis, as well as assessing the effect that the patient’s medical history, treatment, disease progression, or other parameters have on the patient, the Department recognizes the concern about selecting a specific “substance use risk assessment” tool. Therefore, the Department is replacing the definition of “substance use risk assessment” with a definition of “substance use risk” and changing subsections (B)(1)(c)(ii) and (g)(ii), (C)(1)(c), and (D)(1)(c) to use the phrase “assessment of the patient’s substance use risk” to specify that the assessment being required is to determine the unique likelihood for addiction, misuse, diversion, or another adverse consequence resulting from the individual being prescribed or receiving treatment with opioids, without requiring a specific tool to be used.</p>

<p>- The commenter suggested that “patient’s representative” be added to subsections (C)(1)(d) and (D)(1)(d).</p>	<p>The Department thanks the commenter for pointing out the oversight and is changing these subsections of the rule to include the phrase “patient’s representative.”</p>
<p>- The commenter expressed concern that “[t]here is not a practical or safe opportunity to obtain informed consent or in the event of a medical emergency or incapacitation, conduct a full physical exam, obtain medical history etc.” and requested that subsection (D) be removed because its requirements “would not only impede patient care, in some instances, they could compromise patient safety.”</p>	<p>As stated above, the rule contains an exception in subsection (F) for emergency situations. The Department is clarifying that a health care institution’s policies and procedures can include situations, described in subsections (F) or (G)(1), (3), or (4), when informed consent would not be obtained before an opioid is ordered for a patient, as already inferred from subsection (F)(1). The Department is also changing subsection (D) to clarify that the exception in subsection (F) is applicable to subsection (D).</p>
<p>- The commenter stated that subsection (E)(1)(b) “appears to be intended to be applicable to residential settings” but that this was unclear. The commenter also was uncertain about the intention of the phrases “knowledge and qualifications” and “assist in self-administration.”</p>	<p>Subsection (E)(1)(b) is applicable to any health care institution in which assistance in the self-administration of medication for a prescribed opioid is provided, just as subsection (B)(1)(a) is applicable to any health care institution where opioids are prescribed or ordered as part of treatment. The phrase “knowledge and qualifications” is used in the same context as “qualifications, skills, and knowledge” is used throughout 9 A.A.C. 10. The term “assistance in the self-administration of medication” is defined in R9-10-101. The Department is not changing the rule based on this comment.</p>
<p>- The commenter requested that the exemption in subsection (F) be expanded to also include physicians who prescribe opioids.</p>	<p>Subsection (F) does not give a blanket exemption to a medical practitioner who orders an opioid, just to those instances in which a medical practitioner orders an opioid as part of treatment for a patient in an emergency, if the specified requirements are met. The nature of an emergency situation, requiring immediate treatment to protect the life or health of a patient, would not be one in which a medical practitioner would be prescribing an opioid. The Department is not changing the rule based on this comment.</p>
<p>- The commenter requested that “the exemption that is implied in Subsection G be clarified to explicitly exempt acute inpatient hospital settings from Subsections C, D & E for patients receiving a surgical procedure or other invasive inpatient procedures.”</p>	<p>Subsection (G)(4)(a) exempts the applicable requirements when ordering an opioid for a patient receiving a surgical procedure or other invasive inpatient procedure. The Department believes that when this patient is ready for discharge, a health care institution should be required to comply with the requirements in the rule when prescribing an opioid for use by the patient after discharge. The Department is not changing the rule based on this 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:

- 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 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:

Not applicable

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

No business competitiveness analysis was received by the Department.

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

Not applicable

14. Whether the rule was previously made, amended or repealed as an emergency 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:

Notice of Emergency Rulemaking: 23 A.A.R. 2203, August 18, 2017

Between the initial emergency rulemaking and the final rulemaking packages, the rule was changed by: adding definitions to improve clarity; making subsection (B) applicable only for health care institutions prescribing or ordering an opioid for a patient; revising the list of guidelines in subsection (B)(1)(b); changing the wording in subsection (B)(1)(d) to clarify the intended reason for added attention to be given when prescribing or ordering an opioid and to better describe conditions that may put a patient at a higher risk; adding a requirement that a method for continuing pain control will be addressed after discharge if medically indicated, in response to stakeholder concerns about patients being discharged without a needed prescription; clarifying that documenting a dispensed opioid in the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database is as required by A.R.S. § 36-2608; moving the components of informed consent into the administrative requirements in subsection (B) and removing some requirements and clarifying others; separating and revising requirements for prescribing an opioid for use outside a health care institution (subsection (C)) and for ordering an opioid for administration in a health care institution (subsection (D)) because of the differences in risk to a patient; separating clinical aspects and documentation aspects of prescribing or ordering an opioid; moving applicable subsections from subsection (B) into subsection (E) for health care institutions where opioids are administered as part of treatment or where a patient is

provided assistance in the self-administration of medication for a prescribed opioid; changing the phrase “patient’s pain” to “patient’s need” to recognize that an opioid may be prescribed for a reason other than pain control; adding an exception from requirements for an opioid ordered and administered to a patient in an emergency if the specified conditions are met; expanding the circumstances where a health care institution would be exempt from requirements in the rule; and making the changes described in paragraph 10.

Between the renewed emergency rulemaking and the final rulemaking packages, the rule was changed as described in paragraph 10.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 1. GENERAL

Section

R9-10-120. Opioid Prescribing and Treatment

ARTICLE 1. GENERAL

R9-10-120. Opioid Prescribing and Treatment

A. In addition to the definitions in A.R.S. § 36-401(A) and R9-10-101, the following definitions apply in this Section:

1. “Active malignancy” means a cancer for which:
 - a. A patient is undergoing treatment, such as through:
 - i. One or more surgical procedures to remove the cancer;
 - ii. Chemotherapy, as defined in A.A.C. R9-4-401; or
 - iii. Radiation treatment, as defined in A.A.C. R9-4-401;
 - b. There is no treatment; or
 - c. A patient is refusing treatment.
2. “Benzodiazepine” means any one of a class of sedative-hypnotic medications, characterized by a chemical structure that includes a benzene ring linked to a seven-membered ring containing two nitrogen atoms, that are commonly used in the treatment of anxiety.
3. “End-of-life” means that a patient has a documented life expectancy of six months or less.
4. “Episode of care” means medical services, nursing services, or health-related services provided by a health care institution to a patient for a specific period of time, ending in discharge or the completion of the patient’s treatment plan, whichever is later.
5. “Opioid” means a controlled substance, as defined in A.R.S. § 36-2501, that meets the definition of “opiate” in A.R.S. § 36-2501.
6. “Order” means to issue written, verbal, or electronic instructions for a specific dose of a specific medication in a specific quantity and route of administration to be obtained and administered to a patient in a health care institution.
7. “Prescribe” means to issue written or electronic instructions to a pharmacist to deliver to the ultimate user, or another individual on the ultimate user’s behalf, a specific dose of a specific medication in a specific quantity and route of administration.
8. “Sedative-hypnotic medication” means any one of several classes of drugs that have sleep-inducing, anti-anxiety, anti-convulsant, and muscle-relaxing properties.
9. “Short-acting opioid antagonist” means a drug approved by the U.S. Department of Health and Human Services, Food and Drug Administration, that, when administered,

quickly but for a small period of time reverses, in whole or in part, the pharmacological effects of an opioid in the body.

10. “Substance use disorder” means a condition in which the misuse or dependence on alcohol or a drug results in adverse physical, mental, or social effects on an individual.
11. “Substance use risk” means an individual’s unique likelihood for addiction, misuse, diversion, or another adverse consequence resulting from the individual being prescribed or receiving treatment with opioids.
12. “Tapering” means the gradual reduction in the dosage of a medication administered to a patient, often with the intent of eventually discontinuing the use of the medication for the patient.

B. An administrator of a health care institution where opioids are prescribed or ordered as part of treatment shall:

1. Establish, document, and implement policies and procedures for prescribing or ordering an opioid as part of treatment, to protect the health and safety of a patient, that:
 - a. Cover which personnel members may prescribe or order an opioid in treating a patient and the required knowledge and qualifications of these personnel members;
 - b. As applicable and except when contrary to medical judgment for a patient, are consistent with the Arizona Opioid Prescribing Guidelines or national opioid-prescribing guidelines, such as guidelines developed by the:
 - i. Centers for Disease Control and Prevention, or
 - ii. U.S. Department of Veterans Affairs and the U.S. Department of Defense;
 - c. Include how, when, and by whom:
 - i. A patient’s profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database is reviewed;
 - ii. An assessment is conducted of a patient’s substance use risk;
 - iii. The potential risks, adverse outcomes, and complications, including death, associated with the use of opioids are explained to a patient or the patient’s representative;
 - iv. Alternatives to a prescribed or ordered opioid are explained to a patient or the patient’s representative;
 - v. Informed consent is obtained from a patient or the patient’s representative and, if applicable, in what situations, described in

- during the same episode of care by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to conduct an assessment of the patient's substance use risk;
- d. Explains to the patient or the patient's representative the risks and benefits associated with the use of opioids or ensures that the patient or the patient's representative understands the risks and benefits associated with the use of opioids, as explained to the patient or the patient's representative by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to explain to the patient or the patient's representative the risks and benefits associated with the use of opioids;
 - e. Explains alternatives to a prescribed opioid; and
 - f. Obtains informed consent from the patient or the patient's representative that meets the requirements in subsection (B)(4), including the potential risks, adverse outcomes, and complications associated with the concurrent use of an opioid and a benzodiazepine or another sedative-hypnotic medication, if the patient:
 - i. Is also prescribed or ordered a sedative-hypnotic medication, or
 - ii. Has been prescribed a sedative-hypnotic medication by another medical practitioner;
2. Includes the following information in the patient's medical record, an existing treatment plan, or a new treatment plan developed for the patient:
- a. The patient's diagnosis;
 - b. The patient's medical history, including co-occurring disorders;
 - c. The opioid to be prescribed;
 - d. Other medications or herbal supplements being taken by the patient;
 - e. If applicable:
 - i. The effectiveness of the patient's current treatment,
 - ii. The duration of the current treatment, and
 - iii. Alternative treatments tried by or planned for the patient;
 - f. The expected benefit of the treatment and, if applicable, the benefit of the new treatment compared with continuing the current treatment; and
 - g. Other factors relevant to the patient's being prescribed an opioid; and
3. If applicable, specifies in the patient's discharge plan how medically indicated pain control will occur after discharge to meet the patient's needs.

D. Except as provided in subsection (F) or (G), an administrator of a health care institution where opioids are ordered for administration to a patient in the health care institution as part of treatment shall ensure that a medical practitioner authorized by policies and procedures to order an opioid in treating a patient:

1. Before ordering an opioid for a patient of the health care institution:
 - a. Conducts a physical examination of the patient or reviews the documentation from a physical examination conducted:
 - i. During the patient's same episode of care; or
 - ii. Within the previous 30 calendar days, at a health care institution transferring the patient to the health care institution or by the medical practitioner who referred the patient for admission to the health care institution;
 - b. Except as exempted by A.R.S. § 36-2606(G), reviews the patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
 - c. Conducts an assessment of the patient's substance use risk or reviews the documentation from an assessment of the patient's substance use risk conducted within the previous 30 calendar days by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to conduct an assessment of the patient's substance use risk;
 - d. Explains to the patient or the patient's representative the risks and benefits associated with the use of opioids or ensures that the patient or the patient's representative understands the risks and benefits associated with the use of opioids, as explained to the patient or the patient's representative by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to explain to the patient or the patient's representative the risks and benefits associated with the use of opioids;
 - e. If applicable, explains alternatives to a prescribed opioid; and
 - f. Obtains informed consent from the patient or the patient's representative, according to subsection (C)(1)(f); and
2. Includes the following information in the patient's medical record, an existing treatment plan, or a new treatment plan developed for the patient:
 - a. The patient's diagnosis;
 - b. The patient's medical history, including co-occurring disorders;

- c. The opioid being ordered and the reason for the order;
- d. Other medications or herbal supplements being taken by the patient; and
- e. If applicable:
 - i. The effectiveness of the patient's current treatment,
 - ii. The duration of the current treatment,
 - iii. Alternative treatments tried by or planned for the patient,
 - iv. The expected benefit of a new treatment compared with continuing the current treatment, and
 - v. Other factors relevant to the patient's being ordered an opioid.

E. For a health care institution where opioids are administered as part of treatment or where a patient is provided assistance in the self-administration of medication for a prescribed opioid, including a health care institution in which an opioid may be prescribed or ordered as part of treatment, an administrator, a manager as defined in R9-10-801, or a provider, as applicable to the health care institution, shall:

- 1. Establish, document, and implement policies and procedures for administering an opioid as part of treatment or providing assistance in the self-administration of medication for a prescribed opioid, to protect the health and safety of a patient, that:
 - a. Cover which personnel members may administer an opioid in treating a patient and the required knowledge and qualifications of these personnel members;
 - b. Cover which personnel members may provide assistance in the self-administration of medication for a prescribed opioid and the required knowledge and qualifications of these personnel members;
 - c. Include how, when, and by whom a patient's need for opioid administration is assessed;
 - d. Include how, when, and by whom a patient receiving an opioid is monitored; and
 - e. Cover how, when, and by whom the actions taken according to subsections (E)(1)(c) and (d) are documented;
- 2. Include in the plan for the health care institution's quality management program a process for:
 - a. Review of incidents of opioid-related adverse reactions or other negative outcomes a patient experiences or opioid-related deaths, and
 - b. Surveillance and monitoring of adherence to the policies and procedures in subsection (E)(1);

3. Except as prohibited by Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2, or as provided in subsection (G)(1), ensure that, if a patient's death may be related to an opioid administered as part of treatment, written notification, in a Department-provided format, is provided to the Department of the patient's death within one working day after the patient's death; and
 4. Except as provided in subsection (G), ensure that an individual authorized by policies and procedures to administer an opioid in treating a patient or to provide assistance in the self-administration of medication for a prescribed opioid:
 - a. Before administering an opioid or providing assistance in the self-administration of medication for a prescribed opioid in compliance with an order as part of the treatment for a patient, identifies the patient's need for the opioid;
 - b. Monitors the patient's response to the opioid; and
 - c. Documents in the patient's medical record:
 - i. An identification of the patient's need for the opioid before the opioid was administered or assistance in the self-administration of medication for a prescribed opioid was provided, and
 - ii. The effect of the opioid administered or for which assistance in the self-administration of medication for a prescribed opioid was provided.
- F. A medical practitioner authorized by a health care institution's policies and procedures to order an opioid in treating a patient is exempt from the requirements in subsection (D), if:
1. The health care institution's policies and procedures, required in subsection (B)(1) or the applicable Article in 9 A.A.C. 10, contain procedures for:
 - a. Providing treatment without obtaining the consent of a patient or the patient's representative,
 - b. Ordering and administering opioids in an emergency situation, and
 - c. Complying with the requirements in subsection (D) after the emergency is resolved;
 2. The order for the administration of an opioid is:
 - a. Part of the treatment for a patient in an emergency, and
 - b. Issued in accordance with policies and procedures; and
 3. The emergency situation is documented in the patient's medical record.
- G. The requirements in subsections (C), (D), and (E)(4), as applicable, do not apply to a health care institution's:

1. Prescribing, ordering, or administration of an opioid as part of treatment for a patient with an end-of-life condition or pain associated with an active malignancy;
2. Prescribing an opioid as part of treatment for a patient when changing the type or dosage of an opioid, which had previously been prescribed by a medical practitioner of the health care institution for the patient according to the requirements in subsection (C):
 - a. Before a pharmacist dispenses the opioid for the patient; or
 - b. If changing the opioid because of an adverse reaction to the opioid experienced by the patient, within 72 hours after the opioid was dispensed for the patient by a pharmacist;
3. Ordering an opioid as part of treatment for no longer than three calendar days for a patient remaining in the health care institution and receiving continuous medical services or nursing services from the health care institution; or
4. Ordering an opioid as part of treatment:
 - a. For a patient receiving a surgical procedure or other invasive procedure; or
 - b. When changing the type, dosage, or route of administration of an opioid, which had previously been ordered by a medical practitioner of the health care institution for a patient according to the requirements in subsection (D), to meet the patient's needs.

TITLE 9. HEALTH SERVICES

CHAPTER 10. HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 1. GENERAL

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 10. HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 1. GENERAL

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-405(A) requires the Director of the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety, and welfare. A.R.S. § 36-132(A)(17) requires the Department to license and regulate health care institutions according to A.R.S. Title 36, Chapter 4. The Department has implemented these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Requirements that are applicable to more than one class or subclass of health care institution are included in 9 A.A.C. 10, Article 1.

In the last 15 years, prescription opioid sales in the United States have risen by 300%, resulting in more than 33,000 opioid overdose deaths in 2015 nationwide. In Arizona, 790 individuals died in 2016 of an opioid overdose, a 74% increase since 2012. This figure represents over half of all drug overdoses in Arizona in 2016. In response to this epidemic, Governor Doug Ducey, on June 5, 2017, issued a Declaration of Emergency (Opioid Overdose Epidemic). In compliance with the Governor's Declaration of Emergency, the Department has amended the rules in 9 A.A.C. 10, Article 1 for licensed health care institutions through emergency rulemaking. The new emergency rule, A.A.C. R9-10-120, effective July 28, 2017, requires licensed health care institutions to:

- Establish, document, and implement policies and procedures for prescribing, ordering, or administering opioids as part of treatment;
- Include specific processes related to opioids in a licensed health care institution's quality management program; and
- Notify the Department of the death of a patient from an opioid overdose.

The Department also specified requirements with which an individual will need to comply before prescribing opioids, ordering opioids, or administering opioids in the treatment of a patient. To reduce the burden on licensed health care institutions, the Department exempted the prescription, ordering, or administration of opioids as part of treatment for a patient with a terminal condition.

In a regular rulemaking for R9-10-120, the Department is revising what is in the emergency rulemaking to address stakeholder concerns and improve the effectiveness of the rule. Changes from the emergency rule include:

- Breaking out requirements for ordering an opioid for administration in the licensed health care institution from requirements for prescribing an opioid for administration, including self-administration, outside the licensed health care institution;
- Adding an exception for ordering an opioid for administration in an emergency situation;
- Broadening the exception for applicability of the rule to patients with an active malignancy;
- Adding exceptions for:
 - Changing the prescription for an opioid for a patient, which had previously been ordered according to the requirements in subsection (C), to meet patient needs;
 - Ordering an opioid as part of treatment for no longer than three calendar days for a patient remaining in the health care institution and receiving continuous medical services or nursing services from the health care institution;
 - Ordering an opioid as part of treatment for a patient receiving a surgical procedure or other invasive procedure;
 - Changing the type, dosage, or route of administration of an opioid, which had previously been ordered for a patient according to the requirements in subsection (D), to meet the patient's needs;
- Clarifying exceptions for reviewing a patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database, pursuant to A.R.S. § 36-2606(G);
- Adding definitions to clarify the meaning of terms used in the rule, such as "sedative-hypnotic medication," "episode of care," "order," "prescribe," "substance use disorder," and "tapering";
- Adding a requirement for a licensed health care institution where opioids are prescribed or ordered to include in a patient's discharge planning how continuing opioid administration will occur after discharge to meet the patient's needs;
- Allowing the physical examination performed by another individual to be used, under specified circumstances, before an opioid is prescribed or ordered;
- Allowing another individual to conduct a patient's risk assessment, under specified circumstances, and
- Clarifying requirements for individuals administering an opioid to a patient or assisting in the self-administration of an opioid.

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

a. Cost bearers

- The Department
- AHCCCS and other third-party payors
- Health care institutions licensed under 9 A.A.C. 10
- Medical practitioners in licensed health care institutions
- Personnel members in licensed health care institutions

b. Beneficiaries

- The Department
- AHCCCS and other third-party payors
- Health care institutions licensed under 9 A.A.C. 10
- Patients and residents of licensed health care institutions
- Families of patients and residents
- General public

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rule changes and does not describe effects imposed by the Governor's Declaration of Emergency or the emergency rule, except to describe how a burden imposed by or a benefit derived from requirements in the emergency rule was changed during the regular rulemaking. No new FTEs will be required due to this rulemaking. Annual costs/revenues changes are designated as minimal when more than \$0 and \$10,000 or less, moderate when between \$10,000 and \$50,000, and substantial when \$50,000 or greater in additional costs or revenues. A cost is 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	Specifying and clarifying requirements for opioid prescribing and treatment	None	Significant
AHCCCS	Specifying and clarifying requirements for opioid prescribing and treatment resulting in fewer opioid overdoses	None	None-to-substantial
	Specifying and clarifying requirements for opioid prescribing and treatment resulting in more patients seeking treatment for substance use disorder	None-to-substantial	None
B. Privately Owned Businesses			
Third-party payors	Specifying and clarifying requirements for opioid prescribing and treatment resulting in fewer opioid overdoses	None	None-to-substantial
	Specifying and clarifying requirements for opioid prescribing and treatment resulting in more patients seeking treatment for substance use disorder	None-to-substantial	None
Licensed health care institutions	Requiring policies and procedures specific to opioid prescribing and treatment	Minimal-to-moderate	Significant
	Incorporating specific processes related to opioids into the quality management program	Minimal, with higher costs to address identified issues	Significant
	Reporting opioid-related deaths	Minimal-to-moderate	None
	Specifying and clarifying clinical requirements for opioid prescribing and treatment	Minimal-to-substantial	Significant
	Specifying exceptions Specifying requirements for administration or assistance in the self-administration of an opioid	None None-to-minimal	Significant Significant
Medical practitioners	Specifying and clarifying clinical requirements for opioid prescribing and treatment	Minimal-to-moderate	Significant
Personnel members in licensed health care institutions	Specifying and clarifying requirements for opioid prescribing and treatment	None-to-minimal	Significant
C. Consumers			

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
Patients of licensed health care institutions and their families	Specifying and clarifying requirements for opioid prescribing and treatment	None-to-minimal	Significant
General public	Specifying and clarifying requirements for opioid prescribing and treatment	None	Significant

- **The Department**

In Arizona, 790 individuals died in 2016 of an opioid overdose. Since June 13, 2017, when enhanced opioid surveillance began more than 716 suspected opioid deaths and 4,914 suspected opioid overdoses have been reported to the Department (as of December 28, 2017). The number of opioid prescriptions issued in November 2017 totals more than 340,000. In September 2017, about 40% of the individuals reported as experiencing a suspected overdose, who had a prescription history in the Controlled Substances Prescription Monitoring Program (CSPMP), had received opioid prescriptions from 10 or more medical practitioners, but by November 2017, the percentage had dropped to 24%. In addition, about 40% of people experiencing suspected opioid overdoses, who had a prescription listed in the Controlled Substances Prescription Monitoring Program, had been prescribed both benzodiazepines and opioids in 2017. Although many of these prescriptions were issued by medical practitioners in their private practices, which are not under the regulatory authority of the Department, the Department believes that a large percentage were issued by medical practitioners in health care institutions licensed by the Department.

In this rule, the Department establishes requirements specific to opioid prescribing and treatment for licensed health care institutions. Many of the requirements in the rule may be encompassed by other, more general requirements related to medication services provided by a licensed health care institution that are contained in the Articles in 9 A.A.C. 10 specific to the class/subclass of licensed health care institution. However, by making these opioid-specific requirements, the Department may be better able to, and more easily, assess whether a licensed health care institution is adequately addressing the opioid epidemic occurring in Arizona. Therefore, the rule may provide a significant benefit to the Department.

- **AHCCCS and other third-party payors**

Opioid overdoses have a large impact on Arizona’s medical care system due to the volume and cost of overdose encounters. In 2015, opioid-related encounters cost Arizona hospitals nearly \$350 million, representing a 26% jump from the previous year. The estimated

cost to Arizona hospitals in 2016 was over \$400 million, a further 18% increase in the net annual costs since 2015. The Department estimates that the costs will continue to rise so long as opioid prescribing practices remain the same. Since AHCCCS and other third party payors pay for a very large proportion of health care costs in Arizona, the Department believes that AHCCCS and other third party payors incur a substantial cost related to the provision of medical care for opioid overdoses. The Department anticipates that the strengthened requirements for licensed health care institutions that prescribe, order, or administer opioids may help reduce the number of opioid overdose deaths in Arizona and the number of individuals suffering an opioid overdose as a result of opioids prescribed, ordered, or administered as part of treatment in licensed health care institutions. Therefore, the Department estimates that this rule may provide up to a substantial cost savings to AHCCCS and other third party payors. Opioid-related reports received by the Department as of December 28, 2017 indicate that 47% of individuals with a suspected opioid overdose were referred to a behavioral health facility after the overdose. If more individuals covered by AHCCCS or another third-party payor who have a substance use disorder seek treatment paid for by AHCCCS or another third-party payor because of requirements in the rule, the Department anticipates that AHCCCS or another third-party payor may incur up to a substantial cost for this treatment.

- **Licensed health care institutions**

The Department currently licenses over 5,700 facilities as one of 18 classes/subclasses of health care institutions. As of January 5, 2018, these include: 112 hospitals, 44 behavioral health inpatient facilities, 149 nursing care institutions, 3 recovery care centers, 8 hospice inpatient facilities, 38 outpatient surgical centers, 2,019 outpatient treatment centers, one behavioral health specialized transitional facility, 4 abortion clinics, 4 substance abuse transitional facilities, 520 behavioral health residential facilities, and 39 unclassified health care institutions. In these facilities, an opioid may be ordered for administration to a patient or prescribed for use outside the health care institution. In behavioral health inpatient facilities, hospice inpatient facilities, behavioral health residential facilities, some outpatient treatment centers, the behavioral health specialized transitional facility, and some unclassified health care institutions, assistance in the self-administration of medication is also provided. The Department also licenses 169 hospice service agencies and 222 home health agencies, through which an opioid prescribed by a patient's medical practitioner may be administered to the patient or the patient may be assisted in the self-administration of an opioid. In the 2,044 assisted living facilities, 22 adult day health care facilities, 13 behavioral health respite homes, and 47 adult behavioral health therapeutic homes licensed by the Department, an opioid prescribed by a patient's/resident's/participant's medical

practitioner be administered to the patient or the patient may be assisted in the self-administration of an opioid. No medication prescribing, ordering, or administration is authorized for the 250 counseling facilities licensed by the Department.

The rule in subsection (B)(1) requires a licensed health care institution where opioids are prescribed or ordered as part of treatment to establish, document, and implement policies and procedures for prescribing or ordering opioids as part of treatment, specific to the licensed health care institution. Subsection (E)(1) requires a licensed health care institution where opioids are administered as part of treatment or where a patient is provided assistance in the self-administration of medication for a prescribed opioid to establish, document, and implement policies and procedures related to these services, specific to the licensed health care institution. All licensed health care institutions, except counseling facilities, provide medication ordering, prescribing, or administration or assistance in the self-administration of medication as part of their scopes of services. Therefore, they all would already have policies and procedures related to these services. The Department believes that making changes to their policies and procedures to specifically address opioids would impose a minimal cost on most licensed health care institutions, although there may be a few with extensive ordering, prescribing, or administration policies and procedures that could incur a moderate cost. Having these policies and procedures in place may provide a significant benefit to a licensed health care institution from the clarity and specificity of the requirements, which may lead to fewer opioid-related adverse reactions or other negative outcomes for a patient.

All licensed health care institutions, except behavioral health respite homes and adult behavioral health therapeutic homes, have requirements in their respective Articles in 9 A.A.C. 10 for the adoption of a quality management program to evaluate services provided to patients and to identify, document, and evaluate incidents. Quality management for the latter two classes of licensed health care institutions is the responsibility of the collaborating health care institution. All classes of licensed health care institutions, except assisted living facilities, home health agencies, behavioral health respite homes, adult behavioral health therapeutic homes, and counseling facilities, are required to address any medication-related incidents as part of their quality management program. The Department anticipates that specific processes related to opioids could be incorporated into a licensed health care institution's quality management program and, for most licensed health care institutions, believes that including these processes may cause the licensed health care institution to incur minimal costs. If a licensed health care institution identifies a larger number of opioid-related adverse reactions or other negative patient outcomes as a result of this rule, and then investigates and makes changes or takes action as a

result of the identification of a concern, the cost incurred by the licensed health care institution may be higher. As stated above, having specific processes related to opioids as part of a licensed health care institution's quality management program may provide a significant benefit to the licensed health care institution from the clarity and specificity of the requirements. Having clearer, more specific requirements may lead to fewer opioid-related adverse reactions or other negative outcomes for patients and possibly less liability for the health care institution.

The rule requires a licensed health care institution to report to the Department, within one working day after a patient's death, the death of a patient that may be related to an opioid prescribed for, ordered as part of treatment for, or administered to the patient. Behavioral health inpatient facilities, nursing care institutions, behavioral health residential facilities, assisted living facilities, outpatient treatment centers providing urgent care, the behavioral health specialized transitional facility, substance abuse transitional facilities, abortion clinics, adult behavioral health therapeutic homes, behavioral health respite homes, and unclassified health care institutions are already required, under their respective Articles in 9 A.A.C. 10, to report a patient's death to the Department within one working day after the patient's death, if the patient's death is required to be reported according to A.R.S. § 11-593. Therefore, the rule extends this requirement to other classes/subclasses of licensed health care institutions, specific to opioid-related deaths. Although the Department believes that these events will be rare, the Department anticipates that these licensed health care institutions may incur a minimal-to-moderate increase in costs for reporting these deaths, depending on the number of opioid-related deaths being reported. The Department believes that the public health response to the opioid overdose epidemic being implemented by the Department, local health agencies, medical practitioners, health care institutions, emergency medical services providers/ambulance services, and other partners may reduce the number of opioid-related deaths in the future and, therefore, lessen this reporting burden.

In addition to these administrative requirements, the rule specifies some clinical requirements that the administrator of a licensed health care institution is required to ensure take place. For a licensed health care institution where opioids are prescribed as part of treatment, an administrator is required to ensure that a medical practitioner authorized by policies and procedures to order or prescribe an opioid in treating a patient complies with the requirements in subsection (C) or (D), as applicable. For a licensed health care institution where opioids are administered as part of treatment or where a patient is provided assistance in the self-administration of medication for a prescribed opioid, an administrator is required to ensure that an individual administering an opioid as part of treatment or providing assistance in the self-

administration of medication for a prescribed opioid complies with the requirements in subsection (E)(4). The amount of a cost increase that these requirements may impose on a health care institution depends on what practices the health care institution is employing currently and may range from minimal to substantial. The requirements may also provide a significant benefit to a health care institution through improved patient care.

The requirements for ordering or prescribing an opioid for a patient follow best-practice guidelines, but take into consideration the unique needs of specific licensed health care institutions. For example, best-practice guidelines call for a medical practitioner to conduct a physical examination and a substance use risk assessment of a patient before prescribing an opioid for the patient. However, the Department recognizes that a patient in a licensed health care institution may be treated by several medical practitioners during an episode of care before being prescribed an opioid at discharge from the licensed health care institution. It is unnecessary for an administrator of the licensed health care institution to ensure that the prescribing medical practitioner conducts a physical examination of the patient if one has already been done during the patient's episode of care at the licensed health care institution. Similarly, for a medical practitioner ordering an opioid to be administered to a patient in a licensed health care institution, it is unnecessary for an administrator of the licensed health care institution to ensure that the ordering medical practitioner conducts a physical examination of the patient if one has already been done during the patient's episode of care at the licensed health care institution or by the referring medical practitioner, as long as the ordering medical practitioner has reviewed the documentation of the previous physical examination. It is also unnecessary for multiple substance use risk assessments to be conducted for the patient before an opioid is ordered. These exceptions may provide a significant benefit to a health care institution. To reduce the burden on licensed health care institutions further, the Department exempted the requirements related to ordering an opioid as part of treatment for a patient during an emergency situation or for a patient with an end-of-life condition or pain associated with an active malignancy.

At the suggestion of stakeholders, the Department is also exempting ordering an opioid for immediate pain control in an acute care situation in which a patient would be closely monitored, as well as ordering an opioid as part of treatment for a patient receiving a surgical procedure or other invasive procedure. The Department would expect a health care institution to determine a patient's past and present level of exposure to opioids and resultant tolerance, or otherwise determine the efficacy of treatment with an opioid, as part of the services provided to the patient in an acute care setting. Because the type, dose, or route of administration of an opioid ordered for a patient may change as the patient's condition changes, any changes a medical

practitioner makes to the order for an opioid will also be exempt, as long as an opioid was previously ordered by a medical practitioner of the health care institution for the patient according to the requirements in subsection (D). Similarly, a medical practitioner's changes to a patient's opioid prescription before the opioid is dispensed, for example due to an insurance coverage issue, or due to an adverse reaction experienced by the patient within 72 hours after the opioid is dispensed would also be exempt from the requirements in the rule.

The requirements in the rule related to the administration of an opioid to a patient or to providing assistance in the self-administration of medication for a prescribed opioid are similar to the more general requirements currently in a licensed health care institution's respective Article in 9 A.A.C. 10. They call for the administrator to ensure that an individual administering an opioid to a patient or providing assistance in the self-administration of medication for a patient's prescribed opioid to identify the patient's need for the opioid, monitor the effect of the opioid, and document the results. The Department anticipates that a licensed health care institution may incur at most a minimal increased cost due to these requirements and receive a significant benefit.

Although the requirements in the rule impose a cost on a licensed health care institution beyond what had been in 9 A.A.C. 10 before the Governor's Declaration of Emergency (Opioid Overdose Epidemic), they provide a reduction in the burden compared with the emergency rule currently in effect.

Medical practitioners

As defined in R9-10-101, a medical practitioner means a physician, physician assistant, or registered nurse practitioner. According to the Arizona Medical Board's 2016-2017 Annual Report, the number of licensed allopathic physicians in FY 2017 was 23,519. The 2016-2017 Annual Report of the Arizona Regulatory Board of Physician Assistants stated that the number of physician assistants licensed in Arizona is 2,932. According to the Arizona State Board of Nursing, there are 7,034 nurse practitioners in Arizona. The rule affects medical practitioners who work for licensed health care institutions through requirements imposed on these licensed health care institutions. The rule does not apply to medical practitioners in private practices. According to data collected by the Department as of October 15, 2017, only about 25% of medical practitioners prescribing controlled substances, including opioids, checked the CSPMP prior to prescribing.

As described above, a medical practitioner prescribing an opioid for a patient on behalf of a licensed health care institution will be required by the licensed health care institution to comply with the requirements in subsection (C), and a medical practitioner ordering an opioid for a patient on behalf of a licensed health care institution will be required by the licensed health care

institution to comply with the requirements in subsection (D). If a medical practitioner administers an opioid as part of treatment, the medical practitioner will be required to comply with requirements in subsection (E). The Department has reduced the burden on ordering or prescribing medical practitioners as described above. The Department believes that the rule may cause an affected medical practitioner to incur minimal-to-moderate additional costs, depending on the number of patients for whom the medical practitioner orders, prescribes, or administers opioids, and to receive a significant benefit from providing better care to a patient.

- **Personnel members in licensed health care institutions**

A personnel member is defined in R9-10-101 as an individual providing physical health services or behavioral health services to a patient and does not include a medical staff member, a student, or an intern. As described above, an individual administering an opioid as part of treatment or providing assistance in the self-administration of medication for a prescribed opioid will be required by a licensed health care institution to comply with the requirements in subsection (E). Since these requirements are very similar to those requirements in other Articles in 9 A.A.C. 10, with which a personnel member would have to comply, the Department believes that a personnel member may incur at most a minimal cost due to the rule and receive a significant benefit from providing better care to a patient.

- **Patients and their families**

The requirements in the rule were designed to improve the health and safety of patients receiving an opioid medication as part of treatment in a licensed health care institution. As mentioned above, the Department had received reports of more than 716 suspected opioid deaths and 4,914 suspected opioid overdoses between when opioid-related reporting began in June 2017 and December 28, 2017. In addition, 441 cases of neonatal abstinence syndrome had been reported. With the new rule, the Department expects these numbers to go down. Therefore, the Department anticipates that patients and their families may receive a significant benefit from the requirements in the rule. It is possible that a patient could incur a minimal increase in the cost of services provided by a licensed health care institution if the licensed health care institution passes on any increases in the licensed health care institution's costs due to the rule as increased fees for these services.

- **General public**

The Department anticipates that the general public will receive a significant benefit from the rule, which was developed to help combat the opioid overdose epidemic and reduce the number of opioid overdose deaths. As described above, the opioid epidemic has taken a tremendous toll on Arizonans, with an average of more than three opioid-related deaths per day

occurring in Arizona between June 15, 2017 when opioid-related reporting began under Executive Order 2017-04 and December 28, 2017. With an average of more than 20 suspected opioid overdoses per day during the same period, the potential costs of the opioid epidemic in terms of loss of economic productivity and use of public resources are substantial. For example, from June 15, 2017 to December 7, 2017, law enforcement agencies reported 337 suspected opioid overdoses and administration of 333 doses of naloxone. During the same period, emergency medical services providers/ambulance services responded to 2,589 suspected opioid overdoses and administered 2,574 doses of naloxone. However, the number of suspected opioid overdoses reported to the Department has dropped from a high of 270 during the week of September 7, 2017 to 117 during the week of December 14, 2017, which may be indicative of the effect of the public health efforts to combat the epidemic.

4. 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

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. Identification of the small businesses subject to the rules

Small businesses subject to the rule may include small licensed health care institutions.

b. The administrative and other costs required for compliance with the rules

Anticipated costs for complying with the rule are described under paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The rule reduces the impact on small businesses by having an exclusion for reporting for patients with end-of-life conditions or with pain due to an active malignancy. In addition, the rule requirements were designed to enhance existing policies and procedures and practices, rather than add new ones.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The costs to private persons and consumers from the rule changes are described in paragraph 3.

6. A statement of the probable effect on state revenues

The rulemaking does not include any fees, so the Department does not expect the rule to affect state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed 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

Department of Health Services - Health Care Institutions: Licensing

EMERGENCY RULEMAKING

R9-10-120. Opioid Prescribing and Treatment

- A.** For purposes of this Section, the following definitions apply:
1. "Benzodiazepine" means any one of a class of drugs that have sleep-inducing, anti-anxiety, anti-convulsant, and muscle-relaxing properties and are commonly used in the treatment of anxiety.
 2. "Opioid" means the same as "opiate" in A.R.S. § 36-2501.
 3. "Opioid antagonist" means a drug approved by the U.S. Department of Health and Human Services, Food and Drug Administration, that, when administered, negates or neutralizes, in whole or in part, the pharmacological effects of an opioid in the body.
 4. "Substance abuse risk assessment" means an evaluation of an individual's unique likelihood for addiction, abuse, misuse, diversion, or another adverse consequence resulting from the individual being prescribed or receiving treatment with opioids.
 5. "Terminal condition" means the final stage of an incurable or irreversible ailment, caused by injury, disease, or illness and from which, to a reasonable degree of medical certainty, there is no recovery.
- B.** Except as provided in subsection (E), a licensee of a health care institution where opioids are prescribed, ordered, or administered as part of treatment shall:
1. Establish, document, and implement policies and procedures for prescribing or ordering an opioid or administering an opioid as part of treatment, to protect the health and safety of a patient, that:
 - a. Cover which personnel members may prescribe or order an opioid or administer an opioid in treating a patient and the required knowledge and qualifications of these personnel members;
 - b. Except when contrary to medical judgment for a patient, are consistent with the Arizona Opioid Prescribing Guidelines or national opioid-prescribing guidelines, such as guidelines developed by the:
 - i. Centers for Disease Control and Prevention,
 - ii. Substance Abuse and Mental Health Services Administration, or
 - iii. American Society of Addiction Medicine;
 - c. Include how, when, and by whom:
 - i. A patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database is reviewed;
 - ii. A substance abuse risk assessment of a patient is conducted;
 - iii. The potential risks; adverse outcomes; and complications, including death, associated with the use of opioids are explained to a patient or the patient's representative;
 - iv. Alternatives to a prescribed opioid are explained to a patient or the patient's representative;
 - v. Informed consent is obtained from a patient or the patient's representative;
 - vi. A patient receiving an opioid is monitored; and
 - vii. The actions taken according to subsections (B)(1)(c)(i) through (vi) are documented;
 - d. Cover conditions that may contraindicate prescribing an opioid or using an opioid in treatment, including:
 - i. Concurrent use of a benzodiazepine,
 - ii. History of opioid abuse,
 - iii. History of other substance abuse, or
 - iv. Pregnancy;
 - e. Cover the criteria for co-prescribing an opioid antagonist for a patient;
 - f. For a patient being prescribed an opioid, or for whom opioid administration is being ordered, for longer than a 30-calendar-day period, include the frequency of:
 - i. Face-to-face interactions with the patient,
 - ii. Conducting a substance abuse risk assessment of the patient,
 - iii. Renewal of a prescription for an opioid without a face-to-face interaction with the patient, and
 - iv. Monitoring the effectiveness of the treatment;
 - g. If applicable, include documenting a dispensed opioid in the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
 - h. Cover the criteria and procedures for tapering or discontinuing opioid prescription or administration as part of treatment; and
 - i. Cover the criteria and procedures for offering or referring a patient for treatment for substance abuse;
 2. Include in the plan for the health care institution's quality management program a process for:
 - a. Review of incidents of opioid-related adverse reactions or other negative outcomes a patient experiences or opioid-related deaths; and
 - b. Surveillance and monitoring of adherence to the policies and procedures in subsection (B)(1); and
 3. Except as prohibited by Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2, ensure that, if a patient's death may be related to an opioid prescribed, ordered, or administered as part of treatment, written notification, in a Department-provided format, is provided to the Department of the patient's death within one working day after the health care institution learns of the patient's death.
- C.** Except as provided in subsection (E), an administrator shall ensure that, before prescribing an opioid or ordering the administration of an opioid as part of the treatment for a patient, an individual authorized by policies and procedures to prescribe or order an opioid in treating a patient:
1. Conducts a physical examination of the patient;

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2. Reviews the patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
3. Conducts a substance abuse risk assessment of a patient;
4. Develops a treatment plan for the patient based on the:
 - a. Patient's diagnosis;
 - b. Patient's medical history, including co-occurring disorders;
 - c. Opioid to be prescribed;
 - d. Other medications or herbal supplements being taken by the patient;
 - e. Effectiveness of the patient's current treatment;
 - f. Duration of the current treatment;
 - g. Alternative treatments tried by or planned for the patient;
 - h. Expected benefit of a new treatment compared with continuing the current treatment; and
 - i. Other factors relevant to the patient;
5. Explains to the patient the risks and benefits associated with the use of opioids;
6. Explains alternatives to a prescribed opioid; and
7. Obtains informed consent from the patient or the patient's representative that includes:
 - a. The patient's:
 - i. Name;
 - ii. Date of birth;
 - iii. Address;
 - iv. Condition for which opioids are being prescribed or used;
 - v. Telephone number; and
 - vi. E-mail address, if applicable;
 - b. The potential risks, adverse reactions, complications, and medication interactions associated with the use of opioids;
 - c. If the patient is also prescribed a benzodiazepine, the potential risks, adverse outcomes, and complications associated with the concurrent use of an opioid and benzodiazepine;
 - d. Alternatives to a prescribed opioid;
 - e. Name and signature of the personnel member explaining the use of an opioid to the patient; and
 - f. The signature of the patient or patient's representative and the date signed.
- D.** Except as provided in subsection (E), an administrator shall ensure that an individual authorized by policies and procedures to administer an opioid in treating a patient:
 1. Before administering an opioid in compliance with an order as part of the treatment for a patient, identifies the patient's pain before the opioid is administered;
 2. Monitors the patient's response to the opioid; and
 3. Documents in the patient's medical record:
 - a. An identification of the patient's pain before the opioid was administered, and
 - b. The effect of the opioid administered.
- E.** The requirements in subsections (B), (C), and (D) do not apply to a health care institution's prescription, ordering, or administration of opioids as part of treatment for a patient with a terminal condition.

Historical Note

New Section made by emergency rulemaking at 23 A.A.R. 2203, effective July 28, 2017, for 180 days (Supp. 17-3).

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants.

The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definition

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum,

hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for

abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any

recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for the selection of health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees, and fees for architectural plans and specifications reviews.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

AHCCCS (R-18-0305)

Title 9, Chapter 28, Article 4, Eligibility and Enrollment

Amend: R9-28-408



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: March 6, 2018

AGENDA ITEM: F-5

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

FROM: Council Staff

DATE: February 20, 2018

SUBJECT: AHCCCS (R-18-0305)
Title 9, Chapter 28, Article 4, Eligibility and Enrollment

Amend: R9-28-408

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Health Care Cost Containment System Administration (AHCCCS or Administration), seeks to amend one rule in A.A.C. Title 9, Chapter 28, Article 4, related to eligibility and enrollment in the Arizona Long-Term Care System (ALTCS).

The rulemaking relates to the requirements for the deduction of expenses incurred by ALTCS eligible persons in AHCCCS' share of cost calculation. In particular, the rulemaking is intended to provide flexibility with regard to the amount of money that may be retained in limited situations for persons who are ALTCS eligible, are residents of a nursing facility, and are responsible for court ordered spousal and/or child support. The Governor's Office provided an exemption from Executive Order 2017-02 on November 17, 2017.

Proposed Action

Subsection (E)(5)(a) is amended to provide two exceptions from the rule that the personal-needs allowance (PNA) deducted from the share-of-cost for a person residing in a medical institution for a full calendar month cannot be increased above 15% of the Federal Benefit Rate (FBR). In addition, subsections (E)(5)(d) and (E)(6) are amended to clarify the requirements for deduction of medical or remedial care expenses from AHCCCS' share of cost calculation.

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

Yes. AHCCCS cites to both general and specific authority for the rule. Of particular note is A.R.S. § 36-2932(L), under which, in relevant part, the Administration is required to “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....”

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:

CMS (Centers for Medicare and Medicaid Services) has notified the Administration that the current rule is not in alignment with CMS’s interpretation of the federal regulations that govern the share of cost determinations. If the rule is not changed, receipt of federal funds may be jeopardized.

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 Administration has determined that the revisions to the rules are the most cost effective and efficient method of complying with federal law and state law.

5. What are the economic impacts on stakeholders?

The nursing facilities, private persons which receive medical services and the Administration are the parties that will either bear the costs or directly benefit from the rulemaking. While the Administration is unable to calculate a specific financial benefit, the rulemaking is beneficial to the state insofar as it allows the Administration to be in compliance with CMS’s interpretation of the federal regulations that control share of cost eligibility and calculation.

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

Yes. AHCCCS indicates that it received one public comment in support of the rulemaking, from Ms. Kathleen Collins-Pagels of the Arizona Health Care Association.

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. AHCCCS indicates that the rule aligns with, and is not more stringent than, the federal post-eligibility treatment-of-income (PETI) rules found at 42 C.F.R. § 435.726.

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?

No. AHCCCS indicates that it did not rely on any study in its evaluation of, or justification for, the rule.

11. Conclusion

If approved, this rulemaking will become effective immediately upon filing with the Secretary of State. AHCCCS requests this immediate effective date under A.R.S. § 41-1032(A)(2), as the rulemaking ensures consistency with federal law. Council staff recommends approval of the rulemaking.

January 23, 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. 28, Article 4, Eligibility and Enrollment

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., January 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 2017-02.

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,

A handwritten signature in black ink, appearing to read "Matthew Devlin", with a stylized flourish at the end.

Matthew Devlin
Assistant Director - Office of Legal Assistance
Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ADMINISTRATION – ARIZONA LONG TERM CARE SYSTEM

PREAMBLE

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

R9-28-408

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. §§ 36-2903.01, 36-2903, 36-2932

Implementing statutes: A.R.S. §§ 36-2904, 36-2933

3. The effective date of the rule:

AHCCCS requests an immediate effective date citing A.R.S. § 41-1032(A)(2). The immediate effective date is necessary to ensure consistency with CMS interpretation of 42 CFR 435.726. CMS and the Administration have worked together to craft new language for the Administration’s State Plan Amendment that reflects how share of cost is determined. This rulemaking mirrors that language. However, CMS has made it clear that prompt revision of the State Plan is necessary to conform to CMS interpretation.

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: 23 A.A.R. 3430, December 15, 2017

Notice of Proposed Rulemaking 23 A.A.R. 3397, December 15, 2017

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:

There are two major changes in this rulemaking. First, the proposed rulemaking will amend and clarify rules to provide further flexibility as to the amount of money that may be retained in limited situations for persons who are ALTCS eligible, residents of a nursing facility, and who are responsible for court ordered spousal and/or child support. In particular, this rulemaking is requested to allow institutionalized members subject to court ordered child and/or spousal support to increase their personal needs allowance beyond the current limit of 15% of the Federal Benefit Rate (FBR) in limited circumstances. An individual's personal needs allowance is deducted from the member's share of cost which is the monthly amount an individual contributes to his or her cost of care calculated from the individual's income. With respect to share of cost for the ALTCS Program, ARS §36-2932 (L)(1) provides that 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." AHCCCS Rule R9-28-408(E)(5)(a) limits the personal needs allowance for institutionalized member to 15% of the FBR, stating the following with respect to calculation of share of cost: "The following expenses are deducted from the share-of-cost of an eligible person to calculate the person's share of-cost: a. A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month." Some ALTCS members have had income garnished for payment of child or spousal support, and, as a result, the nursing facility did not receive full payment for institutional services provided to the member. This rulemaking will address these unusual situations, allowing providers to receive full payment for these residents.

Second, the rulemaking clarifies the requirements for deduction of medical or remedial care expenses from the share of cost calculation. As a result of the revisions, the rule specifies a three month time frame for incurring the expense as well as the requirement that the individual have a legal liability to pay the expense. Since the description of the list of services eligible for share of cost deductions was clarified, there was no longer a need for an itemized description of qualified services. Moreover the list of qualifying services in the current rule does not reflect the full scope of expenses that may be deducted.

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

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

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

Not applicable.

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

It is anticipated that the members and the Administration will be minimally impacted by the changes to the rule language although these changes will require system and policy changes. There will be a minimal small business or private industry economic impact because these articles deal with members' share of cost and the Administration's reimbursement of certain expenses. The economic impact upon members and the Administration is unknowable because it is not determined how members' behavior may change in response to this rulemaking and therefore which expenses will be submitted for reimbursement going forward.

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

The changes made between the proposed rulemaking and the final rulemaking were mainly a reorganization of the order of subsection (E)(5) to make it more easily understandable by stakeholders and members.

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

Only one member of the public attended the oral proceeding and provided comments.

Item #	Comment From and Date rec'd.	Comment	Analysis/ Recommendation
1.	Kathleen Collins-Pagels 01/04/18 Executive Director of the AZHCA	<p>I am writing to offer my support for the revision of Article 4. Eligibility and Enrollment R9-28-408 Income Criteria for AHCCCS eligibility. This addresses an issue we brought to AHCCCS a few years ago, the growing number of younger residents of skilled nursing facilities who had their Share of Cost (SOC) garnished for spousal maintenance and child support, thereby creating financial hardship for them and the facilities providing their care. We appreciate your consideration of our documentation of the issue, and your subsequent effort in revising the rule to address this problem.</p> <p>We know there are other SOC issues that may arise in the future as our ever changing SNF resident population evolves- tax and insurance liens, for example, are now presenting. The future may lie in some sort of a universal policy for an exception to the personal needs allowance and SOC calculation. That said, we are very grateful for this current proposed change. It will be of great service to our high Medicaid facilities, particularly those serving younger behavioral care residents...a great need in Arizona, and a vulnerable population to be sure.</p> <p>Thank you for your responsiveness to stakeholders, and AHCCCS members.</p>	AHCCCS thanks Ms. Collins-Pagels for the support.

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

No other matters have been prescribed.

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

Not applicable.

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

The rules were updated to align with CMS's current interpretation of post-eligibility treatment-of-income (PETI) rules found at 42 CFR 435.726. However, the Administration's rules are not more stringent than the federal regulations.

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:

Not applicable.

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

Section

R9-28-408. Income Criteria for Eligibility

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

R9-28-408. Income Criteria for Eligibility

- A. The following Medicaid-eligible persons shall be deemed to meet the income requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.
1. A person receiving Supplemental Security Income (SSI);
 2. A person receiving Title IV-E Foster Care Maintenance Payments; or
 3. A person receiving Title IV-E Adoption Assistance.
- B. If the person is not included in subsection (A), the Administration shall count the income described in 42 U.S.C. 1382a and 20 CFR 416 Subpart K to determine eligibility with the following exceptions:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are also excluded in determining gross income to determine eligibility;
 2. Income of the parent or spouse of a minor child is counted as part of income under 42 CFR 435.602, except that the income of the parent or spouse is disregarded for the month beginning when the person is institutionalized;
 3. In-kind support and maintenance, under 42 U.S.C. 1382a(a)(2)(A), are excluded for both net and gross income tests;
 4. The income exceptions under A.A.C. R9-22-1503(B) apply to the net income test; and
 5. Income described in subsection (C) is excluded.
- C. The following are income exceptions:
1. Disbursements from a trust are considered in accordance with federal and state law; and
 2. For an institutionalized spouse, a person defined in 42 U.S.C. 1396r-5(h)(1), income is calculated in accordance with 42 U.S.C. 1396r-5(b).
- D. Income eligibility. Except as provided in R9-28-406(B)(2)(b), countable income shall not exceed 300 percent of the FBR.
- E. The Administration shall determine the amount a person shall pay for the cost of ALTCS services and the post-eligibility treatment of income (share-of-cost) under A.R.S. § 36-2932(L) and 42 CFR 435.725 or 42 CFR 435.726. The Administration shall consider the following in determining the share-of-cost:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are excluded in determining share-of-cost.
 2. SSI benefits paid under 42 U.S.C. 1382(e)(1)(E) and (G) to a person who receives care in a hospital or nursing facility are not included in calculating the share-of-cost.
 3. The share-of-cost of a person with a spouse is calculated as follows:
 - a. If an institutionalized person has a community spouse under 42 U.S.C. 1396r-5(h), share-of-cost is calculated under R9-28-410 and 42 U.S.C. 1396r-5(b) and (d); and
 - b. If an institutionalized person does not have a community spouse, share of cost is calculated solely on the income of the institutionalized person.
 4. Income assigned to a trust is considered in accordance with federal and state law.
 5. The following expenses are deducted from the share-of-cost of an eligible person to calculate the person's share-of-cost:
 - a. ~~A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month. A personal-needs allowance equal to 300 percent of the FBR for a person who receives or intends to receive HCBS or who resides in a medical institution for less than the full calendar month;~~A personal-needs allowance (PNA) equal to 300 percent of the FBR for a person who receives or intends to receive HCBS or who resides in a medical institution for less than the full calendar month. A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month, except:
 - i. The PNA shall be increased above 15 % of the FBR by the amount of income garnished for child support under a court order, including administrative fees garnished for collection efforts, but only to the extent that the amount garnished is not deducted as a monthly allowance for the dependent under any other provision of the post-eligibility process. The increase to the PNA due to the garnishment shall not exceed the actual garnishment paid in the month for which the PNA is calculated; and
 - ii. The PNA shall be increased above 15 % of the FBR by the amount of income garnished for spousal maintenance under a judgment and decree for dissolution of marriage, including administrative fees garnished for collection efforts, but only to the extent that the amount garnished is not deducted as a monthly allowance for the spouse under any other provision of the post-eligibility process. The

increase to the PNA due to the garnishment shall not exceed the actual garnishment paid in the month for which the PNA is calculated.

- b. A spousal allowance, equal to the FBR minus the income of the spouse, if a spouse but no children remain at home;
 - c. A household allowance equal to the standard specified in Section 2 of the Aid for Families with Dependent Children (AFDC) State Plan as it existed on July 16, 1996 for the number of household members minus the income of the household members if a spouse and children remain at home;
 - d. Expenses for ~~the~~ medical and remedial care services ~~listed in subsection (6)~~ if the expenses were for services rendered to the applicant or beneficiary and prescribed by a health care practitioner acting within the scope of practice as defined by State law. The applicant or recipient must have, or have had, a legal obligation to pay the medical or remedial expense. Deductions do not include the cost of services to the extent a third party paid for, or is liable for, the service. Deductions for expenses incurred prior to application are limited to expenses incurred during the three months prior to the filing of an application. Documents shall be submitted within a reasonable time as determined by the Director. ~~have not been paid or are not subject to payment by a third party, the person still has the obligation to pay the expense, and one of the following conditions is met:~~
 - i. ~~The expense represents a payment made and reported to the Administration during the application period or a payment reported to the Administration no later than the end of the month following the month in which the payment occurred and the expense has not previously been allowed a share of cost deduction; or~~
 - ii. ~~The expense represents the unpaid balance of an allowed, noncovered medical or remedial expense, and the expense has not been previously a share of cost deduction;~~
 - e. An amount determined by the Director for the maintenance of a single person's home for not longer than six months if a physician certifies that the person is likely to return home within that period; or
 - f. An amount for Medicare and other health insurance premiums, deductibles, or coinsurance not subject to third-party reimbursement; and
6. The deductible expense under subsection (5)(~~bd~~) shall not include any amount for a service covered under the Title XIX State Plan. ~~The deductible expense may include the TPL deductible, co-insurance, and co-payment charges for the following medically necessary services:~~
- ~~a. Nonemergency dental services for a person who is age 21 or older;~~
 - ~~b. Hearing aids and hearing aid batteries for a person who is age 21 or older;~~
 - ~~c. Nonemergency eye care and prescriptive lenses for a person who is age 21 or older;~~
 - ~~d. Chiropractic services, including treatment for subluxation of the spine, demonstrated by x ray;~~
 - ~~e. Orthognathic surgery for a person who is age 21 or older; or~~
 - ~~f. Co-payments for Medicare Part D prescriptions, if not paid by the State.~~
 - ~~g. On a case by case basis, other noncovered medically necessary services that a person petitions the Administration for and the Director approves.~~
- F. A person shall provide information and verification of income under A.R.S. § 36-2934(G) and 20 CFR 416.203.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ADMINISTRATION – ARIZONA LONG TERM CARE SYSTEM

Introduction:

Through this rulemaking, the AHCCCS Administration proposes to amend AHCCCS rule R9-28-408 to allow greater flexibility in the amount permitted to be retained by institutionalized members for their personal needs allowance (PNA) in specific situations related to court ordered spousal and child support. Additionally, AHCCCS proposes to amend the rule addressing consideration of medical and remedial care expenses for share of cost calculation to align with CMS direction. Amending the rule to increase the current personal needs allowance limit and amend the share of cost calculation with respect to medical and remedial care expenses is authorized under both federal and state provisions.

Purpose of Rule:

The proposed rulemaking will amend and clarify rules to provide flexibility in the amount of money that may be retained in the personal needs allowance in limited situations for persons who are ALTCS eligible, residents of a nursing facility, and who are responsible for court ordered spousal and/or child support. In particular, this rulemaking is requested to allow institutionalized members subject to court ordered child and/or spousal support to increase their personal needs allowance beyond the current limit of 15% of the Federal Benefit Rate (FBR) in limited circumstances. An individual's personal needs allowance is deducted from the member's share of cost which is the monthly amount an individual contributes to his or her cost of care calculated from the individual's income. With respect to share of cost for the ALTCS Program, ARS §36-2932 (L)(1) provides that 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." AHCCCS Rule R9-28-408(E)(5)(a) limits the personal needs allowance for institutionalized member to 15% of the FBR, stating the following with respect to calculation of share of cost: "The following expenses are deducted from the share-of-cost of an eligible person to calculate the person's share of-cost: a. A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month." Some ALTCS members have had income garnished for payment of child or spousal support, and, as a result, the nursing facility did not receive full payment for institutional services provided to the member. This rulemaking will address these unusual situations, allowing providers to receive full payment for these residents.

1. Identification of rulemaking.

This rulemaking will revise R9-28-408 to reflect changes in the State Plan regarding consideration of medical and remedial care expenses in the share of cost calculation to comport with CMS guidance. AHCCCS Rule R9-28-408(E)(5)(d)(i) requires: "The expense is allowed only when one of the following conditions is met:

1. The expense represents a current payment, by the individual, of an allowed non-covered medical or remedial expense, and the expense has not previously been allowed as a share of cost deduction. A current payment is a payment made and reported to AHCCCS during the application period or a payment reported to AHCCCS no later than the end of the month following the month in which the payment occurred.
2. The expense represents the unpaid balance of an allowed non-covered medical or remedial expense and the expense has not previously been allowed as a share of cost deduction."

However, the corresponding update in the State Plan that was amended to align with CMS guidance states: "Deductions for expenses incurred prior to application are limited to expenses incurred during the three months prior to the filing of an application. Documents must be submitted within a reasonable time as determined by the

Director.” This rulemaking will revise the language of the AHCCCS rule to reflect the updates to the State Plan and CMS guidance.

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

The changes to this rule revise some of the requirements for how share of cost is calculated. This calculation is done on a per member basis when individuals are determined eligible for ALTCS.

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, CMS has notified the Administration that the current rules are not in alignment with CMS’s interpretation of the federal regulations that govern the share of cost determination. If the rule is not changed, receipt of federal funds may be jeopardized.

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 nursing facilities, private persons which receive medical services and the Administration are the parties that will either bear the costs or directly benefit from the rulemaking.

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 is unable to calculate a specific financial benefit to the implementing agencies. However, the Administration will now be in compliance with CMS’s interpretation of the federal regulations that control share of cost eligibility and calculation.

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 does not anticipate a fiscal impact on small businesses because the proposed rule language changes are anticipated to only affect nursing facilities and the Administration.

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 Administration is unable to calculate the costs or benefits to private persons because the Administration does not have the data available and the current rule imposes different requirements for deduction from share of cost.

6. Statement of the probable effect on state revenues.

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

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

The Administration did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law.

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.

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- A. The following Medicaid-eligible persons shall be deemed to meet the resource requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.
1. A person receiving Supplemental Security Income (SSI);
 2. A person receiving Title IV-E Foster Care Maintenance payment; or
 3. A person receiving a Title IV-E Adoption Assistance.
- B. Except as provided in subsection (C), if a person's ALTCS eligibility is most closely related to SSI and is not included in subsection (A), the Administration shall determine eligibility using resource criteria in 42 U.S.C. 1382(a)(1)(B), 42 U.S.C. 1382b, and 20 CFR 416 Subpart L. The resource limit for an individual is \$2,000 or \$3,000 for a couple under 20 CFR 416.1205.
- C. The Administration permits the following exceptions to the resource criteria for a person identified in subsection (B):
1. Resources of the spouse or parent of a minor child are disregarded beginning the first day in the month the person is institutionalized.
 2. The value of household goods and personal effects is excluded.
 3. The value of oil, timber, and mineral rights is excluded.
 4. The value of all of the following shall be disregarded:
 - a. Term insurance;
 - b. Burial insurance;
 - c. Assets that a person has irrevocably assigned to fund the expense of a burial;
 - d. The cash value of all life insurance if the face value does not exceed \$1,500 total per insured person and the policy has not been assigned to fund a pre-need burial plan or has a legally binding designation as a burial fund;
 - e. The value of any burial space held for the purpose of providing a place for the burial of the person, a spouse, or any other member of the immediate family;
 - f. \$1,500 of the equity value of an asset that has a legally binding designation as a burial fund or a revocable burial arrangement if there is no irrevocable burial arrangement;
 - g. During the time a person remains continuously eligible, all appreciation in the value of the assets in subsection (C)(4)(f) will be disregarded; and
 - h. The amount of a payment refunded by a nursing facility after ALTCS approval is only excluded for six months beginning with the month the refund was received. The Administration shall evaluate the refund in accordance with R9-28-409 if transferred without receiving something of equal value.
- D. For an institutionalized spouse, a resource disregard is allowed under 42 U.S.C. 1396r-5(c).
- E. Trusts are evaluated in accordance with federal and state laws to determine eligibility.
- F. A person shall provide information and verification necessary to determine the countable value of resources.

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 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).

R9-28-408. Income Criteria for Eligibility

- A. The following Medicaid-eligible persons shall be deemed to meet the income requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.
1. A person receiving Supplemental Security Income (SSI);
 2. A person receiving Title IV-E Foster Care Maintenance Payments; or
 3. A person receiving Title IV-E Adoption Assistance.
- B. If the person is not included in subsection (A), the Administration shall count the income described in 42 U.S.C. 1382a and 20 CFR 416 Subpart K to determine eligibility with the following exceptions:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are also excluded in determining gross income to determine eligibility;
 2. Income of the parent or spouse of a minor child is counted as part of income under 42 CFR 435.602, except that the income of the parent or spouse is disregarded for the month beginning when the person is institutionalized;
 3. In-kind support and maintenance, under 42 U.S.C. 1382a(a)(2)(A), are excluded for both net and gross income tests;
 4. The income exceptions under A.A.C. R9-22-1503(B) apply to the net income test; and
 5. Income described in subsection (C) is excluded.
- C. The following are income exceptions:
1. Disbursements from a trust are considered in accordance with federal and state law; and
 2. For an institutionalized spouse, a person defined in 42 U.S.C. 1396r-5(h)(1), income is calculated in accordance with 42 U.S.C. 1396r-5(b).
- D. Income eligibility. Except as provided in R9-28-406(B)(2)(b), countable income shall not exceed 300 percent of the FBR.
- E. The Administration shall determine the amount a person shall pay for the cost of ALTCS services and the post-eligibility treatment of income (share-of-cost) under A.R.S. § 36-2932(L) and 42 CFR 435.725 or 42 CFR 435.726. The Administration shall consider the following in determining the share-of-cost:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are excluded in determining share-of-cost.
 2. SSI benefits paid under 42 U.S.C. 1382(e)(1)(E) and (G) to a person who receives care in a hospital or nursing facility are not included in calculating the share-of-cost.
 3. The share-of-cost of a person with a spouse is calculated as follows:
 - a. If an institutionalized person has a community spouse under 42 U.S.C. 1396r-5(h), share-of-cost is calculated under R9-28-410 and 42 U.S.C. 1396r-5(b) and (d); and
 - b. If an institutionalized person does not have a community spouse, share of cost is calculated solely on the income of the institutionalized person.
 4. Income assigned to a trust is considered in accordance with federal and state law.
 5. The following expenses are deducted from the share-of-cost of an eligible person to calculate the person's share-of-cost:
 - a. A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month. A personal-needs allowance equal to 300 percent of the FBR for a person who receives or intends to receive HCBS or who

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resides in a medical institution for less than the full calendar month;

- b. A spousal allowance, equal to the FBR minus the income of the spouse, if a spouse but no children remain at home;
 - c. A household allowance equal to the standard specified in Section 2 of the Aid for Families with Dependent Children (AFDC) State Plan as it existed on July 16, 1996 for the number of household members minus the income of the household members if a spouse and children remain at home;
 - d. Expenses for the medical and remedial care services listed in subsection (6) if the expenses have not been paid or are not subject to payment by a third-party, the person still has the obligation to pay the expense, and one of the following conditions is met:
 - i. The expense represents a payment made and reported to the Administration during the application period or a payment reported to the Administration no later than the end of the month following the month in which the payment occurred and the expense has not previously been allowed a share-of-cost deduction; or
 - ii. The expense represents the unpaid balance of an allowed, noncovered medical or remedial expense, and the expense has not been previously a share-of-cost deduction;
 - e. An amount determined by the Director for the maintenance of a single person's home for not longer than six months if a physician certifies that the person is likely to return home within that period; or
 - f. An amount for Medicare and other health insurance premiums, deductibles, or coinsurance not subject to third-party reimbursement; and
6. The deductible expense under subsection (5)(b) shall not include any amount for a service covered under the Title XIX State Plan. The deductible expense may include the TPL deductible, co-insurance, and co-payment charges for the following medically necessary services:
- a. Nonemergency dental services for a person who is age 21 or older;
 - b. Hearing aids and hearing aid batteries for a person who is age 21 or older;
 - c. Nonemergency eye care and prescriptive lenses for a person who is age 21 or older;
 - d. Chiropractic services, including treatment for subluxation of the spine, demonstrated by x-ray;
 - e. Orthognathic surgery for a person who is age 21 or older; or
 - f. Co-payments for Medicare Part D prescriptions, if not paid by the State.
 - g. On a case-by-case basis, other noncovered medically necessary services that a person petitions the Administration for and the Director approves.
- F.** A person shall provide information and verification of income under A.R.S. § 36-2934(G) and 20 CFR 416.203.

Historical Note

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 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).

R9-28-409. Transfer of Assets

- A.** The provisions in this Section apply to an institutionalized person who has, or whose spouse has, transferred assets and received less than the fair market value (uncompensated value) as specified in A.R.S. § 36-2934(B) and 42 U.S.C. 1396p(c)(1)(A), July 1, 2009, 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.** A person shall report transfer of assets. The Administration shall evaluate all transfers made during or after the look-back period under 42 U.S.C. 1396p(c)(1)(B), July 1, 2009, 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. The person shall provide verification of any transfer.
- C.** Certain transfers are permitted under 42 U.S.C. 1396p(c)(2), July 1, 2009, 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.
- D.** If the Administration determines a disqualification period applies due to a transfer, and the person is otherwise eligible, the person may remain eligible for ALTCS acute care services but shall be disqualified for receiving ALTCS coverage under 42 U.S.C. 1396p(c)(1)(E), July 1, 2009, 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.
- E.** Period of disqualification for transfers.
1. Calculating a period of disqualification at application. The uncompensated value of all transfers shall be divided by the monthly private pay rate. The result of this calculation equals the number of months of ineligibility.
 2. Calculating a period of disqualification after approval:
 - a. For one or more transfers occurring in one calendar month or in consecutive months, the period of disqualification is determined under subsection (E)(1). The period of disqualification begins with the month that the first transfer was made.
 - b. For transfers occurring in nonconsecutive calendar months, the period of disqualification for each transfer of assets shall be determined separately under subsection (E)(1) to determine if the periods of disqualification overlap.
 - i. Periods of disqualification that overlap shall be added together and shall run consecutively, beginning with the month the first transfer was made.
 - ii. Periods of disqualification that do not overlap are each applied separately beginning the month that the transfer was made.
- F.** Transfers of assets for less than fair market value are presumed to have been made to establish eligibility for ALTCS services.
- G.** Rebuttal of disqualification.
1. A person found ineligible for ALTCS services by reason of a transfer of assets for uncompensated value shall have the right to rebut the disqualification for reasons stated

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.

F-6

AHCCCS (R-18-0306)

Title 9, Chapter 28, Article 8, TEFRA Liens and Recoveries

Amend: R9-28-801; R9-28-802; R9-28-803; R9-28-806; R9-28-807

Repeal: R9-28-801.01



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: March 6, 2018

AGENDA ITEM: F-6

TO: Members of the Governor's Regulatory Review Council

FROM: Council Staff

DATE: February 20, 2018

SUBJECT: AHCCCS (R-18-0306)
Title 9, Chapter 28, Article 8, TEFRA Liens and Recoveries

Amend: R9-28-801; R9-28-802; R9-28-803; R9-28-806; R9-28-807

Repeal: R9-28-801.01

SUMMARY OF THE RULEMAKING

This rulemaking, from the Arizona Health Care Cost Containment System Administration (AHCCCS or Administration), seeks to repeal one rule and amend five rules in A.A.C. Title 9, Chapter 28, Article 8, related to Tax Equity and Fiscal Responsibility Act (TEFRA) liens and recoveries.

The rulemaking is intended to maximize the Administration's opportunity for recovery of payments made for medical assistance to ALTCS members in manner that is consistent with federal law. AHCCCS indicates that the rulemaking is likely to increase state revenues by extending the imposition of TEFRA liens to members under the age of 55. The Governor's Office provided an exemption from Executive Order 2017-02 on November 14, 2017.

Proposed Action

- Section 801 – *Definitions Related to TEFRA Liens*: The following language is added to the definition of "TEFRA lien" in the rule: "This type of lien is placed on an AHCCCS member's interest in any real property before the member is deceased."
- Section 801.01 – *TEFRA Liens – General*: The rule is being repealed, as the content will now be covered by Section 801.
- Section 802 – *TEFRA Liens – Filings*: With the elimination of subsection (A)(2), AHCCCS will now file TEFRA liens against the real property of all AHCCCS members, not just members who are 55 years of age or older. In addition, subsection (C) is added to

allow AHCCCS to impose a TEFRA lien against the property of a member where a court judgment determined that benefits were incorrectly paid on behalf of the member.

- Section 803 – *TEFRA Liens – Prohibitions*: A technical change is made.
- Section 806 – *TEFRA Liens – Recovery*: Subsection (A) is amended to clarify that AHCCCS will seek to recover a TEFRA lien for the amount of the medical assistance provided up to the amount of the sale upon the sale or transfer of the real property subject to the lien made prior to the member’s death. Subsection (C)(2)(c) is added to clarify that AHCCCS may seek to recover a TEFRA lien on an individual’s home if the member is survived by a child who resides in the deceased member’s home, but has not resided in the member’s home on a continuous basis since the admission of the deceased member to the medical institution.
- Section 807 – *TEFRA Liens – Release*: Subsection (3), requiring AHCCCS to issue a release of a TEFRA lien within 30 days of notice of a member’s death if a lien has been filed on a life estate, is repealed.

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

Yes. AHCCCS cites to both general and specific authority for the rule. Of particular note is A.R.S. § 36-2932(M), under which, in relevant part, the Director of the Administration “may adopt necessary rules pursuant to [T]itle 41, [C]hapter 6 to carry out this article [Title 36, Chapter 29, Article 2, Arizona Long-Term Care 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:

The Administration indicates that the TEFRA rules, as current written, may present compliance issues with federal law. Additionally, leaving the current TEFRA rules in place will decrease the fiscal recoveries to which the state is entitled pursuant to federal law. AHCCCS indicates that this rulemaking is necessary to Failure to allow the ALTCS Program to maximize recoveries of payments for the cost of care made to institutionalized members who own real property.

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 has determined that the revisions to the rules are the most cost effective and efficient method of complying with federal law and state law as well as the State’s fiduciary responsibility to Arizona taxpayers.

5. What are the economic impacts on stakeholders?

The nursing facilities, private persons which receive medical services and the Administration, the State and CMS (Centers for Medicare and Medicaid Services) are the parties that will either bear the costs or directly benefit from the rulemaking. The Administration anticipates no specific benefit to the implementing agencies, except that the Administration will now be in compliance with federal regulations governing the third-party recoveries, and the potential for higher numbers of State revenues from such liens.

The Administration does not anticipate a fiscal impact on small businesses because the proposed changes are anticipated to only affect the Administration. The effect of the rule on private persons is not a value the Administration can calculate at this time, but any change is expected to be limited to monies recovered by AHCCCS from TEFRA liens.

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

Yes. AHCCCS indicates that it received no public comments on the rulemaking.

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. AHCCCS indicates that the rules align with, and are not more stringent than, the TEFRA lien provisions found at 42 U.S.C. § 1396p(a).

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. AHCCCS indicates that it did not rely on any study in its evaluation of, or justification for, the rules.

11. Conclusion

If approved, this rulemaking will become effective 60 days after filing with the Secretary of State. Council staff recommends approval of the rulemaking.

January 23, 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. 28, Article 8, TEFRA Liens and Recoveries

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., January 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 2017-02.

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,

A handwritten signature in black ink, appearing to read "Matt Devlin", written in a cursive style.

Matthew Devlin
Assistant Director - Office of Legal Assistance
Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ADMINISTRATION – ARIZONA LONG TERM CARE SYSTEM

PREAMBLE

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

Rulemaking Action:

R9-28-801	Amend
R9-28-801.01	Repeal
R9-28-802	Amend
R9-28-803	Amend
R9-28-806	Amend
R9-28-807	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
Implementing statute: A.R.S. § 36-2915, 36-2916, 36-2935, 36-2956

3. The effective date of the rule:

60 days after filing with the Secretary of State.

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: 23 A.A.R. 3431, December 15, 2017
Notice of Proposed Rulemaking 23 A.A.R. 3403, December 15, 2017

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 rulemaking is necessary to comport with federal law and to ensure that AHCCCS maximizes the opportunity for recovery of payments made for medical assistance to ALTCS members consistent with federal law. In addition, the rulemaking will likely increase State revenues and improve the fiscal health of the State by extending the imposition of TEFRA liens to members under the age of 55 years.

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

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

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

Not applicable.

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

The economic impact will be minimal on consumers and the Administration, because the changes are anticipated to affect only a small number of ALTCS members. Additionally, any economic impact on the economy of the State will be minimal because when AHCCCS does make recoveries, roughly 70% is returned to the federal government.

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

The only changes made between the proposed rulemaking and the final rulemaking were minor typographical changes for consistency and clarity across the agency's rules.

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

No comments were received.

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:

Not applicable.

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

The TEFRA lien provisions are codified at 42 U.S.C. 1396p(a), providing AHCCCS the authority to file TEFRA liens on the real property of certain Medicaid members who are determined to be permanently institutionalized (PI) and cannot return home. However, the Administration's TEFRA regulations are not more stringent than the applicable federal law.

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

No analysis was submitted.

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

Not applicable.

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 9. HEALTH SERVICES
CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION – ARIZONA LONG-TERM CARE SYSTEM
ARTICLE 8. TEFRA LIENS AND RECOVERIES

Section

R9-28-801	Definitions Related to TEFRA Liens
R9-28-801.01	TEFRA Liens – General <u>Repeal</u>
R9-28-802	TEFRA Liens – Affected Members <u>Filings</u>
R9-28-803	TEFRA Liens – Prohibitions
R9-28-806	TEFRA Liens – Recovery
R9-28-807	TEFRA Liens – Release

ARTICLE 8. TEFRA LIENS AND RECOVERIES

R9-28-801. Definitions Related to TEFRA Liens

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

“Consecutive days” means days following one after the other without an interruption resulting from a discharge.

“File” means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-805, as established by a date stamp on the request or other record of receipt.

“Home” means property in which a member has an ownership interest and that serves as the member’s principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.

“Recover” means that AHCCCS takes action to collect from a claim.

“TEFRA lien” means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982. This type of lien is placed on an AHCCCS member’s interest in any real property before the member is deceased.

~~R9-28-801.01. TEFRA Liens – General Repeal~~

~~Purpose. The purpose of TEFRA is to allow AHCCCS to file a lien on an AHCCCS member’s interest in any real property before the member is deceased, including but not limited to life estates and beneficiary deeds.~~

R9-28-802. TEFRA Liens – ~~Affected Members Filings~~

- A. Except for members under R9-28-803, AHCCCS shall file a TEFRA lien against the real property of all members who are:
1. Receiving ALTCS services, and
 2. ~~55 years of age or older, and~~
 3. Permanently institutionalized.
- B. A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ~~ICF/MR~~ Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or other medical institution defined in 42 CFR 435.1010 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member’s condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.
- C. A TEFRA lien may also be imposed against the property of a member where a court judgment determined that benefits were incorrectly paid on behalf of the member.

R9-28-803. TEFRA Liens – Prohibitions

AHCCCS shall not file a TEFRA lien against a member’s home if one of the following individuals is lawfully residing in the member’s home:

1. Member’s spouse;
2. Member’s child who is under the age of 21;
3. Member’s child who is blind or disabled under 42 U.S.C. 1382c; or
4. Member’s sibling who has an equity interest in the home and who was residing in the member’s home for at least one year immediately before the date the member was admitted to a nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution as defined under 42 CFR 435.1010.

R9-28-806. TEFRA Liens – Recovery

- A. AHCCCS shall seek to recover a TEFRA lien for the amount of the medical assistance provided up to the amount of the sale upon the sale or transfer of the real property subject to the lien made prior to the member’s death
- B. After the member’s death, AHCCCS shall seek to recover a TEFRA lien for the amount of the medical assistance received by the member at the age of 55 years or older from the member’s estate after the sale or transfer of the real property subject to the lien. However, AHCCCS shall not seek to recover the TEFRA lien or

attempt recovery against any real property subject to the TEFRA lien so long as the member is survived by the member's:

1. Spouse;
2. Child under the age of 21; or
3. Child who receives benefits under either Title II or Title XVI of the Social Security Act as blind or disabled, as defined under 42 U.S.C. 1382c.

B.C. AHCCCS shall not seek to recover a TEFRA lien on an individual's home if the member is survived by:

1. A sibling of the member who currently resides in the deceased member's home and who has resided in the member's home on a continuous basis since at least one year immediately before the date of the member's admission to the nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution as defined under 42 CFR 435.1010 and has ; or
2. A child of the member who resides in the deceased member's home and who:
 - a. Was residing in the member's home for a period of at least two years immediately before the date of the member's admission to the nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution as defined under 42 CFR 435.1010; ~~and~~
 - b. Provided care to the member that allowed the member to reside at home rather than in an institution; ~~and~~
 - c. Has resided in the member's home on a continuous basis since the admission of the deceased member to the medical institution.

C.D. To determine whether a child of the member provided care under subsection (B)(2), AHCCCS shall require the following information:

1. A physician's written statement that describes the member's physical condition and service needs for the previous two years before the member's death;
2. Verification that the child actually lived in the member's home;
3. A written statement from the child providing the services that describes and attests to the services provided;
4. A written statement, if any, made by the member prior to death regarding the services received; and
5. A written statement from physician, friend, or relative as witness to the care provided.

R9-28-807. TEFRA Liens – Release

AHCCCS shall issue a release of a TEFRA lien within 30 days of:

1. Satisfaction of the lien; or
2. Notice that the member has been discharged from the nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution, defined under 42 CFR 435.1010, and the member has returned home and is physically residing in the home with the intention of remaining in the home. Discharge to an alternative HCBS setting defined at R9-28-101 does not constitute a return to the home; ~~or~~
3. ~~Notice of the member's death, if a lien has been filed on a life estate.~~

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ADMINISTRATION – ARIZONA LONG TERM CARE SYSTEM

Introduction:

The regulations in Title 9, Chapter 28, Article 8 support the operations and practices of the Arizona Long Term Care System with respect to the imposition and recovery of liens authorized pursuant to the federal Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. The ALTCS program is authorized by Title XIX of the Social Security Act. This program is a federal and state funded program for persons aged 65 years and over, persons who are blind, and persons who are disabled who also require an institutional level of care.

Purpose of Rule:

The TEFRA lien provisions are codified at 42 USC 1396p(a), providing AHCCCS the authority to file TEFRA liens on the real property of certain Medicaid members who are determined to be permanently institutionalized (PI) and cannot return home. The TEFRA regulations allow AHCCCS to place a lien on the member's real property before the death of the member, thus securing the Agency's future recovery of expenses paid for the cost of health care to the member. If there is an intention to sell or transfer the real property before the death of the member, the TEFRA lien must be satisfied first. Implementing TEFRA liens protects the State's interest and right of recovery against real property owned by the member at the time of application to the ALTCS program and increases the likelihood that AHCCCS will be able to recover payments for ALTCS services when compared to pursuing recovery without the existence of a TEFRA lien.

1. Identification of rulemaking.

The Administration proposes to amend the AHCCCS regulations to comport with federal requirements. In part, this rulemaking proposes to:

- a. Remove language which limits AHCCCS to filing TEFRA liens against the real property of all members who are 55 years of age or older. The federal law imposes no such age restriction.
- b. Add language to specify that the amount that AHCCCS shall seek to recover from the TEFRA lien shall be for the amount of medical assistance provided until the member's death, clarifying that the TEFRA lien is for the amount of the medical assistance provided by AHCCCS through the period of ALTCS eligibility.
- c. Clarify the exceptions for recovery of TEFRA liens to be consistent with federal law.

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

The changes to this rule revise some of the requirements for how third party liens are calculated. This calculation is done on a per member basis when individuals are determined eligible for ALTCS and are permanently institutionalized.

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:

Failure to amend the TEFRA regulations may present compliance issues as the current rules are not entirely consistent with federal law. Additionally, leaving the current TEFRA regulations in place will decrease the fiscal recoveries to which the State is entitled pursuant to federal law. Failure to initiate this rulemaking will prevent the ALTCS Program from maximizing recoveries of payments for the cost of care made to

institutionalized members who own real property.

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 nursing facilities, private persons which receive medical services, the Administration, the State, and CMS are the parties that will either bear the costs or directly benefit from the rulemaking.

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 no specific benefit to the implementing agencies, except that the Administration will now be in compliance with federal regulations governing third party recoveries and the potential for higher numbers of State revenues from such liens.

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 does not anticipate a fiscal impact on small businesses because the proposed rule language changes are anticipated to only affect the Administration.

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.

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.

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.

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.

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.

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 is not a value the Administration can calculate. However, any change is not anticipated to be a great amount.

6. Statement of the probable effect on state revenues.

It is anticipated that the rule may increase state revenues.

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

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

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

The Administration did not consider any specific data to base the rule upon.

Arizona Health Care Cost Containment System – Arizona Long-term Care System

3. If the applicant moves from another state directly into a NF or alternative HCBS setting in this state, the county of fiscal responsibility is the county in which the person currently resides.
 4. If the applicant moves from the Arizona State Hospital (ASH) into a NF or alternative HCBS setting, or is an inmate of a public institution moving from the public institution into a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant resided in the applicant's own home prior to admission to ASH or the public institution.
- C. Criteria for determining if there is a change in county of fiscal responsibility for a member moving from one county to another county.
1. No change in the county of fiscal responsibility. There is no change in the county of fiscal responsibility for a member if:
 - a. The member moves from a NF to another NF in a different county,
 - b. The member moves from a NF to an alternative HCBS setting in a different county,
 - c. The member moves from an alternative HCBS setting to another alternative HCBS setting in a different county,
 - d. The member moves from an alternative HCBS setting to a NF in a different county,
 - e. The member moves from the member's own home to an alternative HCBS setting in a different county,
 - f. The member moves from the member's own home to a NF in a different county,
 - g. The member moves from a NF or alternative HCBS setting into ASH, or
 - h. The member moves from ASH to a NF or alternative HCBS setting.
 2. Change in the county of fiscal responsibility. If a member moves from one county to another, the county of fiscal responsibility changes to the new county if the member moves from:
 - a. An alternative HCBS setting to the member's own home in a different county,
 - b. A NF to the member's own home in a different county,
 - c. The member's own home to the member's own home in a different county, or
 - d. ASH to the member's own home.
 3. Transfers between program contractors. The county of fiscal responsibility changes if the Administration transfers a member from one program contractor to a different program contractor and if:
 - a. Both program contractors agree, or
 - b. The Administration determines that it is in the best interest of the member.

Historical Note

Adopted effective November 4, 1998 (Supp. 98-4).
Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3).

R9-28-713. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemak-

ing at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-714. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-715. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

ARTICLE 8. TEFRA LIENS AND RECOVERIES**R9-28-801. Definitions Related to TEFRA Liens**

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

"Consecutive days" means days following one after the other without an interruption resulting from a discharge.

"File" means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-805, as established by a date stamp on the request or other record of receipt.

"Home" means property in which a member has an ownership interest and that serves as the member's principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.

"Recover" means that AHCCCS takes action to collect from a claim.

"TEFRA lien" means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-801.01. TEFRA Liens – General

Purpose. The purpose of TEFRA is to allow AHCCCS to file a lien on an AHCCCS member's interest in any real property before the member is deceased, including but not limited to life estates and beneficiary deeds.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-802. TEFRA Liens – Affected Members

- A. Except for members under R9-28-803, AHCCCS shall file a TEFRA lien against the real property of all members who are:
1. Receiving ALTCS services,
 2. 55 years of age or older, and
 3. Permanently institutionalized.

Arizona Health Care Cost Containment System – Arizona Long-term Care System

- B.** A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ICF/MR, or other medical institution defined in 42 CFR 435.1010 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member's condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-803. TEFRA Liens – Prohibitions

AHCCCS shall not file a TEFRA lien against a member's home if one of the following individuals is lawfully residing in the member's home:

1. Member's spouse;
2. Member's child who is under the age of 21;
3. Member's child who is blind or disabled under 42 U.S.C. 1382c; or
4. Member's sibling who has an equity interest in the home and who was residing in the member's home for at least one year immediately before the date the member was admitted to a nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-804. TEFRA Liens – AHCCCS Notice of Intent

- A.** Time-frame. At least 30 days before filing a TEFRA lien, AHCCCS shall send the member or member's representative a Notice of Intent.
- B.** Content of the Notice of Intent. The Notice of Intent shall include the following information:
1. A description of a TEFRA lien and the action that AHCCCS intends to take,
 2. How a TEFRA lien affects a member's property,
 3. The legal authority for filing a TEFRA lien,
 4. The time-frames and procedures involved in filing a TEFRA lien, and
 5. The member's right to request an exemption.
- C.** Request for exemption. A member or a member's representative may request an exemption. To request an exemption the member or the member's representative shall submit a written statement to AHCCCS within 30 days from the receipt of the Notice of Intent describing the factual basis for a claim that the property should be exempt from placement of a TEFRA lien or

from recovery of lien based on R9-28-802, R9-28-803, or R9-28-806. AHCCCS shall respond to the member or member's representative in writing within 30 days of receiving a request for exemption, unless the parties mutually agree to a longer period of time.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Section repealed effective August 11, 1997 (Supp. 97-3). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-805. TEFRA Liens and Estate Recovery – Member's Request for a State Fair Hearing

- A.** If the member or member's representative does not request an exemption under R9-28-804(C), the Administration shall send the member or representative a Notice of TEFRA Lien. The member or representative may file a request for a State Fair Hearing within 30 days of the receipt of the Notice of TEFRA Lien.
- B.** If the member requests an exemption and the request is denied, the Administration shall send the member or representative a Denial of a Request for Exemption. The member or representative may file a request for a State Fair Hearing within 30 days of the receipt of the Denial of Request for Exemption. After the 30-day time-frame to file a State Fair Hearing, the member or representative is sent a Notice of a TEFRA Lien.
- C.** Hearings regarding TEFRA liens shall be conducted under 9 A.A.C. 34.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-806. TEFRA Liens – Recovery

- A.** AHCCCS shall seek to recover a TEFRA lien upon the sale or transfer of the real property subject to the lien. However, AHCCCS shall not seek to recover the TEFRA lien or attempt recovery against any real property subject to the TEFRA lien so long as the member is survived by the member's:
1. Spouse;
 2. Child under the age of 21; or
 3. Child who receives benefits under either Title II or Title XVI of the Social Security Act as blind or disabled, as defined under 42 U.S.C. 1382c.
- B.** AHCCCS shall not seek to recover a TEFRA lien on an individual's home if the member is survived by:
1. A sibling of the member who currently resides in the deceased member's home and who was residing in the member's home for a period of at least one year immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010; or
 2. A child of the member who resides in the deceased member's home and who:
 - a. Was residing in the member's home for a period of at least two years immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010; and
 - b. Provided care to the member that allowed the member to reside at home rather than in an institution.
- C.** To determine whether a child of the member provided care under subsection (B)(2), AHCCCS shall require the following information:

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1. A physician's written statement that describes the member's physical condition and service needs for the previous two years before the member's death;
2. Verification that the child actually lived in the member's home;
3. A written statement from the child providing the services that describes and attests to the services provided;
4. A written statement, if any, made by the member prior to death regarding the services received; and
5. A written statement from physician, friend, or relative as witness to the care provided.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-807. TEFRA Liens – Release

AHCCCS shall issue a release of a TEFRA lien within 30 days of:

1. Satisfaction of the lien;
2. Notice that the member has been discharged from the nursing facility, ICF/MR, or other medical institution, defined under 42 CFR 435.1010, and the member has returned home and is physically residing in the home with the intention of remaining in the home. Discharge to an alternative HCBS setting defined at R9-28-101 does not constitute a return to the home; or
3. Notice of the member's death, if a lien has been filed on a life estate.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES**R9-28-901. Definitions**

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

"Estate" has the meaning in A.R.S. § 14-1201.

"Member" means a person eligible for AHCCCS-covered services under A.R.S. Title 36, Chapter 29, Article 2.

"Recover" means that AHCCCS takes action to collect from a claim.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-902. General Provisions

The provisions in A.A.C. R9-22-1002 apply to this Section.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended effective November 7, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-903. Cost Avoidance

The provisions in A.A.C. R9-22-1003 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-904. Member Participation

The provisions in A.A.C. R9-22-1004 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-905. Collections

The provisions in A.A.C. R9-22-1005 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-906. AHCCCS Monitoring Responsibilities

The provisions in A.A.C. R9-22-1006 apply to this Section.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-907. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

The provisions in A.A.C. R9-22-1007 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-908. Notification Information for Liens

The provisions in A.A.C. R9-22-1008 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-909. Notification of Health Insurance Information

The provisions in A.A.C. R9-22-1009 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-910. Recoveries

AHCCCS shall recover funds paid before or after the death of a member for ALTCS benefits including: capitation payments, Medicare Parts A and B premium payments, coinsurance and deductibles paid by AHCCCS, fee-for-service payments, and reinsurance payments from:

1. The estate of a member who was 55 years of age or older when the member received benefits; or
2. The estate or the property of a member under A.R.S. §§ 36-2935, 36-2956, and 42 U.S.C. 1396p.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-911. Estate Recovery and Undue Hardship

A. Any recovery of a claim by AHCCCS against a member's estate shall be made only after the death of the member's surviving spouse and only at a time:

36-2915. Lien of administration on damages recovered by injured person; perfection, recording, assignment and notice of lien

A. The administration is entitled to a lien for the charges for hospital or medical care and treatment of an injured person for which the administration or a contractor is responsible, on any and all claims of liability or indemnity for damages accruing to the person to whom hospital or medical service is rendered, or to the legal representative of such person, on account of injuries giving rise to such claims and which necessitated such hospital or medical care and treatment. The member or the member's legal representative must provide written notice to the administration within twenty calendar days after the commencement of a civil action or other proceeding to establish the liability of any third party or to collect monies payable from accident insurance, liability insurance, workers' compensation, health insurance, medical payment insurance, underinsured coverage, uninsured coverage or any other first or third party source.

B. In order to perfect a lien granted by this section, the director or the director's authorized representative, before or within sixty days from the date of notification to the administration of the hospital discharge or rendering of medical care and treatment, shall record in the office of the recorder of the county in which the injuries were incurred a verified statement in writing setting forth the name and address of the patient as they appear on the records of the administration, the name and address of the administration, the dates of admission to and discharge of the patient from the hospital or the dates on which medical care and treatment were provided to the patient, the amount estimated to be due for hospital or medical care and treatment, and, to the best of the director's knowledge, the names and addresses of all persons, firms or corporations and their insurance carriers alleged by the injured person or that person's legal representative to be liable for damages arising from the injuries for which he was hospitalized or for which medical care and treatment were provided. However, the director or the director's authorized representative is not required to include the address of the patient in the verified statement if the administration's records indicate that the patient's injuries may have resulted from an offense against the patient as defined in section 13-105. The director or the director's authorized representative, within five days after recording the lien, shall mail a copy of the lien, postage prepaid, to the patient and to each person, firm or corporation, including insurance carriers, alleged to be liable for liability or indemnity damages, at the address given in the statement. The recording of the lien is notice of the lien to all persons, firms or corporations, including insurance carriers, liable for liability or indemnity damages, whether or not they are named in the lien.

C. The recorder shall endorse on a lien recorded as provided by this section the date and hour of receipt and such facts as are necessary to indicate that it has been recorded.

D. The lien may be assigned in whole or in part to a contractor that is responsible for hospital or medical services.

E. The director shall establish by rule procedures for a contractor and a noncontracting provider to notify the administration concerning the delivery of hospital or medical services to a person who may have claims for damages.

F. Notwithstanding any other law, a lien or claim provided for by this article has priority over a lien of the department pursuant to section 36-596.01, a lien of the counties pursuant to section 11-291, a health care provider lien pursuant to title 33, chapter 7, article 3 and a claim against a third party payor. A lien of the department of economic security pursuant to section 36-596.01, a lien of a special health care district pursuant to section 48-5541.01, subsection N and a lien of the counties pursuant to section 11-291 has priority over a health care provider lien pursuant to title 33, chapter 7, article 3 and a claim against a third party payor.

G. A lien authorized pursuant to this chapter may be amended to reflect current charges. However, if the administration is given notice of an impending settlement of the member's claim at least fifteen working days before the final settlement of that claim, the lien may not be amended after the time of final settlement.

H. A public entity shall compromise a claim it has pursuant to this section or section 11-291, 12-962, 36-596, 36-596.01, 36-2903, 36-2935 or 36-2956 if, after considering the factors listed in subsection I of this section, the compromise provides a settlement of the claim that is fair and equitable.

I. In determining the extent of the compromise of the claim required by subsection H of this section, the public entity shall consider the following factors:

1. The nature and extent of the patient's injury or illness.
2. The sufficiency of insurance or other sources of indemnity available to the patient.
3. Any other factor relevant for a fair and equitable settlement under the circumstances of a particular case.

J. Notwithstanding any other law, for the purpose of recovering monies from third party payors as provided by this section, a lien that includes a cover sheet pursuant to subsection K of this section and that is filed by an entity under contract with the administration, a health plan or a program contractor, or the authorized representatives of these entities, is considered filed by the state for the purposes of payment of county recorder fees pursuant to section 11-475, subsection A, paragraph 2.

K. A health plan, a program contractor, an entity under contract with the administration or an authorized representative of the health plan, program contractor or entity shall include a cover sheet, as prescribed by the administration, when filing a lien on behalf of the administration pursuant to this section. The cover sheet shall be signed by the director on the administration's letterhead with the statutory authority of the health plan, program contractor, entity or authorized representative of the health plan, program contractor or entity to file a lien on behalf of the administration.

36-2916. Release of claim by injured person ineffective as to system; action to enforce lien; release of lien

A. A release of a claim on which a lien is imposed pursuant to section 36-2915 is not valid or effective as against the lien unless the director joins in the release or executes a release of the lien.

B. If any amount has been or is to be collected by the injured person or his legal representative from or on account of the person, firm or corporation, including insurance carriers liable for liability or indemnity damages by reason of a judgment, settlement or compromise, the director may enforce the lien by action against the patient or the person, firm or corporation, including insurance carriers, liable for liability or indemnity damages. Such action shall be commenced and tried in the county in which the lien is filed, unless the court orders that the action be removed to another county for cause. If the director prevails in the action, the court may allow the administration its reasonable attorney fees and disbursements. Such an action shall be commenced within two years after the entry of the judgment or the making of the settlement or compromise.

C. Within thirty days after a lien established pursuant to section 36-2915 is satisfied, the director shall issue a release of the lien to the person, firm or corporation against which the lien was claimed. The release shall be a document which conforms to the requirements of section 11-480.

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.

36-2935. Estate recovery program; liens

- A. The director shall adopt rules in accordance with state and federal law to allow the administration to file a claim against a member's estate to recover paid assistance. The administration is also entitled to a lien on a member's property to recover paid assistance the member receives.
- B. A member's personal representative must notify the administration of the member's estate or property within three months after the member's death if the member was at least fifty-five years of age and the administration has not already filed a statement of claim in the estate proceedings.
- C. As nearly as is possible, the administration shall recover charges pursuant to the procedures prescribed in sections 36-2915 and 36-2916. If both the administration and a county have valid liens for paid assistance provided to the same member, or if both the administration and a special health care district have valid claims for paid assistance provided to the same member, the value of the property shall be divided between the administration, the special health care district and the county pro rata according to the amounts of their respective liens.
- D. The administration shall impose liens in a manner consistent with federal law.
- E. This section 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.

36-2956. Liens on damages for injuries; notification

A. The administration is entitled to a lien for the charges for hospital, medical or long-term care and treatment of an injured person for which the administration or a program contractor is responsible pursuant to this article, on any and all claims for damages accruing to the person to whom hospital or medical service is rendered, or to the legal representative of such person, on account of injuries giving rise to such claims and which necessitated such hospital or medical care and treatment. Recovery of charges pursuant to this section shall be in a manner as nearly as possible the same as the procedures prescribed in sections 36-2915 and 36-2916.

B. The member or the member's legal representative must provide written notice to the administration within twenty calendar days after the commencement of a civil action or other proceeding to establish the liability of any third party or to collect monies payable from accident insurance, liability insurance, workers' compensation, health insurance, medical payment insurance, underinsured coverage, uninsured coverage or any other first or third party source.

G-1

NATUROPATHIC PHYSICIANS MEDICAL BOARD (F-18-0205)

Title 4, Chapter 18, Article 1, General Provisions; Article 2, Licenses, Specialist Certificates, Continuing Medical Education, Renewal; Article 4, Approval of Schools of Naturopathic Medicine; Article 5, Naturopathic Clinical Training and Preceptorship Training Program Requirements; Article 7, Time-Frames for Board Decisions; Article 8, Experimental Medicine



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: March 6, 2018

AGENDA ITEM: G-1

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

FROM: Council Staff

DATE : February 20, 2018

SUBJECT: NATUROPATHIC PHYSICIANS MEDICAL BOARD (F-18-0205)
Title 4, Chapter 18, Article 1, General Provisions; Article 2, Licenses, Specialist Certificates, Continuing Medical Education, Renewal; Article 4, Approval of Schools of Naturopathic Medicine; Article 5, Naturopathic Clinical Training and Preceptorship Training Program Requirements; Article 7, Time-Frames for Board Decisions; Article 8, Experimental Medicine

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Naturopathic Physicians Medical Board (Board) is to “promote the safe and professional delivery of naturopathic services and treatment in this state.” Laws 2005, Ch. 30, § 3.

This five-year-review report covers 28 rules in A.A.C. Title 4, Chapter 18, Articles 1, 2, 4, 5, 7, and 8. The rules contain general definitions, requirements for licenses, specialist certificates, continuing medical education, approval of schools of naturopathic medicine, naturopathic clinical training and preceptorship training program, time-frames for Board decisions, and experimental medicine.

The rules were last amended at various times between 2002 and 2015. In 2015, the Board amended most of the rules to complete its proposed course of action identified in its previous five-year-review report.

Proposed Action

To make the changes identified below, the Board plans to initiate the rulemaking process by December 2018.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Board provides general statutory authority for the rules. Under A.R.S. § 32-1504(A)(1), the Board shall “[a]dopt rules that are necessary or proper for the administration of this chapter [Chapter 14, Naturopathic Medicine].” In addition, under A.R.S. § 32-1504(A)(2), the Board is required to “[a]dminister and enforce all provisions of this chapter and rules by the [B]oard under the authority granted by this chapter.”

The Board also cites to specific statutory authority for each rule throughout the report.

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

At the end of FY17, the Board regulated 883 certified naturopathic physicians, 8 accredited schools, and 292 students certified to engage in a clinical training program.

Key stakeholders include applicants seeking licensures, schools training naturopathic students, clinics employing naturopathic physicians, and the Board.

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 Board indicates that the rules impose the least burden and costs to the regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Board has not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Board indicates that the rules are generally clear, concise, and understandable, with the following exceptions:

- Section 101: The rule contains definitions for terms that are defined in statute, such as Device, Internship, and Medical student. The rule could be made more concise if the terms solely provided a location for the definition.
- Section 108: Subsection (B) contains a list of designations and abbreviations not to be used by a licensed naturopathic physician and should be removed because the appropriate designations are outlined in subsection (A).
- Section 110: The rule should be amended because it includes repetition of requirements outlined in statute.
- Section 111: The rule should be rewritten to be more clear.

- Section 205: The rule contains terms that should be defined for clarity. In addition, subsection (C) should address what must be included in a request for approval of extension of continuing medical education requirements.
- Sections 401 and 402: The rules should be amended to align with Board's current practices. The Board makes the determination of whether a school should be approved after review of the documentation provided each year by the accrediting body.
- Section 501: The phrase "naturopathic medical school" should be replaced with "school of naturopathic medicine."

The Board indicates that the following rules are inconsistent with other rules and statutes:

- Section 102: Subsection (C) conflicts with A.R.S. § 32-1502(B)(1), which allows the Governor to remove a Board member upon a finding that the Board member is guilty of malfeasance, misfeasance, or dishonorable conduct.
- Section 110: The requirement to notify the Board within 30 days of any actions taken against the licensee is inconsistent with R4-18-111, which provides a 10-day time-frame for notifying the Board of any possible criminal action.
- Section 701: Subsection (D) is inconsistent with A.R.S. § 32-1524(G), which establishes the criteria for considering an application withdrawn.

The Board indicates that the rules that are inconsistent with statute or other rules and the rules that are not clear, concise, and understandable are only partially effective. In addition, the following rule is ineffective in achieving its objectives:

- Section 504: The rule should specify the information that must be submitted on an application form for renewal.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Board indicates that the rules are enforced as written to the extent they are consistent with statutes.

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

No. The Board indicates that no federal laws relate to the rules in the report.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes. The rules adopted after July 29, 2010 that require licenses comply with A.R.S. § 41-1037.

9. Conclusion

As mentioned above, the Board plans to initiate the rulemaking process, to make the changes identified in this memo, by December 2018. This report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.



State Of Arizona
Naturopathic Physicians Medical Board
"Protecting the Public's Health"

1740 W. Adams, Ste. 3002 Phoenix, AZ 85007 Phone, 602-542-8242, Email Gail.anthony@aznd.gov www.aznd.gov

Douglas A. Ducey - Governor

December 19, 2017

Nicole O. Colyer, Chairwoman
Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

Re: Five-year review of A.A.C. Title 4, Chapter 18, Articles 1, 2, 4, 5, 7, 8

Dear Chairwoman Colyer:

Please accept the following 5 year review, submitted by the State of Arizona Naturopathic Physicians Medical Board. The Board is in compliance with A.R.S. § 41-1091. All scheduled rules have been reviewed and outlined in the following report. The Board has not left out rule with the intention of expiration. The Board has not left out rule based on Council reschedule.

In the event you have questions, I can be reached by email at gail.anthony@aznd.gov, or phone 602 542-8242

Respectfully,

Gail Anthony, Executive Director

**STATE OF ARIZONA
NATUROPATHIC PHYSICIANS MEDICAL BOARD**

FIVE-YEAR-REVIEW REPORT

**TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD**

ARTICLE 1. GENERAL PROVISIONS

**ARTICLE 2. LICENSES; SPECIALISTS CERTIFICATES; CONTINUING MEDICAL
EDUCATION; RENEWAL**

ARTICLE 4. APPROVAL OF SCHOOLS OF NATUROPATHIC MEDICINE

**ARTICLE 5. NATUROPATHIC CLINICAL TRAINING AND PRECEPTORSHIP TRAINING
PROGRAM REQUIREMENTS**

ARTICLE 7. TIME-FRAMES FOR BOARD DECISIONS

ARTICLE 8. EXPERIMENTAL MEDICINE

December 2017

- R4-18-205. Continuing Medical Education Requirements
- R4-18-206. Renewal of a License
- R4-18-207. Reinstatement of an Expired License or Certificate
- R4-18-208. Reinstatement of a Retired License
- R4-18-209. Reinstatement of a Suspended, Revoked or Surrendered License or Certificate

Article 3. Reserved

Article 4. Approval of Schools of Naturopathic Medicine

- R4-18-401. Approval of a School of Naturopathic Medicine
- R4-18-402. Annual Renewal of an Approved School of Naturopathic Medicine

Article 5. Naturopathic Clinical Training and Preceptorship Training Program Requirements

- R4-18-501. Certificate to Engage in Clinical or Preceptorship Training
- R4-18-502. Annual Renewal of a Certificate to Engage in Clinical or Preceptorship Training
- R4-18-503. Application for a Certificate to Conduct a Clinical or Preceptorship Training Program
- R4-18-504. Annual Renewal of a Certificate to Conduct a Clinical or Preceptorship Training Program

Article 7. Time-Frames for Board Decisions

- R4-18-701. Time-frames for Board Decisions
Table 1. Time-frames

Article 8. Experimental Medicine

- R4-18-801. Experimental Medicine
- R4-18-802. Informed Consent and Duty to Follow Protocols

Five-Year-Review Overview

The Naturopathic Physicians Medical Board (Board) is statutorily vested with the duty to issue licenses and certificates to applicants who are qualified, according to A.R.S. § 32-1501 *et seq.* Pursuant to the Board's Mission Statement "The Primary Duty of the Board is to Protect the Public through Regulation of the Practice of Naturopathic Medicine." The Board's statutes contain provisions authorizing the Board to write rules to implement the statutes. A.R.S. § 32-1504(A)(1) requires the Board to "adopt rules that are necessary or proper for the administration of this chapter." A.R.S. § 32-1504(A)(2) requires the Board to "administer and enforce all provisions of this chapter." A.R.S. § 32-1504(A)(3) requires the Board to adopt rules regarding the qualifications of medical assistants. A.R.S. § 32-1504(A)(4) requires the Board to adopt rules for the approval of schools of naturopathic medicine. A.R.S. § 32-1504(A)(5) required the Board to adopt rules relating to clinical, internship, preceptorship and postdoctoral training programs, and rules regarding continuing medical education requirements. The majority of the rules in Article 1 have not been amended since August of 2002, with the exception of R4-18-101 with the addition of the definition "verified" in September of 2015, and R4-18-107 with a change in fees. The fee change was made through exempt rulemaking in September of 2013 and reviewed and approved through the regular rules process in September of 2015. In September of 2015 the following amendments were made to Article 2. R4-18-202 License by Examination, R4-18-203, License by Endorsement, R4-18-204, Specialists Certificates, R4-18-206, Renewal of a License, R4-18-207, Reinstatement of an Expired License or Certificate, R4-18-208, Reinstatement of a Retired License, R4-18-209, and Reinstatement of a Suspended, Revoked, or Surrendered License or Certificate. R4-18-201, Jurisprudence Examination and R4-18-205 Continuing Medical Education Requirements have not been amended since August of 2002. Article 4, R4-18-401, Approval of a School of Naturopathic Medicine, and R4-18-402 have not been amended since 2002. Article 5, R4-18-501 Certificate to Engage in Clinical or Preceptorship Training, and R4-18-502, Annual Renewal of a Certificate to Engage in Clinical or Preceptorship Training were amended in September of 2015. R4-18-503, Application for a Certificate to Conduct a Clinical or Preceptorship Training Program, and R4-18-504, Annual Renewal of Certificate to conduct a Clinical or Preceptorship Training Program, have not been amended since August of 2002.

Article 7. R4-18-701 Time-Frames for Board Decisions has not been amended since August of 2002. Article 8, R4-18-801 Experimental Medicine and R4-18-802, Informed Consent and Duty to Follow Protocols were last amended in July of 2013.

General Information

1. **Written criticisms of the rule received within the last 5 years**

The Board has not received written criticism of the rules within the last five years. However, this does not take into account any comments which may have been received by the Governor's Office as part of the "Regulation Rollback Initiative". The Board has not been made aware of any results of the initiative specific to this Board's rules.

2. **Authorization of rule by existing statutes**

General statutory authority in A.R.S. § 32-1504(A)(1) and A.R.S. § 32-1504(A)(2).

Specific statutory authority is as stated in each rule.

3. **Analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.**

This analysis is limited to consideration of materials submitted to the agency by another person.

At this time, no such analysis has ever been submitted to the agency.

4. **A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of federal law.**

None of the rules appear to be more stringent than federal law without statutory authority.

5. **Effectiveness in achieving the objective**

Effective in achieving the objective: R4-18-103, R4-18-106, R4-18-107, R4-18-108, R4-18-110, R4-18-111, R4-18-202, R4-18-203, R4-18-204, R4-18-206, R4-18-207, R4-18-208, R4-18-209, R4-18-501, R4-18-203, R4-18-801, R4-18-802.

Partially effective in achieving the objective: R4-18-101, R4-18-102, R4-18-105, R4-18-401, R4-18-402, R4-18-504, R4-18-701.

6. **Written criticisms of the rule received within the last 5 years**

The Board has not received written criticism of the rules within the last five years. However, this does not take into account any comments which may have been received by the Governor's Office as part of the "Regulation Rollback Initiative". The Board has not been made aware of any results of the initiative specific to this Board's rules.

7. **Authorization of rule by existing statutes**

General statutory authority in A.R.S. § 32-1504(A)(1) and A.R.S. § 32-1504(A)(2).

Specific statutory authority is as stated in each rule.

8. **Consistency with state and federal statutes and rules**

No Federal law applies to the rules outlined in this report.

9. **Clarity, conciseness, and understandability**

Clear, concise and understandable: R4-18-103, R4-18-106, R4-18-107, R4-18-202, R4-18-203, R4-18-204, R4-18-206, R4-18-207, R4-18-208, R4-18-209, R4-18-501, R4-18-502, R4-18-503, R4-18-801, R4-18-802.

Mostly clear, concise and understandable: R4-18-101, R4-18-102, R4-18-108, R4-18-110, R4-18-111, R4-18-701.

Not clear, concise and understandable: R4-18-205, R4-18-401, R4-18-402, R4-18-504.

10. **Estimated economic, small business and consumer impact comparison**

In this comparison, minimal means less than \$1,000 and moderate means \$1,000 to \$10,000.

The Board currently licenses 924 naturopathic physicians who are required to obtain 30 credit hours of continuing medical education (CME) each year as part of the renewal process. The costs to obtain CME are extremely variable. Physicians can obtain CME by various means and at varying costs running from free to moderate, depending on the CME provider. The requirement is a matter of public safety, particularly in the area of pharmacology. Physicians must be aware of the current medications, risks and benefits. CME requirements translate into benefits for both physician and patient, allowing advancements in healthcare techniques to be offered to patients. Currently the Board recognizes 8 schools approved for accreditation by The Council of Naturopathic Medical Education. The Board does not charge a fee for the recognition of approval and yearly renewal of the board's recognition of approved of these schools. The Board currently has 30 licensed physicians who have applied for and been granted certification to conduct a preceptorship training program. The Board does not charge a fee to the physician for the initial application and certificate issuance, or the renewal. Unlike MD's and DO's, graduates of approved schools of naturopathic medicine are not required to participate in any type of Residency or post graduate program. The Board considers the decision of a physician to open up their clinic to recent graduates, to be a benefit to the profession and does not want to place added monetary burden on those physicians. The cost to the Board is minimal to grant these approvals. The Board currently has 326 students certified to engage in a clinical training program. The initial cost for the application is \$100, with a yearly renewal fee of \$225. The Board's fee schedule will be reviewed. It is anticipated the cost for renewal of this certificate will decrease. The cost to implement the time-frame rules are minimal each year, and are part of the Board's overall activities while processing applications.

11. **Analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.**

This analysis is limited to consideration of materials submitted to the agency by another person. At this time, no such analysis has ever been submitted to the agency.

12. **Status of the completion of action indicated in the previous five-year-review report**

The 2012 five-year-review report indicated 15 rules where action should be taken. The Board has taken action in the form of a rules revision, on all but 5 items identified in the 2012 review. R4-18-102 refers to removal of Board members. This particular rule requires legal review and should include input from the Governor's office. R4-18-205 relates to Continuing Medical Education (CME). While the Board has not changed the rule, the Board has implemented a CME check sheet which guides licensees on gaining appropriate education. R4-18-401 and R4-18-402 refers to Board approval of naturopathic schools. While the Board has not changed this rule as proposed in the 2012 review, the definition of approved school of naturopathic medicine is defined in statute. Board policy and procedures have been updated to reflect a specific procedure for this approval process, by placing the yearly list of approved schools on the agenda for Board approval. Further, the Board has determined the approval process (of a school) does not fall under the jurisdiction of the Board. The actual approval and renewal process for a school of naturopathic medicine, must meet the education standards as prescribed by the council on naturopathic medical education, and be accredited or a candidate for accreditation by an agency recognized by the United States secretary of education as specialized accrediting agency for schools of naturopathic medicine, and/or accredited or a candidate for accreditation by an accrediting agency recognized by the council for higher education accreditation. Therefore the Board believes the requirement of approval and renewal of schools, as currently stated in rule, is addressed by the process as outlined in the Board's policy and procedures. And upon further review, the Board may address these rules by repeal. R4-18-701 references time frame decision. The rule states an application is withdrawn if, within 360 days from the date of application, missing information has not been provided to the Board. While statute expands on that, stating among other things, applications are considered withdrawn upon failure to submit a complete application within one year from the date of the mailing by the Board of the deficiency notice. While this rule has not yet been addressed via a rules package, Board follows statute which grants addition time, when compared to rule. The Board anticipates upon approval from the Governor's office to begin the rules process, that these items, along with any items addressed in this current report will be addressed. The Board plans to

submit a request to the Governor's Office to begin the process of drafting a rules package, by December of 2018.

13. **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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective**

Notwithstanding any costs imposed by statutes or caused by the rules of other agencies, in most cases, the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective. However, the Board has recognized in some instances, it can decrease a burden on an applicant, license holder or certificate holder, while still maintaining the required duty to ensure statutory requirements are met, and to protect the public. The proposed course by the Board to amend rules in these instances are outlined in other areas of this report. Additionally, the Board will be reviewing all the fees it currently charges and anticipates at least some of the fees can be lowered.

14. **A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of federal law.**

No Federal law applies to the rules reviewed in this report.

15. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037.**

Rules adopted by the Board after July 29, 2010 comply with section 41-1037.

Article 1. General Provisions

R4-18-101. Definitions

1. Authorization of the rule by existing statute
General Authority applies.
2. Objective of the rule
The rule was adopted to define terms in order to make the rules understandable to the reader, afford consistent interpretation and achieve clarity without needless repetition.
3. Analysis of effectiveness of achieving the objective
The rule is partially effective.
4. Analysis of consistency with state and federal statutes and rules
The rule includes needless repetition because some of the rule definitions are already provided in statute or, are also defined in another portion of rule. R4-18-101 (6) defines Device, which is also defined in A.R.S. § 32-1581(H)(1). R4-18-101 defines Internship which is also defined in A.R.S. § 32-1501(5). R4-18-101(13) defines Medical student, which is also defined in A.R.S. § 32-1501(24). Administrative Completeness, and Substantive review are defined in Article 7, R4-18-701. Continuing medical education is defined in Article 2, R4-18-205.
5. Status of enforcement of the rule
Where the rules conflict with statute, the Board enforces according to its statutes.
6. Analysis of clarity, understandability, and conciseness
The rule is partially clear, concise, and understandable because it defines terms that are already defined by statute or in another portion of the Board's rules.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified the supervision definitions should be repealed. The Board completed this proposed course of action in 2015.
8. Analysis of cost vs. benefit
The Board believes the adopted rule impose the least burden and to persons regulated by the Board. However, costs in the form of fees shall be reviewed and may include possible fee reductions.
9. Proposed course of action
At the next available opportunity for rule revision, the Board plans on amending the rules to address the issues raised in paragraphs 3, 4, 6 and 8.

R4-18-102. Board Meetings; Elections; Officers

1. Authorization of the rule by existing statute

Specific authority for the rule is in A.R.S. § 32-1502 and A.R.S. § 32-1503.

2. Objective of the rule

The rule was adopted to outline when regular Board meetings are to be held, requires Board members to attend meetings, designates at which board meeting officers are to be elected, and defines the action to be taken by the Board, in the event an officer's position becomes vacant. The rule also allows for recommendation to be made to the Governor for removal of a Board member, in the event the member misses three consecutive meetings.

3. Analysis of effectiveness of achieving the objective

Most of the rule is effective.

4. Analysis of consistency with state and federal statutes and rules

The last sentence in subsection (C) may conflict with A.R.S. § 32-1502(B)(1). The statute states that the Governor may remove a Board member upon a finding that the Board member is guilty of malfeasance, misfeasance, or dishonorable conduct. The rule states the Board may recommend to the Governor that a "Board member who fails to attend three consecutive Board meetings be removed from the Board." The rule requirement does not appear to fall within the three reasons stated in statute, and may go beyond Board authority as outline in statute.

5. Status of enforcement of the rule

The Board enforces the rule according to the statute.

6. Analysis of clarity, understandability, and conciseness

The rule is mostly clear, concise, and understandable.

7. Status of completion of action indicated in the previous five-year-review report

The 2012 report identified the issue as stated in 4. The Board has not addressed the issue.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

At the next available opportunity for a rules revision, the Board plans to address the issue raised in paragraph 4., possibly striking paragraph (C).

R4-18-103. Duties of Board Committees

1. Authorization of the rule by existing statute
Specific authority for the rule is in A.R.S. § 32-1503(E).
2. Objective of the rule
The rule was adopted to outline the duties of Board appointed committees.
3. Analysis of effectiveness of achieving the objective
The rule achieves its objective.
4. Analysis of consistency with state and federal statutes and rules
The rule is consistent with state and federal statutes and rules.
5. Status of enforcement of the rule
The rule is being enforced.
6. Analysis of clarity, understandability, and conciseness
The rule is clear, concise, and understandable.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report did not contain stated issue with this rule.
8. Analysis of cost vs. benefit
The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.
9. Proposed course of action
None proposed at this time.

R4-18-106. Rehearing or Review of Decision

1. Authorization of the rule by existing statute
General Authority applies.
2. Objective of the rule
The rule was adopted to outline the procedure for requesting a rehearing or review, and to explain the Board's process for denying or granting such a request.
3. Analysis of effectiveness of achieving the objective
The rule achieves its objective.
4. Analysis of consistency with state and federal statutes and rules
The rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule
The rule is being enforced.
6. Analysis of clarity, understandability, and conciseness
The rule is clear, concise, and understandable.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report did not contain stated issue with this rule.
8. Analysis of cost vs. benefit
The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.
9. Proposed course of action
None proposed at this time.

R4-18-107. Fees

1. Authorization of the rule by existing statute
Specific authority for the rule is in A.R.S. § 32-1527.
2. Objective of the rule
The rule was adopted to establish a specific set of fees the Board charges for applications, licenses, certificates, examinations, renewals, and other miscellaneous charges, and takes into consideration the maximum fee allowable to be charged pursuant to statute.
3. Analysis of effectiveness of achieving the objective
The rule achieves its objective.
4. Analysis of consistency with state and federal statutes and rules
The fees are within statutory limits.
5. Status of enforcement of the rule
The rule is being enforced.
6. Analysis of clarity, understandability, and conciseness
The rule is clear, concise, and understandable.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified a fee in rule that was not consistent with Statute. Specifically R4-18-107(E). This issue was addressed with the 2013 Fee change.
8. Analysis of cost vs. benefit
The Board is in the beginning process of reviewing the possibility of lowering fees.

9. Proposed course of action

In the event the final review indicates the Board can lower fees without impacting the Board's function, the proposed reduction of fees shall be included in the next rules package.

R4-18-108. Titles, Use of Abbreviations

1. Authorization of the rule by existing statute

General Authority applies.

2. Objective of the rule

The rule was adopted to identify the widely recognized and appropriate designation(s) used by licensed naturopathic physicians. The rule also identifies the designation to be used by an unlicensed graduate of approved school of naturopathic medicine, who is certified by the Board as preceptee or intern and, the requirement to disclose the designation when providing patient care. Additionally, the rule requires a licensee who is retired, to indicate the retired status when using the naturopathic physician designation.

3. Analysis of effectiveness of achieving the objective

The rule achieves its objective.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is being enforced.

6. Analysis of clarity, understandability, and conciseness

The rule is partially clear, concise, and understandable because it defines the appropriate designations and abbreviations a licensed naturopathic physician in this state may use. The designations listed in R4-18-108(A)(1-7) are clear and not misleading to the reader. R4-18-108(B)(1-3) lists designations and abbreviations which a licensed naturopathic physician in this state shall not use. R4-18-108(B) is not needed because the appropriate designations and abbreviations are clearly listed in subsection (A), therefore any designation or abbreviation used other than the ones listed in that subsection, would not be appropriate. Statute also addresses use of title. A.R.S. § 32-1555 (B) states if unlicensed, it is unlawful to use the designation "doctor of naturopathic medicine", or the abbreviation "N.M.D.", "doctor of naturopathy", or the abbreviation "N.D.", or "naturopathic physician" or to use any other words, initials, symbols or combination of these that would lead the public to believe that person is licensed to practice naturopathic medicine.

7. Status of completion of action indicated in the previous five-year-review report

The 2012 report did not contain stated issue with this rule.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

At the next available opportunity for a rules revision, the Board plans to address the issue raised in paragraph 6., with a proposed amendment to the rule striking subsection (B).

R4-18-110. Display of Licenses and Certificates; Notice of Change in Status; Student Identification

1. Authorization of the rule by existing statute

General Authority applies.

2. Objective of the rule

The rule was adopted to require the licensee or certificate holder to display credentials in a manner which affords easy viewing by the public. The rule goes further to require a person, business, or institution under the jurisdiction of the Board, to notify the Board in writing within a 30 day time-frame, of any change to the initial application, including name, demographics and any court actions.

3. Analysis of effectiveness of achieving the objective

The rule achieves its objective.

4. Analysis of consistency with state and federal statutes and rules

The requirement to notify the Board within 30 days of court action may conflict with R4-18-111, which gives a 10 day time-frame to notify the Board of possible criminal action. R4-18-110(C) may go beyond Board's statutory authority in requiring a student participating in clinical training, to wear an identification card issued by the medical school conducting the training.

5. Status of enforcement of the rule

The Board enforces the rule according to statute.

6. Analysis of clarity, understandability, and conciseness

The rule is partially clear, concise, and understandable because it includes needless repetition of requirements which are already provided for in statute. A.R.S. § 32-1508, requires a person who holds a license or certificate issued by the Board, to display the document in a conspicuous place

that is accessible to view by the public and, at every location where continuous patient care is conducted.

7. Status of completion of action indicated in the previous five-year-review report

The 2012 report did not contain stated issue with this rule.

8. Analysis of cost vs. benefit

The Board believes the rule with the adopted amendments, impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

At the next available opportunity for a rules revision, the Board plans to address the issue raised in paragraphs 4. and 6.

R4-18-111. Notice of Civil and Criminal Actions

1. Authorization of the rule by existing statute

Specific authority for the rule is in A.R.S. § 32-3208

2. Objective of the rule

The rule was adopted to require a person under the jurisdiction of the Board, to notify the Board of any civil or criminal complaint or court filing. And that based on the information it receives, allows for the Board determination if an investigation is warranted. The rule outlines notification requirements and what information must be submitted to the Board in the notification.

3. Analysis of effectiveness of achieving the objective

The rule achieves its objective.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The Board enforces the rule.

6. Analysis of clarity, understandability, and conciseness

The rule is partially clear, concise, and understandable. R4-18-111(A) consists of a long run on sentence which states in part, "arising directly or indirectly out of the person's conduct of the person's professional activities." This portion of the rule is not clear.

7. Status of completion of action indicated in the previous five-year-review report

The 2012 report did not contain stated issue with this rule.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the

Board.

9. Proposed course of action

At the next available opportunity for a rules revision, the Board plans to address the issue raised in paragraph 6.

Article 2. Licenses; Specialist Certificates; Continuing Medical Education; Renewal

R4-18-201. Jurisprudence Examination

1. Authorization of the rule by existing statute

Specific authority for the rule is in A.R.S. § 32-1504(B)(6), and A.R.S. § 32-1525(E).

2. Objective of the rule

The rule requires an applicant demonstrate knowledge of the statutes and rules relating to naturopathic medicine in this state, by passing an examination. The rule outlines the type of format to be used when drafting the examination, and requires a minimum score of 75% for a passing grade. Additionally, the rule allows for a person who passes the examination, and maintains continuous regulation under the Board, not be required to retake the examination as part of a requirement for application.

3. Analysis of effectiveness of achieving the objective

The rule achieves its objective.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules

5. Status of enforcement of the rule

The rule is enforced.

6. Analysis of clarity, understandability, and conciseness

The rule is clear, concise and understandable.

7. Status of completion of action indicated in the previous five-year-review report

The 2012 report did not contain stated issue with this rule.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

None proposed at this time.

R4-18-202. License by Examination

1. Authorization of the rule by existing statute
Specific authority for the rule is in A.R.S. § 32-1504(A)(1), A.R.S. § 32-1525, and A.R.S. § 32-1522.
2. Objective of the rule
The rule was adopted to state the requirements for obtaining a licensure by examination and information required on the application.
3. Analysis of effectiveness of achieving the objective
The rule achieves its objective
4. Analysis of consistency with state and federal statutes and rules
The rule is consistent with state and federal statutes and rules
5. Status of enforcement of the rule
The Board enforces the rule.
6. Analysis of clarity, understandability, and conciseness
The rule is clear, concise, and understandable.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified the application requirements were not addressed in rule. The Board revised the rules in 2015 to include the application requirements for license by exam.
8. Analysis of cost vs. benefit
The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.
9. Proposed course of action
None proposed at this time.

R4-18-203. License by Endorsement

1. Authorization of the rule by existing statute
Specific authority for the rule is in A.R.S. § 32-1504(A)(1), A.R.S. § 32-1525, and A.R.S. § 32-1523.
2. Objective of the rule

The rule was adopted to state the requirements for obtaining a licensure by endorsement and information required on the application.

3. Analysis of effectiveness of achieving the objective

The rule achieves its objective.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules

5. Status of enforcement of the rule

The Board enforces the rule.

6. Analysis of clarity, understandability, and conciseness

The rule is clear, concise, and understandable.

7. Status of completion of action indicated in the previous five-year-review report

The 2012 report identified the application requirements were not addressed in rule. The Board revised the rules in 2015 to include the application requirements for license by endorsement.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

None proposed at this time.

R4-18-204. Specialists Certificate

1. Authorization of the rule by existing statute

Specific authority for the rule is in A.R.S. § 32-1504(B)(3) and A.R.S. § 32-1529.

2. Objective of the rule

The rule was adopted to state the requirements for obtaining a specialist certificate and information required on the application.

3. Analysis of effectiveness of achieving the objective

The rule achieves its objective.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules

5. Status of enforcement of the rule

The Board enforces the rule.

6. Analysis of clarity, understandability, and conciseness

The rule is clear, concise, and understandable.

7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified the application requirements were not addressed in rule. The Board revised the rules in 2015 to include the application requirements for specialty certificate application.
8. Analysis of cost vs. benefit
The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.
9. Proposed course of action
None proposed at this time.

R4-18-205. Continuing Medical Education Requirements

1. Authorization of the rule by existing statute
Specific authority for the rule is in A.R.S. §§ 32-1504(A)(5), 32-1504(A)(6), and 32-1504(B)(1).
2. Objective of the rule
The rule was adopted to outline the yearly continuing medical education required as part of the license renewal process and, to identify approved continuing medical education activities. Additionally, the rule was adopted to define the ability of the Board to grant an extension of time to complete the required continuing medical education, and requirement of Board staff to conduct audits in order to confirm licensee compliance.
3. Analysis of effectiveness of achieving the objective
The rule is partially effective.
4. Analysis of consistency with state and federal statutes and rules
The rule is consistent with state and federal statutes and rules.
5. Status of enforcement of the rule
The Board enforces the rule.
6. Analysis of clarity, understandability, and conciseness
The rule is not clear, concise, and understandable because it contains a buried definition of credit in subsection (A); contains undefined terms, such as Category 1, utilization review committee; a long run on sentence in subsection (B)(7); does not specify what must be included in a request for approval of extension of continuing medical education requirements in subsection (C); and does not provide standards for other extenuating circumstances in subsection (C).
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified the issues as addressed in paragraph 6. The Board has not yet addressed

the identified issue.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

At the next available opportunity for a rules revision, the Board plans on amending the rule to address issues raised in paragraph 6.

R4-18-206. Renewal of a License

1. Authorization of the rule by existing statute

Specific authority for the rule is in A.R.S. §§ 32-1526(B) and 32-1526(C).

2. Objective of the rule

The rule was adopted to state the requirements for renewal of naturopathic medical license and what information is required on the form.

3. Analysis of effectiveness of achieving the objective

The rule achieves its objective

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules

5. Status of enforcement of the rule

The Board enforces the rule.

6. Analysis of clarity, understandability, and conciseness

The rule is clear, concise, and understandable.

7. Status of completion of action indicated in the previous five-year-review report

The 2012 report identified the rule was not clear, concise, and understandable because it does not specify the information that must be submitted on a renewal application form. The Board address the issue during a revision of rules in 2015.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

None proposed at this time.

R4-18-207. Reinstatement of an Expired License or Certificate

1. Authorization of the rule by existing statute
Specific authority for the rule is in A.R.S. § 32-1526 (H).
2. Objective of the rule
The rule was adopted to state the requirements for renewal of an expired naturopathic medical license and certificates and the information required on the forms.
3. Analysis of effectiveness of achieving the objective
The rule achieves its objective.
4. Analysis of consistency with state and federal statutes and rules
The rule is consistent with state and federal statutes and rules
5. Status of enforcement of the rule
The Board enforces the rule.
6. Analysis of clarity, understandability, and conciseness
The rule is clear, concise, and understandable.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified the rules was not clear, concise, and understandable because it does not specify the information that must be submitted on a renewal application form. The Board address the issue during a revision of rules in 2015.
8. Analysis of cost vs. benefit
The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.
9. Proposed course of action
None proposed at this time.

R4-18-208. Reinstatement of a Retired License

1. Authorization of the rule by existing statute
Specific authority for the rule is in A.R.S. § 32-1528.
2. Objective of the rule
The rule was adopted to state the requirements for a retired naturopathic medical license and what information is required on the form.
3. Analysis of effectiveness of achieving the objective
The rule achieves its objectives.

4. Analysis of consistency with state and federal statutes and rules
The rule is consistent with state and federal statutes and rules
5. Status of enforcement of the rule
The Board enforces the rule.
6. Analysis of clarity, understandability, and conciseness
The rule is clear, concise, and understandable.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified the rules was not clear, concise, and understandable because it does not specify the information that must be submitted on a renewal application form. The Board address the issue during a revision of rules in 2015.
8. Analysis of cost vs. benefit
The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.
9. Proposed course of action
None proposed at this time.

R4-18-209. Reinstatement of a Suspended, Revoked, or Suspended License or Certificate

1. Authorization of the rule by existing statute
Specific authority for the rule is in A.R.S. § 32-1551.
2. Objective of the rule
The rule was adopted to state the requirements for reinstatement of a suspended, revoked or surrendered license or certificate.
3. Analysis of effectiveness of achieving the objective
The rule achieves its objective.
4. Analysis of consistency with state and federal statutes and rules
The rule is consistent with state and federal statutes and rules
5. Status of enforcement of the rule
The Board enforces the rule.
6. Analysis of clarity, understandability, and conciseness
The rule is clear, concise, and understandable.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified the rules was not clear, concise, and understandable because it does not specify the information that must be submitted on a renewal application form. The Board address the issue during a revision of rules in 2015.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

None proposed at this time.

Article 4. Approval of Schools of Naturopathic Medicine

R4-18-401. Approval of Schools of Naturopathic Medicine

1. Authorization of the rule by existing statute

Specific authority for the rule is in A.R.S. § 32-1501(8) and A.R.S. § 32-1504(4).

2. Objective of the rule

The rule outlines the Board process for approving schools of naturopathic medical.

3. Analysis of effectiveness of achieving the objective

The rule is partially effective.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules

5. Status of enforcement of the rule

The Board enforces the rule by a formal vote each year on the list of accredited schools.

6. Analysis of clarity, understandability, and conciseness

The rule is not clear, concise, or understandable. The Board make the determination of school approval by review of the documentation provided each year by the accrediting body. Upon receipt of the information, the Board votes to approve the schools which meet the requirements in A.R.S. § 32-1501(8).

7. Status of completion of action indicated in the previous five-year-review report

The 2012 report identified the rule was not clear, concise, and understandable.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

At the next available opportunity for a rules revision, the Board plans on amending the rule to address issues raised in paragraph 3, 6, and 8.

R4-18-402. Annual Renewal of an Approved School of Naturopathic Medicine

1. Authorization of the rule by existing statute
General Authority applies.
2. Objective of the rule
The rule outlines the Board process for renewing the approval of schools of naturopathic medicine.
3. Analysis of effectiveness of achieving the objective
The rule is partially effective.
4. Analysis of consistency with state and federal statutes and rules
The rule is consistent with state and federal statutes and rules
5. Status of enforcement of the rule
The Board enforces the rule by a formal vote each year on the list of schools approved schools.
6. Analysis of clarity, understandability, and conciseness
The rule is not clear, concise, or understandable. The Board make the determination of school approval by review of the documentation provided each year by the accrediting body. Upon receipt of the information, the Board votes to approve the schools which meet the requirements in A.R.S. § 32-1501(8).
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified the rule was not clear, concise, and understandable. The Board has not yet addressed the issue.
8. Analysis of cost vs. benefit
The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.
9. Proposed course of action
The Board plans on amending the rule to address issues raised in paragraph 3, 6, and 8.

Article 5. Naturopathic Clinical Training and Preceptorship Training Program Requirements

R4-18-501. Certificate to Engage in Clinical or Preceptorship Training

1. Authorization of the rule by existing statute

Specific authority for the rule is in A.R.S. §§ 32-1526.

2. Objective of the rule

The rule was adopted to clarify the requirements to obtain a certificate for clinical training or preceptorship training and, to specify the requirements listed on the application.

3. Analysis of effectiveness of achieving the objective

The rule achieves its objective.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules

5. Status of enforcement of the rule

The Board enforces the rule.

6. Analysis of clarity, understandability, and conciseness

The rule is clear, concise, and understandable. The Board however has determined R4-18-501(B) states the applicant must be attending an approved naturopathic medical school. The language is not consistent. The term school of naturopathic medicine is used throughout statute and rule.

7. Status of completion of action indicated in the previous five-year-review report

The 2012 report identified the rules were not clear, concise, and understandable because it did not specify the information that must be submitted on an application form. The Board addressed this issue during the 2015 rules revision.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

The Board plans on amending the rule to address the inconsistency in language raised in paragraph 6.

R4-18-502. Annual Renewal of a Certificate to Engage in Clinical or Preceptorship Training

1. Authorization of the rule by existing statute

Specific authority for the rule is in A.R.S. 32-1526.

2. Objective of the rule

The rule was adopted to clarify the requirements to renew a certificate for clinical training or preceptorship training and, to specify the requirements listed on the applications.

3. Analysis of effectiveness of achieving the objective

The rule achieves its objective.

4. Analysis of consistency with state and federal statutes and rules
The rule is consistent with state and federal statutes and rules
5. Status of enforcement of the rule
The Board enforces the rule.
6. Analysis of clarity, understandability, and conciseness
The rule is clear, concise, and understandable.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified the rules were not clear, concise, and understandable because it did not specify the information that must be submitted on an application form. The Board addressed this issue during the 2015 rules revision.
8. Analysis of cost vs. benefit
The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.
9. Proposed course of action
None proposed at this time.

R4-18-503. Application for Certificate to Conduct a Clinical or Preceptorship Training Program

1. Authorization of the rule by existing statute
Specific authority for the rule is in A.R.S. § 32-1504(A)(1).
2. Objective of the rule
The rule was adopted to specify the requirements of application for a certificate to conduct a clinical or preceptorship training program.
3. Analysis of effectiveness of achieving the objective
The rule achieves its objective.
4. Analysis of consistency with state and federal statutes and rules
The rule is consistent with state and federal statutes and rules
5. Status of enforcement of the rule
The rule is enforced.
6. Analysis of clarity, understandability, and conciseness
The rule is clear, concise and understandable.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report did not contain stated issue with this rule.
8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

None proposed at this time.

R4-18-504. Annual Renewal of Certificate to Conduct a Clinical or Preceptorship Training Program

1. Authorization of the rule by existing statute

General Authority applies.

2. Objective of the rule

The rule was adopted to specify the requirements for renewal of certification to conduct a clinical or preceptorship training program.

3. Analysis of effectiveness of achieving the objective

The rule is partially effective because it does not specify the information that must be submitted on an application form for renewal.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules

5. Status of enforcement of the rule

The Board enforces the rule to the extent appropriate.

6. Analysis of clarity, understandability, and conciseness

The rule is not clear, concise, and understandable.

7. Status of completion of action indicated in the previous five-year-review report

The 2012 report identified the rules were not clear, concise, and understandable because it did not specify the information that must be submitted on an application form.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

The Board plans on amending the rule to address the issue raised in paragraph 3. 6. and 8.

Article 7. Time-Frames for Board Decisions

R4-18-701. Time-frames for Board Decisions

1. Authorization of the rule by existing statute
Specific authority for the rule is in A.R.S. § 32-1522. 32-1524 and 41-1072 *et seq.*
2. Objective of the rule
The rule was adopted to define steps required for the administrative completeness review, substantive review and, overall time frame, including the maximum number of days the Board may take in completion of each review.
3. Analysis of effectiveness of achieving the objective
Most of the rule is effective except as stated in paragraph 4.
4. Analysis of consistency with state and federal statutes and rules
Most of the rule is consistent with state and federal statutes and rules. Subsection (D) appears to conflict with A.R.S. § 32-1524(G), which states the criteria for considering an application withdrawn. While subsection (D)(1) is consistent with A.R.S. § 32-1524(G)(3), subsection (D)(2) does not appear to have a counterpart in the statute.
5. Status of enforcement of the rule
The Board enforces the rule according to statute.
6. Analysis of clarity, understandability, and conciseness
The rule is partially clear concise and understandable for the reasons addressed in paragraph 4.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified the issues as addressed in paragraph 4.
8. Analysis of cost vs. benefit
The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.
9. Proposed course of action
At the next available opportunity the Board plans on amending the rule to address issues raised in paragraph 4.

See Table as it appears in rule.

Article 8. Experimental Medicine

R4-18-801. Experimental Medicine

1. Authorization of the rule by existing statute
Specific authority for the rule is in A.R.S. § 32-15041(31)(dd).
2. Objective of the rule
The rule was adopted to define what is considered experimental medicine.
3. Analysis of effectiveness of achieving the objective
The rule achieves its objective.
4. Analysis of consistency with state and federal statutes and rules
The rule is consistent with state and federal statutes and rules
5. Status of enforcement of the rule
The rule is enforced.
6. Analysis of clarity, understandability, and conciseness
The rule is clear, concise and understandable.
7. Status of completion of action indicated in the previous five-year-review report
The 2012 report identified issues as that were addressed in the 2013 rules revision.
8. Analysis of cost vs. benefit
The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.
9. Proposed course of action
None proposed at this time.

R4-18-802. Informed Consent and Duty to Follow Protocols

1. Authorization of the rule by existing statute
General Authority applies.
2. Objective of the rule
The rule was adopted to define when informed consent is required and the duty to follow protocols.
3. Analysis of effectiveness of achieving the objective
The rule achieves its objective.
4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules

5. Status of enforcement of the rule

The rule is enforced.

6. Analysis of clarity, understandability, and conciseness

The rule is clear, concise and understandable.

7. Status of completion of action indicated in the previous five-year-review report

The 2012 report identified issues as that were addressed in the 2013 rules revision.

8. Analysis of cost vs. benefit

The Board believes the adopted rule impose the least burden and cost to persons regulated by the Board.

9. Proposed course of action

None proposed at this time.

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

(Authority: A.R.S. § 32-1501 et seq.)

Editor's Note: Laws 2008, 2nd Regular Session, Ch. 16 provided for a name change of the Naturopathic Physicians Board of Medical Examiners to Naturopathic Physicians Medical Board (Supp. 12-2).

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-3).

Editor's Note: This Chapter contains rules which were adopted under exemptions from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 41-1005(25). Exemption from A.R.S. Title 41, Chapter 6 means that the Naturopathic Physicians Board of Medical Examiners did not submit these rules to the Governor's Regulatory Review Council for review; the Board did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Board was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.

Editor's Note: This Chapter has been reprinted due to an error in publishing text that was thought to be adopted and certified but in fact was rejected by the Attorney General on December 29, 1995 (Supp. 95-4). Text removed includes amendments made to R4-18-101 and adoption of Article 2, consisting of Sections R4-18-201 through R4-18-205. Removal of this text reflects the latest effective rules on file with the Office of the Secretary of State last modified Supp. 88-4 (reprinted Supp. 96-4).

Laws 1982, 6th S.S., Chs. 1 and 4 provided for a name change of the Naturopathic Board of Examiners to Naturopathic Physicians Board of Examiners.

ARTICLE 1. GENERAL PROVISIONS

Article 1 consisting of Sections R4-18-101, R4-18-102, R4-18-104, R4-18-106 through R4-18-111, R4-18-116 and R4-18-117 adopted effective December 31, 1984.

Former Article 1 consisting of Sections R4-18-01 through R4-18-07 repealed effective December 31, 1984.

Section

- R4-18-101. Definitions
- R4-18-102. Board Meetings; Elections; Officers
- R4-18-103. Duties of Board Committees
- R4-18-104. Repealed
- R4-18-105. Reserved
- R4-18-106. Rehearing or Review of Decision
- R4-18-107. Fees
- R4-18-108. Titles, Use of Abbreviations
- R4-18-109. Repealed
- R4-18-110. Display of Licenses and Certificates; Notice of Change of Status; Student Identification
- R4-18-111. Notice of Civil and Criminal Actions
- R4-18-112. Reserved
- R4-18-113. Reserved
- R4-18-114. Reserved
- R4-18-115. Reserved
- R4-18-116. Repealed
- R4-18-117. Repealed

ARTICLE 2. LICENSES; SPECIALIST CERTIFICATES; CONTINUING MEDICAL EDUCATION; RENEWAL

New Article 2, consisting of Sections R4-18-201 through R4-18-206, made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Article 2 consisting of Sections R4-18-201 through R4-18-205 has been deleted due to an error in publishing text that was thought to be adopted and certified but in fact was rejected by the Attorney General on December 29, 1995 (Supp. 95-4). Removal of this text reflects the latest effective rules on file with the Office of the Secretary of State last modified Supp. 88-4 (reprinted Supp. 96-4).

Section

- R4-18-201. Jurisprudence Examinations
- R4-18-202. License by Examination
- R4-18-203. License by Endorsement
- R4-18-204. Specialist Certificate
- R4-18-205. Continuing Medical Education Requirements
- R4-18-206. Renewal of a License
- R4-18-207. Reinstatement of an Expired License or Certificate
- R4-18-208. Reinstatement of a Retired License
- R4-18-209. Reinstatement of a Suspended, Revoked or Surrendered License or Certificate

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ARTICLE 3. RESERVED

ARTICLE 4. APPROVAL OF SCHOOLS OF NATUROPATHIC MEDICINE

New Article 4, consisting of Sections R4-18-401 and R4-18-402, made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Section

- R4-18-401. Approval of a School of Naturopathic Medicine
R4-18-402. Annual Renewal of an Approved School of Naturopathic Medicine

**ARTICLE 5. NATUROPATHIC CLINICAL TRAINING
AND PRECEPTORSHIP TRAINING PROGRAM REQUIREMENTS**

New Article 5, consisting of Sections R4-18-501 through R4-18-504, made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Section

- R4-18-501. Certificate to Engage in Clinical or Preceptorship Training
R4-18-502. Annual Renewal of a Certificate to Engage in Clinical or Preceptorship Training
R4-18-503. Application for a Certificate to Conduct a Clinical or Preceptorship Training Program
R4-18-504. Annual Renewal of a Certificate to Conduct a Clinical or Preceptorship Training Program

ARTICLE 6. NATUROPATHIC MEDICAL ASSISTANTS

New Article 6, consisting of Sections R4-18-601 through R4-18-605, made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

- R4-18-601. Definitions
R4-18-602. Medical Assistant Qualification
R4-18-603. Application for Medical Assistant Certification
R4-18-604. Renewal of Medical Assistant Certificate
R4-18-605. Authorized Procedures for Medical Assistants

ARTICLE 7. TIME-FRAMES FOR BOARD DECISIONS

New Article 7, consisting of Sections R4-18-701 and Table 1, made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Section

- R4-18-701. Time-frames for Board Decisions
Table 1. Time-frames

ARTICLE 8. EXPERIMENTAL MEDICINE

New Article 8, consisting of Sections R4-18-801 and R4-18-802, made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Section

- R4-18-801. Experimental Medicine
R4-18-802. Informed Consent and Duty to Follow Protocols

ARTICLE 9. CERTIFICATE TO DISPENSE

New Article 9, consisting of Sections R4-18-901 through R4-18-904, made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

Section

- R4-18-901. Definitions
R4-18-902. Qualifications for a Certificate to Dispense
R4-18-903. Application for a Certificate to Dispense; Renewal
R4-18-904. Dispensing; Intravenous Nutrients

ARTICLE 1. GENERAL PROVISIONS

R4-18-101. Definitions

In addition to the definitions in A.R.S. §§ 32-1501 through 32-1581, the following definitions apply to this Chapter unless otherwise specified:

1. "Administrative completeness review" means the Board's process for determining that an applicant has provided, or caused to be provided, all of the application packet information and documentation required by statute or rule for an application for a license or a certificate.
2. "Applicant" means a person requesting from the Board an initial, temporary, or renewal license or certificate.

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3. "Approved Specialty College or Program" means a postdoctoral training program that awards a medical specialist certificate, and is certified by a Specialty Board of Examiners, The American Association of Naturopathic Physicians ("AANP") or another professional association or, another state's licensing agency, and which is recognized by the Board.
4. "Chief medical officer" means a physician who is responsible for a clinical, preceptorship, internship, or postdoctoral training program's compliance with state and federal laws, rules, and regulations.
5. "Continuing medical education" or "CME" means courses, seminars, lectures, programs, conferences, and workshops related to subjects listed in A.R.S. § 32-1525(B), that are offered or sanctioned by one of the organizations referenced in R4-18-205(B).
6. "Device" means the same as in A.R.S. § 32-1581(H)(1).
7. "Endorsement" means the procedure for granting a license in this state to an applicant who is currently licensed to practice naturopathic medicine by another state, district, or territory of the United States or by a foreign country that requires a written examination substantially equivalent to the written examination provided for in A.R.S. § 32-1525.
8. "Facility" means a health care institution as defined in A.R.S. § 36-401, office or clinic maintained by a health care institution or by an individual licensed under A.R.S. Title 32, Chapter 13, 14, 17, or 29, office or public health clinic maintained by a state or county, office or clinic operated by a qualifying community health center under A.R.S. § 36-2907.06, or an office or clinic operated by a corporation, association, partnership, or company authorized to do business in Arizona under A.R.S. Title 10.
9. "Informed consent" means a document, signed by a patient or the patient's legal guardian, which contains the information in R4-18-802(A)(1), (A)(2), and (A)(3).
10. "Institutional review board" means a group of persons that is approved according to guidelines of the United States Department of Health and Human Services, Office for Human Research Protection, which reviews investigational or experimental protocols and approves their use on animals or humans for the purposes of protecting the subjects of the investigational or experimental protocol from undue harm and assures that the research and its review is carried out according to guidelines of the United States Department of Health and Human Services, Office for Human Research Protection.
11. "Internship" means clinical and didactic training by a doctor of naturopathic medicine certified by the Board according to A.R.S. § 32-1561.
12. "License" means a document issued by the Board that authorizes the individual to whom it is issued to practice naturopathic medicine.
13. "Medical student" means naturopathic medical student defined in A.R.S. § 32-1501(24).
14. "Medication" means the same as drug defined in A.R.S. § 32-1501(15) or natural substance defined in A.R.S. § 32-1501(23).
15. "National board" means any of the following:
 - a. The Federation of State Medical Licensing Boards,
 - b. The National Board of Chiropractic Examiners,
 - c. The National Board of Medical Examiners,
 - d. The National Board of Osteopathic Examiners, or
 - e. The North American Board of Naturopathic Examiners.
16. "Procedure" means an activity directed at or performed on an individual for improving health, treating disease or injury, or making a diagnosis.
17. "Protocol" means an explicit detailed plan of an experimental medical procedure or test that is approved by an institutional review board.
18. "Resident physician in training" means a person who holds a degree of doctor of naturopathic medicine and is certified by the Board to diagnose and treat patients under supervision in an internship, preceptorship, or a post doctoral training program.
19. "Substantive review" means the Board's process for determining whether an applicant for licensure, certification, or approval meets the requirements of A.R.S. Title 32, Chapter 14 and this Chapter.
20. "Verified" means a notarized form dated, and signed by the applicant, affirming the information provided in the application, including any accompanying documents submitted by or on behalf of the applicant, is true and complete.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended effective December 29, 1995 (Supp. 95-4). Amended Section corrected Supp. 96-4 to reflect adopted Section on file with the Office of the Secretary of State effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-102. Board Meetings; Elections; Officers

- A. The Board shall hold a regular meeting in January and July of each year. The officers shall be elected at the January meeting of the Board by majority vote of the Board members present at that meeting. The Board chairman shall preside at all Board meetings. If the chairman is disqualified or unable to attend, the Board vice-chairman shall preside at the meeting. If the Board vice-chairman is disqualified or unable to attend, the Board secretary-treasurer shall preside at the meeting.
- B. If an officer's position becomes vacant, the Board shall elect a member of the Board to complete the term of office that is vacant.
- C. A Board member shall attend meetings scheduled by the Board. The Board may recommend to the Governor that a Board member who fails to attend three consecutive Board meetings be removed from the Board.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

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R4-18-103. Duties of Board Committees

A committee appointed by the Board chairman shall make a report to the Board based on the findings or investigations of the committee and may make recommendations for further action by the Board.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-104. Repealed

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended by adding a new subsection (H) effective June 18, 1987 (Supp. 87-2).

Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-105. Reserved

R4-18-106. Rehearing or Review of Decision

- A. Except as provided in subsection (G), any party who is aggrieved by a decision issued by the Board 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 rehearing or review. For purposes of this Section, a decision is considered served when personally delivered or five days after mailing by certified mail to the party at the party's last known residence or place of business.
- B. A motion for rehearing or review under this Section 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 issue raised in the motion and may provide for oral argument.
- C. A rehearing or review of a decision may be granted by the Board for any of the following reasons materially affecting the party's rights:
 - 1. Irregularity in the proceedings of the Board, administrative law judge, or any abuse of discretion that deprives the moving party of a fair hearing;
 - 2. Misconduct of the Board or an administrative law judge;
 - 3. Accident or surprise that could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 - 5. Excessive or insufficient penalties;
 - 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
 - 7. That the findings of fact or decision is not justified by the evidence, or is contrary to law.
- D. The Board may affirm or modify its decision or grant a rehearing or review, to all or any of the parties on all or part of the issues for the reasons specified in subsection (C). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters specified.
- E. Not later than 35 days after the date a decision is rendered, the Board may, on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. In either case, the order shall specify the grounds for rehearing and review.
- F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for good cause.
- G. If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines 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 or review, 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 under A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005(25). Exemption from A.R.S. Title 41, Chapter 6 means the Board did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Board did not submit the rules to the Governor's Regulatory Review Council for review; and the Board was not required to hold public hearings on this Section (Supp. 99-3).

R4-18-107. Fees

- A. Application fees are as follows:
 - 1. Medical license, \$225
 - 2. Certificate to dispense, \$225
 - 3. Medical assistant certificate, \$100
 - 4. Clinical training certificate, \$100
 - 5. Preceptorship certificate, \$100
 - 6. Specialty certificate, \$225
- B. Arizona naturopathic jurisprudence examination, \$60

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- C. Annual renewal fees are as follows:
 - 1. Medical license, \$165
 - 2. Certificate to dispense, \$225
 - 3. Medical assistant certificate, \$150
 - 4. Clinical training certificate, \$225
 - 5. Preceptorship certificate, \$225
 - 6. Renewal of specialty certificate, \$225
- D. Late renewal fees are as follows:
 - 1. Medical license, \$83
 - 2. Certificate to dispense, \$113
 - 3. Medical assistant certificate, \$75
 - 4. Clinical training certificate, \$113
 - 5. Preceptorship certificate, \$113
 - 6. Specialty certificate, \$113
- E. Other fees are as follows:
 - 1. For a duplicate license or certificate, \$20
 - 2. For photocopying Board records, documents, letters, applications, or files, \$5 or \$0.25 per page, whichever is greater
 - 3. For each audio tape or computer disk containing information requested, \$25
 - 4. For written verification of a license or certificate, \$5
 - 5. For the costs in locating a person who is licensed or certified, actual cost incurred by the Board
 - 6. For each insufficient fund check, \$25

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended as an emergency effective December 31, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-6). Emergency expired. Amended and adopted as a permanent rule effective June 18, 1987 (Supp. 87-2). Amended paragraph (3) effective November 10, 1988 (Supp. 88-4). Section repealed; new Section adopted by exempt rulemaking at 5 A.A.R. 2874, effective July 28, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by exempt rulemaking at 18 A.A.R. 1499, effective June 6, 2012 (Supp. 12-2). Amended by exempt rulemaking at 19 A.A.R. 1986, effective September 16, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-108. Titles, Use of Abbreviations

- A. A physician issued a license by the Board may use any of the following titles or abbreviations:
 - 1. Doctor of Naturopathic Medicine,
 - 2. N.M.D.,
 - 3. Doctor of Naturopathy,
 - 4. N.D.,
 - 5. Naturopath,
 - 6. Naturopathic Physician, or
 - 7. Naturopathic Medical Doctor.
- B. A physician issued a license, or a graduate of a school approved by the Board, shall not use any of the following titles or abbreviations:
 - 1. Doctor of medicine (naturopathic),
 - 2. M.D.(N.), or
 - 3. M.D.(naturopathic).
- C. An unlicensed graduate of a Board approved school of naturopathic medicine who is certified by the Board to engage in preceptorship training shall use the designation “(Preceptee)” after any of the designations in subsection (A). The preceptee shall also ensure that any patient treated by the preceptee signs an informed consent treatment form stating clearly that the preceptee is undergoing training, is not licensed, and identifying the name of the supervising physician.
- D. An unlicensed graduate of a Board approved school of naturopathic medicine who is certified by the Board to engage in internship training shall use the designation “(Intern)” after any of the designations in subsection (A). The intern shall ensure that any patient treated by the intern signs an informed consent treatment form stating clearly that the intern is undergoing training, is not licensed and identifying the name of the supervising physician.
- E. A person who is permanently retired under A.R.S. § 32-1528 may use any of the designations listed in subsection (A) if that person also uses the designation “(Retired)” after each designation.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-109. Repealed

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

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R4-18-110. Display of Licenses and Certificates; Notice of Change of Status; Student Identification

- A. Each person licensed by the Board shall display that license, or a Board issued duplicate in a conspicuous place in each location in which the person conducts regular and ongoing patient care activity.
- B. A person, business, or institution regulated by the Board shall notify the Board of any change in the information provided to the Board concerning a license or certificate application or its renewal, including changes in name, address, place of practice, or actions taken against the licensee, for any reason, in any court or by any governmental regulatory body.
- C. Each person certified by the Board to engage in clinical training shall wear an identification card issued by the approved naturopathic medical school conducting the training that clearly identifies the person as a student, at all times that the person is involved in clinical training. An approved school may keep all certificates to engage in clinical training issued by the Board at a central location of the primary training facility, if it is easily available for public viewing.
- D. Each person, business, or institution that is issued a certificate by the Board shall display that certificate or a Board issued duplicate, in a conspicuous place at each location in which the person, business, or institution conducts regular and ongoing business activity.
- E. All notice requirements under this rule shall be in writing and made within 30 days of change of status.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-111. Notice of Civil and Criminal Actions

- A. A person licensed or certified by the Board shall, within 10 days of receipt, notify the Board of any notice, subpoena, summons, or receipt of complaint, whether civil or criminal, arising directly or indirectly out of the person's conduct of the person's professional activities.
- B. To provide notice to the Board a person licensed or certified by the Board shall provide either a photocopy or facsimile copy of the notice or other service or a letter advising the Board of the nature of the cause of action allegations made, and the date, time, and place where appearance is required.

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Amended by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-112. Reserved

R4-18-113. Reserved

R4-18-114. Reserved

R4-18-115. Reserved

R4-18-116. Repealed

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-117. Repealed

Historical Note

Adopted effective December 31, 1984 (Supp. 84-6). Section repealed by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

ARTICLE 2. LICENSES; SPECIALIST CERTIFICATES; CONTINUING MEDICAL EDUCATION; RENEWAL

R4-18-201. Jurisprudence Examination

In addition to the requirements of R4-18-202 or R4-18-203, every applicant for licensure shall take and pass the Arizona Naturopathic Jurisprudence Examination, administered by the Board, with a minimum score of 75%. The examination shall consist of multiple-choice and true-false questions. If an applicant passes the jurisprudence examination to obtain a clinical training certificate under R4-18-501 and is under the continuous regulation of the Board after obtaining the clinical training certificate, the applicant is not required to take the examination again.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-202. License by Examination

In addition to the requirements of R4-18-201, an applicant for licensure by examination shall meet the requirements of A.R.S. Title 32, Chapter 14 and provide the Board:

1. A completed application form, provided by the Board that is signed, dated, and verified; and shall include the following information:
 - a. Applicant's full name and any former names used by the applicant;
 - b. Applicant's place and date of birth;
 - c. Applicant's Social Security number;

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- d. Applicant's home, business, and e-mail addresses;
 - e. Applicant's home, business, and cell phone numbers;
 - f. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
 - g. The name of the approved naturopathic college applicant graduated from, date of graduation, and date of clinical training completion;
 - h. The date applicant took and passed the required NPLEX examinations of Part I; Biomedical examination, Part II; Clinical Science examination, Part II; Core Clinical Science Examination, and the Clinical Elective examinations in acupuncture, and minor surgery. The date applicant took and passed the examination in Arizona naturopathic jurisprudence that is administered by the Board. Applicant must have taken and passed all the required examinations within a five-year period immediately preceding the date of application submission to the Board;
 - i. A list of all license or certificates issued or denied by any agency. Applicant must cause to have a document submitted directly to the Board from each agency listed, containing the applicant's name, date of issuance or denial, current status, and whether or not any disciplinary actions are pending or have ever been taken;
 - j. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 - k. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency;
 - l. Whether applicant has ever been disciplined by any agency for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 - m. Whether applicant, in lieu of disciplinary action, has entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 - n. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 - o. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, in any state, district or territory of the United States or country;
 - p. Whether applicant has ever been found medically incompetent;
 - q. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 - r. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine, and;
 - s. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. A copy of the applicant's complete NPLEX examination record, to be sent directly to the Board by the North American Board of Naturopathic Examiners ("NABNE") or its successor;
 3. A complete transcript sent directly to the Board from the approved school of naturopathic medicine from which the applicant graduated. The transcript shall include the date of graduation and the date of completion of clinical training;
 4. A complete and legible fingerprint card, including the DPS processing fee as specified on the application form;
 5. A passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant, and;
 6. The fees specified in R4-18-107.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-203. License by Endorsement

In addition to the requirements of R4-18-201, an applicant for licensure by endorsement shall meet the requirements of A.R.S. Title 32, Chapter 14, and provide the Board:

1. A completed application form, provided by the Board that is signed, dated, and verified, which shall include the following information:
 - a. Applicant's full name and any former names used by the applicant;
 - b. Place and date of birth;
 - c. Social Security number;
 - d. Home, business, and e-mail addresses;
 - e. Home, business, and cell phone numbers;
 - f. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
 - g. The name of the approved naturopathic college applicant graduated from, date of graduation, and date of clinical training completion;
 - h. The date applicant took and passed the examination in Arizona naturopathic jurisprudence that is administered by the Board, and the required NPLEX examinations of Part I; Biomedical examination, Part II; Clinical Science examination, Part II; Core Clinical Science Examination, the Clinical Elective examination in acupuncture, and the Clinical Elective examination in minor surgery;
 - i. A list of all license or certificates issued or denied by any agency in any state, district or territory of the United States or another country. Applicant must cause to have a document submitted directly to the Board from each agency listed, containing

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- the applicant's name, date of issuance or denial, current status, and whether or not any disciplinary actions are pending or have ever been taken;
- j. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 - k. Whether applicant has ever had a naturopathic medical license or certification, or any other profession license or certification denied, suspended, rejected or revoked by any agency in any state, district or territory of the United States or another country;
 - l. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country, for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 - m. Whether applicant, in lieu of disciplinary action, has entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 - n. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 - o. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law; in any state, district or territory of the United States or another country;
 - p. Whether applicant has ever been found medically incompetent;
 - q. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 - r. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine, and;
 - s. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. A document submitted directly to the Board by the agency by whom the applicant is licensed as a naturopathic physician that is signed and dated by an official of the agency and that contains:
 - a. The applicant's name;
 - b. The date of issuance of the license;
 - c. The current status of the license;
 - d. A statement of whether the applicant has ever been denied a license by the agency, and;
 - e. A statement of whether any disciplinary action is pending or has ever been taken against the applicant;
 3. A copy of the applicant's complete NPLEX examination record, to be sent directly to the Board by the North American Board of Naturopathic Examiners ("NABNE") or its successor;
 4. A complete transcript sent directly to the board from the approved school of naturopathic medicine from which the applicant graduated. The transcript shall include the date of graduation and the date of completion of clinical training.
 5. Applicant must provide evidence of being actively engaged, for at least three years immediately preceding the application, in one or more of the following:
 - a. The active practice as a licensed doctor of naturopathic medicine;
 - b. Participation in an approved internship, preceptorship or clinical training program in naturopathic medicine, as defined in A.R.S. § 32-1501(4), (5), (7);
 - c. Participation in an approved postdoctoral training program in naturopathic medicine, as defined in A.R.S. § 32-1501(6);
 - d. Active in the resident study of naturopathic medicine at an approved school of naturopathic medicine, as defined in A.R.S. § 32-1501(8)(a) and (b);
 6. A complete and legible fingerprint card, including the DPS processing fee, as specified on the application form;
 7. A passport size photograph taken within 60 days prior to application submission, that is signed on the back by the applicant;
 8. The fees specified in R4-18-107;
 9. Applicants who were licensed in another state or a Canadian province before January 1, 2005, shall include evidence of completion of additional 60 hours of continuing medical education ("CME") in the subject of pharmacotherapeutics. The CME must be offered, sanctioned, or accredited by one of the organizations referenced in R4-18-205(B)(1), (2)(a), (b), (c) or (4)(a), (b), (c), and include an examination. In the event the applicant cannot provide satisfactory evidence of completion of the required pharmacotherapeutics, or the required examinations, pursuant to A.R.S. § 32-1524(E), and (G)(3), the applicant will have an additional 365 days from the date the board notifies the applicant of the deficiency, to supply satisfactory evidence of completion.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-204. Specialists Certificate

To obtain a specialist certificate, a physician shall meet the requirements of A.R.S. Title 32, Chapter 14 and provide the Board:

1. A completed application form, provided by the Board that is signed, dated, and verified, which shall include the following information:
 - a. Applicant's full name;
 - b. Current State of Arizona Naturopathic Physicians Medical License number;
 - c. Email address, phone number, and mailing address;

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- d. Name and address of the approved specialty college or program from which applicant completed postdoctoral specialty training;
 - e. The specialty applicant received training in, and a copy of the certificate of completion received in the specialty;
 - f. Who the specialty program was approved by;
 - g. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine;
 - h. Whether applicant has ever been disciplined by any agency in any state or territory of the United States, for any act of un-professional conduct as defined in A.R.S. § 32-1501;
 - i. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency in any state or territory of the United States, and;
 - j. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. The fees specified in R4-18-107 and;
 3. A letter from the specialty board that conducted the specialty examination verifying that the licensee is certified as a specialist in the specialty for which application is made;
 4. A certificate issued to a physician pursuant to A.R.S. § 32-1529(C.), shall be concurrently renewed, suspended or revoked, with that physician's license to practice naturopathic medicine.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-205. Continuing Medical Education Requirements

- A. Every calendar year, a physician shall complete 30 credit hours of approved continuing medical education activities. Ten credit hours shall be in pharmacology as it relates to the diagnosis, treatment, or prevention of disease. Eight credit hours shall be from programs approved by one or more of the organizations listed in subsection (B)(2). One hour of credit is allowed for every 50 minutes of participation in an approved continuing medical education activity unless otherwise noted in R4-18-205(B).
- B. The following are approved continuing medical education activities:
 1. Education certified as Category I by an organization accredited by the Accreditation Council on Continuing Medical Education;
 2. Continuing medical educational programs in the clinical application of naturopathic medical philosophy that are approved by;
 - a. The American Association of Naturopathic Physicians or any of its constituent organizations,
 - b. The Arizona Naturopathic Medical Association, or
 - c. Any naturopathic licensing authority in the United States or Canada.
 3. One credit hour may be claimed for each eight hour day of training in an internship training program, a preceptorship training program, or a postdoctoral training program approved by the Board. A maximum of eight hours per year may be claimed in this manner.
 4. One credit hour, not to exceed eight credit hours, may be claimed for each eight hour day of research in subjects listed in A.R.S. § 32-1525(B), if the research is conducted by or sponsored by a school of naturopathic medicine that is accredited or a candidate for accreditation by:
 - a. The Council on Naturopathic Medical Education,
 - b. The Council for Higher Education Accreditation, or
 - c. An accrediting agency recognized by the United States Department of Education.
 5. One credit hour may be claimed for each hour serving as an instructor of naturopathic medical students or other physicians in a program approved by one of the organizations listed in subsection (B)(2), or a school approved by the Board. A maximum of eight hours may be claimed in this manner.
 6. A maximum of four credit hours may be claimed for preparing or writing for presentation or publication, a medically related paper, report, or book that is presented or published addressing current developments, skills, procedures, or treatment in the practice of naturopathic medicine. Credit may be claimed only for materials presented or published. Credit may be claimed once as of the date of publication or presentation.
 7. A maximum of eight credit hours may be earned for the following activities that provide necessary understanding of current developments, skills, procedures, or treatment related to the practice of naturopathic medicine if the physician maintains a record for at least three years that includes the name of the activity, the date of the activity, and the amount of time to complete the activity:
 - a. Self-instruction that utilizes videotapes, audiotapes, films, filmstrips, slides, radio broadcasts, or computers;
 - b. Independent reading of scientific journals and books;
 - c. Preparation for specialty board certification or re-certification examinations; or
 - d. Participation on a staff committee or quality of care or utilization review committee in a facility or government agency.
- C. The Board shall grant an extension of time to complete continuing medical education required in subsection (A) upon written application by a licensee if the licensee fails to meet the requirements due to illness, military service, medical or religious missionary activity, residence in a foreign country, or other extenuating circumstance. An extension, other than for military service, shall not exceed 90 days.
- D. An applicant for renewal of a license shall certify on the application for renewal, under penalty of perjury, that the applicant has met or will meet, before January 1, the continuing medical education requirements for the calendar year.

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- E. Board staff shall annually select a minimum of ten percent of the active licensees for an audit of required continuing medical education. Failure to complete the required continuing medical education is considered unprofessional conduct.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-206. Renewal of a License

To renew a license to practice naturopathic medicine, on or before January 1 of each year, a licensee shall submit a complete license application renewal form, that allows the Board to determine whether the applicant continues to meet the requirements of A.R.S. Title 32, Chapter 14. If an applicant makes a timely and complete application for renewal of the applicant's license, the physician may continue to practice until the application is approved or denied by the Board.

1. A completed application form, provided by the Board that is signed, dated, and verified, which shall include the following information;
 - a. Applicant's full name;
 - b. Applicant's State of Arizona Naturopathic Physicians Medical License number and initial issuance date of the license;
 - c. Applicant's home, business, and choice of e-mail addresses, and choice of mailing address;
 - d. Applicant's home, business, and cell phone numbers;
 - e. Applicant's attestation of completion of the Continuing Medical Education credit hours required to renew the medical license;
 - f. A statement indicating whether, during the last 12 months, applicant was arrested, charged with, convicted of, or entered into a plea of no contest to any criminal act;
 - g. A statement indicating whether, during the last 12 months, applicant had any licensing agency or board, in any state, district or territory of the United States or another country, initiate or take any action against any license or certificate that is or was held;
 - h. A statement indicating whether, during the last 12 months, applicant entered into a consent agreement or stipulation with any agency in lieu of disciplinary action in any state, district or territory of the United States or another country;
 - i. A statement of whether during the last 12 months applicant was named in a malpractice suit;
 - j. A statement of whether applicant has a complaint currently pending before any agency, or court of law; in any state, district or territory of the United States or another country;
 - k. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;and
2. The fee specified in R4-18-107.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-207. Reinstatement of an Expired License or Certificate

A. In order to reinstate an expired license, an applicant must meet the requirements in A.R.S. § 32-1526, and pay a renewal and penalty fee for each year the license has been expired. In addition, the applicant must demonstrate completion of 30 hours of continuing medical education for each year the license has been expired. The CME must cover clinical application of naturopathic medical philosophy, pharmacology, and be accredited

by the Accreditation Council on Continuing Medical Education or approved by any of the programs listed in R4-18-201(B)(2).

B. The applicant must provide the Board with:

1. A completed application form, provided by the Board that is signed, dated, and verified; which shall include the following information;
 - a. Applicant's full name and any former names used by the applicant;
 - b. Applicant's place and date of birth;
 - c. Applicant's Social Security number;
 - d. Applicant's home, business, and e-mail addresses;
 - e. Applicant's home, business, and cell phone numbers;
 - f. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
 - g. The name of the approved naturopathic college applicant graduated from, date of graduation, and date of clinical training completion;
 - h. A list of all license or certificates issued or denied by any agency in any state, district or territory of the United States or another country. Applicant must cause to have a document submitted directly to the Board from each agency listed, containing

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the applicant's name, date of issuance or denial, current status and whether or not any disciplinary actions are pending or have ever been taken;

- i. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 - j. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency in any state, district or territory of the United States or another country;
 - k. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 - l. Whether in lieu of disciplinary action, has applicant ever entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 - m. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 - n. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law in any state, district or territory of the United States or another country;
 - o. Whether applicant has ever been found medically incompetent;
 - p. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 - q. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine, and;
 - r. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
2. A complete and legible fingerprint card, including the DPS processing fee as specified on the application form;
 3. A passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant;
- C.** An applicant for reinstatement of an expired certificate to dispense must complete the renewal application form and pay the renewal and late fees for each year the certificate has been expired;
- D.** An applicant for reinstatement of a certificate to dispense must complete the initial application form for the certificate. Pursuant to A.R.S. § 32-1526(H), an applicant for reinstatement of an expired certificate shall pay all renewal and penalty fees;
- E.** A applicant who held a specialty certificate that expired with the license, may request reinstatement of the certificate on the application for reinstatement of the medical license.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-208. Reinstatement of a Retired License

- A.** A person may apply to reinstate a retired license to active practice, upon payment of the renewal fee. As a condition of reinstatement of a retired license, pursuant to A.R.S. § 32-1528, each applicant shall provide proof of completion of 30 hours of continuing medical education, and provide the Board with:
1. A completed application form, provided by the Board that is signed, dated, and verified; which shall include the following information:
 - a. Applicant's full name and any former names used by the applicant;
 - b. Applicant's place and date of birth;
 - c. Applicant's Social Security number;
 - d. Applicant's home, business, and e-mail addresses;
 - e. Applicant's home, business, and cell phone numbers;
 - f. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
 - g. The name of the approved naturopathic college applicant graduated from, date of graduation, and date of clinical training completion;
 - h. The dates applicant retired the license;
 - i. A list of all licenses or certificates issued or denied by any agency in any state, district or territory of the United States or another country. Applicant must cause to have a document submitted directly to the Board from each agency listed, containing the applicant's name, date of issuance or denial, current status and whether or not any disciplinary actions are pending or have ever been taken;
 - j. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 - k. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency in any state, district or territory of the United States or another country;
 - l. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country, for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 - m. Whether in lieu of disciplinary action, has applicant ever entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 - n. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;

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- o. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law in any state, district or territory of the United States or another country;
 - p. Whether applicant has ever been found medically incompetent;
 - q. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 - r. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine, and;
 - s. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background.
2. A complete and legible fingerprint card, including the DPS processing fee as specified on the form;
 3. A passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant;
 4. The fees specified in R4-18-107;
- and
5. Provide proof of completion of 30 hours of CME taken, within the last 12 months prior to application submission. The CME is in addition to the 30 hours required each year for license renewal, must cover clinical application of naturopathic medical philosophy, pharmacology, and be accredited by the Accreditation Council on Continuing Education, or approved by any of the programs listed in R4-18-201(B)(2).
- B.** An applicant for reinstatement of a retired certificate to dispense must complete the renewal application form for the certificate, and pay the fee specified in R4-18-107.
- C.** An applicant who held a specialty certificate that retired with the license, may request reinstatement of the certificate on the application for reinstatement of the medical license.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-209. Reinstatement of a Suspended, Revoked, or Surrendered License or Certificate

- A.** A person may apply to the board for the termination of the suspension or reissuance of a revoked license. Pursuant to A.R.S. § 32-1551, the board shall make its determination on each application as it deems consistent with the public health, safety and just in the circumstances. The applicant must provide the Board with;
1. A completed application form, provided by the Board that is signed, dated, and verified; which shall include the following information;
 - a. Applicant's full name and any former names used by the applicant;
 - b. Applicant's place and date of birth;
 - c. Applicant's Social Security number;
 - d. Applicant's home, business, and e-mail addresses;
 - e. Applicant's home, business, and cell phone numbers;
 - f. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
 - g. The name of the approved naturopathic college applicant graduated from, date of graduation, and date of clinical training completion;
 - h. Documentation showing that the basis for the suspension or revocation has been removed, and that suspension termination or reinstatement of the license or certificate, does not constitute a threat to the public health or safety;
 - i. A list of all license or certificates issued or denied by any agency in any state, district or territory of the United States or another country. Applicant must cause to have a document submitted directly to the Board from each agency listed, containing the applicant's name, date of issuance or denial, current status and whether or not any disciplinary actions are pending or have ever been taken;
 - j. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 - k. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency in any state, district or territory of the United States or another country;
 - l. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country, for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 - m. Whether in lieu of disciplinary action, has applicant ever entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 - n. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 - o. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law in any state, district or territory of the United States or another country;
 - p. Whether applicant has ever been found medically incompetent;
 - q. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 - r. Whether applicant has a medical condition that in any way impairs or limits applicant's ability to practice medicine, and;

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- s. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
 2. A complete and legible fingerprint card, including the DPS processing fee as specified on the application form;
 3. A passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant, and;
 4. The fees specified in R4-18-107;
 5. Proof of completion of 30 hours of CME for each year the license has been suspended or revoked. The CME is in addition to the 30 hours required each year for license renewal, must cover clinical application of naturopathic medical philosophy and pharmacology, and, be accredited by the Accreditation Council on Continuing Education, or approved by any of the programs listed in R4-18-205(B)(2);
- B.** An applicant for reinstatement of a suspended or revoked certificate to dispense shall submit a complete renewal form, along with the fee specified in R4-18-107;
- C.** An applicant who held a specialty certificate that was suspended or revoked with the license, may request reinstatement of the certificate on the application for reinstatement of the medical license.
- D.** An applicant seeking licensure after the surrendered of a license or certificate must apply and meet the requirements as a new applicant.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

ARTICLE 3. RESERVED

ARTICLE 4. APPROVAL OF SCHOOLS OF NATUROPATHIC MEDICINE

R4-18-401. Approval of a School of Naturopathic Medicine

The Board shall approve a school of naturopathic medicine if, in addition to the requirements of A.R.S. § 32-1501(8):

1. It is accredited or a candidate for accreditation by the Council on Naturopathic Medical Education, or its successor agency, and
2. It has complied with the requirements of the Arizona State Board of Private Post Secondary Education in A.R.S. Title 32, Chapter 30 and A.A.C. 4-39-101 through 4-39-603.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-402. Annual Renewal of an Approved School of Naturopathic Medicine

An approved school of naturopathic medicine shall be renewed by submitting on or before January 1 of each year, the information required by the Board that allows the Board to determine if the applicant continues to meet the requirements of A.R.S. § 32-1501(8) and of R4-18-401.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

ARTICLE 5. NATUROPATHIC CLINICAL TRAINING AND PRECEPTORSHIP TRAINING PROGRAM REQUIREMENTS

R4-18-501. Certificate to Engage in Clinical or Preceptorship Training

- A.** To obtain a certificate to engage in clinical or preceptorship training, an applicant shall submit to the Board a complete application form provided by the Board, that allows the Board to determine if the applicant meets the requirements of A.R.S. § 32-1524. The application shall be verified, and include the fee listed in R4-18-107;
- B.** In addition to the requirements in subsection (A) a naturopathic medical student who applies for a certificate to engage in clinical training shall comply with the requirements of A.R.S. § 32-1560, and, be attending an approved naturopathic medical school. Applicant must arrange to have submitted directly to the Board, a letter from the chief medical officer of the medical school verifying that the applicant will be entering clinical training, and the anticipated starting and completion dates. The Board may deny an application for any reason set forth in A.R.S. § 32-1501(31) and A.R.S. § 32-1522(A)(3) through (6);
- C.** Applicant must take and pass the examination in Arizona naturopathic jurisprudence that is administered by the Board, with a minimum score of 75%, include with the application a passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant, provide a legible fingerprint card, including the DPS processing fee as specified on the application form;
- D.** The application form for clinical training entry shall include:
1. Applicant's full name and any former names used by applicant;
 2. Applicant's place and date of birth;
 3. Applicant's Social Security number;
 4. Applicant's home and email address;
 5. Applicant's home and cell phone numbers;
 6. The name and address of the approved naturopathic college applicant is attending; name and address of clinical training program, the date of clinical entry and the date of completion of clinical entry;
 7. The name of the Supervising Physician and the name of the Chief Medical Officer of the Clinical Training program;
 8. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;

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9. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any agency in any state, district or territory of the United States or another country;
 10. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country, for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 11. Whether applicant, in lieu of disciplinary action, has entered into a consent agreement or stipulation with a licensing agency in any state, district or territory of the United States or another country;
 12. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 13. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, in any state, district or territory of the United States or another country;
 14. Whether applicant has ever been found medically incompetent;
 15. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 16. Whether applicant has a medical condition, that in any way, impairs or limits applicant's ability to practice medicine;
 17. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background, and;
 18. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence;
- E.** In addition to the requirements in subsection (A), an applicant for a certificate to engage in a preceptorship training program shall comply with the requirements of A.R.S. § 32-1561 and arrange to have submitted directly to the Board, an official transcript from the approved naturopathic medical school from which the applicant graduated;
- F.** Applicant must take and pass the examination in Arizona naturopathic jurisprudence that is administered by the Board with a minimum score of 75%, include with the application, a passport size photograph taken within 60 days prior to application submission that is signed on the back by the applicant, provide a legible fingerprint card, including the DPS processing fee as specified on the application form;
- G.** The application form for preceptorship training shall include:
1. Applicant's full name and any former names used by applicant;
 2. Applicant's place and date of birth;
 3. Applicant's Social Security number;
 4. Applicant's home and email address
 5. Applicant's home and cell phone numbers;
 6. The name, address, and medical license number of the Supervising Physician, designated Supervising Physician, if any, and Chief Medical Officer;
 7. Attestation signed by the Supervising Physician declaring they have read and understand A.R.S. § 32-1561 and R4-18-108, and agree to be the Supervising physician of record;
 8. Whether applicant has ever been arrested, charged with, convicted of, or entered into a plea of no contest to a felony or a misdemeanor;
 9. Whether applicant has ever had a naturopathic medical license or certification, or any other health profession license or certification denied, suspended, rejected or revoked by any state, district or territory or the United States or another country;
 10. Whether applicant has ever been disciplined by any agency in any state, district or territory of the United States or another country, for any act of unprofessional conduct as defined in A.R.S. § 32-1501;
 11. Whether applicant, in lieu of disciplinary action by any agency, in any state, district or territory of the United States or another country, has entered into a consent agreement or stipulation with a licensing agency;
 12. Whether applicant currently has an open complaint or is involved in any open investigation in any agency or court of law, in any state, district or territory of the United States or another country;
 13. Whether applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, in any state, district or territory of the United States, or another country;
 14. Whether applicant has ever been found medically incompetent;
 15. Whether applicant has ever been a defendant in any malpractice matter that resulted in a settlement or judgment;
 16. Whether applicant has a medical condition, that in any way, impairs or limits applicant's ability to practice medicine;
 17. A detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and
 18. A completed Arizona Statement of Citizenship and Alien Status for State Public Benefits, and copy of evidence.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-502. Annual Renewal of a Certificate to Engage in Clinical or Preceptorship Training

A holder of a certificate to engage in clinical training shall renew the certification by submitting before the expiration date of the certificate a completed clinical training renewal form. A holder of a certificate to engage in preceptorship training shall renew the certification on or before July 1, by submitting a completed preceptorship renewal form.

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1. Applicant must submit a completed application form provided by the Board for renewal of certification that allows the Board to determine whether the holder of the certificate continues to meet the requirements of A.R.S. Title 32 Chapter 14. The form must be signed, dated, and shall include:
 - a. Applicant's full name and any former names used by applicant;
 - b. Applicant's certificate number, and original issue date;
2. The fees specified in R4-18-107.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

R4-18-503. Application for a Certificate to Conduct a Clinical or Preceptorship Training Program

A chief medical officer applying on behalf of a school of naturopathic medicine for a certificate to conduct clinical training, or on behalf of a preceptorship training program, shall submit to the Board the fee indicated in R4-18-107 and an application form provided by the Board, signed and dated by the chief medical officer, that contains:

1. The chief medical officer's name, mailing address, and telephone number;
2. The name and address of the training program and of each facility where training will be conducted;
3. The name, professional degree, license number, and licensing agency for each physician who will be providing supervision in the training program; and
4. A mission statement outlining the goals of the training program.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

R4-18-504. Annual Renewal of Certificate to Conduct a Clinical or Preceptorship Training Program

A certificate to conduct clinical or preceptorship training shall be renewed before the anniversary date, by submitting the appropriate fee listed in R4-18-107 and a completed form.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

ARTICLE 6. NATUROPATHIC MEDICAL ASSISTANTS

R4-18-601. Definitions

In addition to the definitions in A.R.S. § 32-1501 and R4-18-101, the following definitions apply to this Article:

1. "Approved medical assistant program" means a course of study for medical assistants that is provided:
 - a. At an institution that is accredited by:
 - i. The Commission on Accreditation of Allied Health Education Programs,
 - ii. The Commission for the Accrediting Bureau of Health Education Schools, or
 - iii. An accrediting agency recognized by the United States Department of Education or the Armed Forces of the United States, or
 - b. By an organization recognized by the American Association of Naturopathic Physicians.
2. "Employ" means to compensate by money or other consideration for work performed.
3. "Medical history" means an account of an individual's past and present physical and mental health including the individual's illness, injury, or disease.
4. "Medication" means a drug as defined in A.R.S. § 32-1501 or a natural substance as defined in A.R.S. § 32-1581.
5. "Naturopathic practice" means a place where the practice of naturopathic medicine as defined in A.R.S. § 32-1501 takes place.
6. "Training" means classroom and clinical instruction completed by an individual as part of an approved medical assistant program.
7. "Treatment" means any of the acts included in the practice of naturopathic medicine as defined in A.R.S. § 32-1501.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-602. Medical Assistant Qualification

An individual shall complete an approved medical assistant program to qualify for certification as a medical assistant.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-603. Application for Medical Assistant Certification

An applicant for a medical assistant certificate shall submit an application packet to the Board that contains the following:

1. An application form provided by the Board, signed and dated by the applicant that contains:
 - a. The applicant's name, mailing address, telephone number, and Social Security number;
 - b. The applicant's date and place of birth;
 - c. The applicant's height, weight, and eye and hair color;
 - d. The name, address, and telephone number of the applicant's employer, if applicable;

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- e. The name of the licensed physician who will supervise the applicant;
- f. The name and address of the institution where the applicant completed an approved medical assistant program;
2. A copy of a certificate of completion from an approved medical assistant program or a letter of completion from an approved medical assistant program signed by the person in charge of the approved medical assistant program;
3. A completed and legible fingerprint card; and
4. The fees required by the Board under A.R.S. § 32-1527.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-604. Renewal of Medical Assistant Certificate

An applicant for a renewal certificate shall submit to the Board:

1. A renewal form, provided by the Board, that is signed and dated by the applicant and contains the applicant's:
 - a. Name,
 - b. Social Security number,
 - c. Residence and naturopathic practice addresses, and
 - d. Telephone number; and
2. The fee required by the Board under A.R.S. § 32-1527.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

R4-18-605. Authorized Procedures for Medical Assistants

A. A medical assistant may perform the following under the direct supervision of a physician:

1. Obtain a patient's medical history;
2. Obtain a patient's vital signs;
3. Assist a physician in performing a physical examination, surgical procedure, or treatment;
4. Perform a diagnostic test ordered by a physician including:
 - a. An electrocardiogram;
 - b. A peripheral vein puncture;
 - c. A capillary puncture;
 - d. Urine analysis;
 - e. A hematology test; or
 - f. Respiratory function testing;
5. Administer a medication:
 - a. By mouth; or
 - b. By subcutaneous or intra-muscular injection if the medical assistant received training on performing this type of administration from an approved medical assistant training program;
6. Monitor and remove an intravenous administration of a medication established by a supervising physician if the medical assistant received training on monitoring and removing an intravenous administration from an approved medical assistant training program.
7. Perform physiotherapy, which includes the following:
 - a. Whirlpool treatment,
 - b. Diathermy treatment,
 - c. Electronic stimulation treatment,
 - d. Ultrasound therapy,
 - e. Massage therapy,
 - f. Traction,
 - g. Transcutaneous nerve stimulation,
 - h. Colon hydrotherapy, or
 - i. Hot and cold pack treatment.

B. A medical assistant shall not:

1. Diagnose a medical condition;
2. Design or modify a treatment program;
3. Prescribe a medication or natural substance;
4. Provide a patient with a prognosis;
5. Unless authorized by law, perform:
 - a. An ionizing radiographic procedure,
 - b. A surgical procedure,
 - c. A central venous catheterization,
 - d. An acupuncture needle insertion, or
 - e. Manipulative therapy;
6. Administer or establish an intravenous medication;
7. Perform any procedure that requires precise placement of a needle into a patient by single or multiple injections including:

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- a. Sclerotherapy,
- b. Prolotherapy,
- c. Mesotherapy, or
- d. Neurotherapy; or
- 8. Employ the medical assistant’s supervising physician or have any financial interest in a naturopathic practice where the supervising physician is employed.
- C. While assisting a naturopathic physician or performing a procedure delegated to the medical assistant, the medical assistant shall wear a clearly visible tag that states the individual is a medical assistant.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1547, effective June 4, 2005 (Supp. 05-2).

ARTICLE 7. TIME-FRAMES FOR BOARD DECISIONS

R4-18-701. Time-frames for Board Decisions

- A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of license, certification, or approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend a substantive review and overall time-frame by no more than 25 percent of the overall time-frame listed in Table 1.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license, certification, and approval granted by the Board is listed in Table 1.
 - 1. The administrative completeness review time-frame begins on the day the Board receives the application form and the appropriate fee.
 - 2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information.
 - 3. The administrative completeness review time-frame and the overall time-frame are suspended from the date on the Board’s notice until the date the Board office receives all missing information.
- C. The substantive review time-frame described in A.R.S. § 41-1072(3) for each type of license, certification, and approval granted by the Board is listed in Table 1.
 - 1. The substantive review time-frame begins on the date of the Board’s notice of administrative completeness.
 - 2. If the Board determines that additional information or documentation is required, the Board shall send to the applicant a written request for that additional information or documentation.
 - 3. The time-frame for the substantive review is suspended from the date the request for additional information or documentation is sent to the applicant, until the date on which all of the requested information is received.
 - 4. The Board shall notify the applicant of the dates of all Board meetings at which the application will be considered.
 - 5. The Board shall send a written notice of approval or denial to applicants within ten working days of the Board meeting at which the decision is made. An applicant may request a hearing on the decision within 30 days of the Board’s action.
- D. The Board shall consider an application withdrawn if within 360 days from the date of application the applicant fails to:
 - 1. Supply the missing information requested under subsection (B)(2) or (C)(2); or
 - 2. If applicable, take and obtain a minimum score of 75% on the Arizona Naturopathic Jurisprudence Examination.
- E. During the administrative review period, an applicant may withdraw an application by requesting withdrawal in writing. During the substantive review period, the Board shall decide whether to grant a request to withdraw.
- F. An applicant shall send written notice to the Board within 10 days from the date of any change of applicant’s address.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

Table 1. Time-frames

Type of Approval	Statutory Authority	Administrative Completeness Time-frame	Substantive Review Time-frame	Re-	Overall Time-frame
License by Examination (R4-18-202)	A.R.S. §§ 32-1504(A), 32-1522, 32-1523, 32-1523.01, 32-1524	90 days	90 days		180 days
License by Endorsement (R4-18-203)	A.R.S. §§ 32-1504(A), 32-1523	60 days	60 days		120 days
Specialist Certificate (R4-18-204)	A.R.S. §§ 32-1504(B)(3), 32-1529	60 days	60 days		120 days
Annual Renewal of License (R4-18-206)	A.R.S. §§ 32-1504(A), 32-1526	30 days	60 days		90 days

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Certificate to Dispense	A.R.S. §§ 32-1504(A), 32-1581	30 days	60 days	90 days
Annual Renewal of Certificate to Dispense	A.R.S. §§ 32-1504(A), 32-1581	30 days	60 days	90 days
Certificate to Engage in a Clinical, Preceptorship, Internship, or Postdoctoral Training Program (R4-18-501)	A.R.S. §§ 32-1504(A), 32-1560, 32-1561	30 days	60 days	90 days
Annual Renewal of Certificate to Engage in a Clinical, Preceptorship, Internship, or Postdoctoral Training Program (R4-18-502)	A.R.S. §§ 32-1504(A), 32-1560, 32-1561	30 days	60 days	90 days
Certificate to Conduct a Clinical, Preceptorship, Internship, or Postdoctoral Training Program (R4-18-503)	A.R.S. §§ 32-1501, 32-1504(A)	30 days	60 days	90 days
Annual Renewal of Certificate to Conduct a Clinical, Preceptorship, Internship, or Postdoctoral Training Program (R4-18-504)	A.R.S. § 32-1504(A)	30 days	60 days	90 days
Medical Assistant Certificate	A.R.S. §§ 32-1504(A), 32-1559	30 days	60 days	90 days
Annual Renewal of Medical Assistant Certificate	A.R.S. §§ 32-1504(A), 32-1559	30 days	60 days	90 days

Historical Note

New Table made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3).

ARTICLE 8. EXPERIMENTAL MEDICINE

R4-18-801. Experimental Medicine

A procedure, medication, or device is experimental if:

1. An Institutional review board exists for a particular procedure, medication, or device;
2. The procedure, medication, or device is not generally considered to be within the accepted practice standards for the naturopathic profession; and
3. The procedure, medication, or device is not part of the curriculum at an approved school of naturopathic medicine or approved postdoctoral training.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-802. Informed Consent and Duty to Follow Protocols

A. A physician, medical student engaged in an approved clinical training program, preceptee, or intern who conducts research involving an experimental procedure, medication, or device, shall ensure that all research subjects give informed consent to participate, which states:

1. Whether a physician, preceptee, or an intern is treating the patient;
2. That the patient or legal guardian of the patient understands:
 - a. The type of treatment the patient is to receive;
 - b. Each procedure that will be provided to the patient;
 - c. The risks and benefits of each procedure, medication, or device to be provided;
 - d. That the patient can withdraw at any time; and
 - e. That the patient is voluntarily participating; and
3. The physician, medical student engaged in the approved clinical training program, preceptee, or intern has established a protocol as required by subsection (B) that meets the requirements of the institutional review board that approved the protocol.

B. A physician, medical student engaged in an approved clinical training program, preceptee, or intern, who conducts research on humans involving an experimental procedure, medication, or device shall have a protocol for that research approved by an institutional review board.

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Historical Note

New Section made by final rulemaking at 8 A.A.R. 3702, effective August 9, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

ARTICLE 9. CERTIFICATE TO DISPENSE

R4-18-901. Definitions

The following definitions apply in this Article:

1. "Applicant" means:
 - a. An individual applying for a license and a certificate to dispense; or
 - b. A licensee requesting a certificate to dispense only.
2. "Auscultation" means the act of listening to sounds within the human body either directly or through the use of a stethoscope or other means.
3. "Certificate to dispense" means an approval granted by the Board to dispense a natural substance, drug, or device.
4. "Dispense" means the same as in A.R.S. § 32-1581(H).
5. "Drug" means the same as in A.R.S. § 32-1501(15).
6. "Hour" means 50 to 60 minutes of participation.
7. "Medical record" means the same as in A.R.S. § 12-2291.
8. "Nutrient" means the same as in A.R.S. § 32-1501(15)(a)(iii).
9. "Physical examination" means an evaluation of the health of an individual's body using inspection, palpation, percussion, and auscultation to determine cause of illness or disease.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-902. Qualifications for a Certificate to Dispense

- A. To qualify for a certificate to dispense, an applicant shall have completed before the submission date of the application, Board approved training in the safe administration of natural substances, drugs, or devices.
- B. The Board approves documentation of the following as evidence of completion of Board approved training in the safe administration of natural substances, drugs, or devices:
 1. Graduation from an approved school of naturopathic medicine after January 1, 2005 as referenced in A.R.S. § 32-1525(B)(4); or
 2. Completion of a 60 hour or more pharmacological course on natural substances, drugs, or devices that is offered, approved, or recognized by one of the organizations in R4-18-205(B)(1) or R4-18-205(B)(2).
- C. If an applicant intends to administer a natural substance or drug intravenously, the Board approved training completed by the applicant shall include administration of a natural substance or drug by intravenous means.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-903. Application for a Certificate to Dispense; Renewal

- A. An applicant for a certificate to dispense shall submit:
 1. An application to the Board that contains:
 - a. The applicant's:
 - i. Full name;
 - ii. Naturopathic license number, if known; and
 - iii. Social Security number;
 - b. If a corporation, a statement of whether the corporation holds tax exempt status;
 - c. A statement of whether the applicant holds a drug enforcement number issued by the United States Drug Enforcement Administration, and if so, the drug enforcement number;
 - d. A statement of whether the applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, and if so, an explanation that includes:
 - i. The name and address of the federal or state agency or court having jurisdiction over the matter, and
 - ii. The disposition of the matter;
 - e. A statement, signed by the applicant, that the applicant agrees to conform to all federal and state statutes, regulations, and rules; and
 - f. The date the application is submitted; and
 2. Unless exempted by A.R.S. § 32-1530, the fee required by the Board.
- B. An applicant for a naturopathic license may request a certificate to dispense as part of a naturopathic license application. When this request is made, approval of the naturopathic license by the Board includes approval of the certificate to dispense.
- C. A certificate holder shall renew a certificate to dispense on or before July 1 of each year by submitting:
 1. An application to the Board that contains:
 - a. The applicant's full name;
 - b. If a corporation, a statement of whether the corporation holds tax exempt status;

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- c. A statement of whether the applicant has had the authority to prescribe, dispense, or administer a natural substance, drug, device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, during the one year period immediately preceding the renewal date and if so, an explanation that includes:
 - i. The name and address of the federal or state agency or court having jurisdiction over the matter; and
 - ii. The disposition of the matter; and
 - d. A statement, signed and dated by the applicant, verifying the information on the application is true and correct and the applicant is the licensee named on the application; and
2. Unless exempted by A.R.S. § 32-1530, the fee required by the Board.
- D.** The Board shall grant or deny the certificate to dispense or renewal of certificate to dispense according to the time-frames in 4 A.A.C. 18, Article 7, Table 1.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

R4-18-904. Dispensing; Intravenous Nutrients

- A.** To prevent toxicity due to the excessive intake of a natural substance, drug, or device, before dispensing the natural substance, drug, or device to an individual, a certified physician shall:
- 1. Conduct a physical examination of the individual,
 - 2. Conduct laboratory tests as necessary that determine the potential for toxicity of the individual, and
 - 3. Document the results of the physical examination and laboratory tests in the individual's medical record.
- B.** For the purposes of A.R.S. § 32-1504(A)(8), a substance is considered a nutrient suitable for intravenous administration if it complies with A.R.S. § 32-1501(15)(iii).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2). Amended by emergency rulemaking at 21 A.A.R. 51, effective December 18, 2014, for 180 days (Supp. 14-4). Emergency renewed at 21 A.A.R. 928, effective June 5, 2015, for 180 days (Supp. 15-2). Amended by final rulemaking at 21 A.A.R. 2009, effective September 1, 2015 (Supp. 15-3).

32-1502. Naturopathic physicians medical board; appointment; qualifications; term of office; immunity

A. The naturopathic physicians medical board is established consisting of the following members:

1. Four physician members appointed by the governor. Each physician member shall be:

(a) A resident of this state for at least five years immediately preceding the appointment.

(b) A doctor of naturopathic medicine with a degree from a naturopathic school or college approved by the board who has engaged in full-time practice of naturopathic medicine for at least five years immediately preceding the appointment.

2. Three public members appointed by the governor. Each public member shall:

(a) Be a resident of this state for at least five years immediately preceding the appointment.

(b) Not be connected, in any manner, with or have any interest in a school of medicine, a health care institution or any person practicing any form of healing or treatment of bodily or mental ailments.

(c) Demonstrate an interest in the health problems in this state.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The terms of office of the physician members and the public members are five years to begin and end on June 30. Each physician member and each public member continue to hold office until the appointment and qualification of their successors, subject to the following exceptions:

1. A member of the board may be removed from office if the governor finds the member was guilty of malfeasance, misfeasance or dishonorable conduct.

2. The term of any member automatically ends on resignation, permanent removal from this state or removal from this state for a period of more than six months.

D. There shall be no monetary liability on the part of and no cause of action shall arise against the members of the board, the secretary-treasurer or permanent or temporary personnel of the board for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

32-1503. Board organization; meetings; compensation; committees

A. The board shall annually elect, from among its membership, a chairman, a vice-chairman and a secretary-treasurer, who shall hold their respective offices at the pleasure of the board.

B. The board shall hold a regular meeting at least semiannually on a date and at a time and place it designates. In addition, the board may hold special meetings it deems necessary.

C. A majority of the members of the board constitutes a quorum, and a majority vote of a quorum present at any meeting governs all actions taken by the board, except as provided in section 32-1525, subsection I and section 32-1526, subsection A.

D. Members of the board are eligible to receive compensation established by the board of not more than one hundred fifty dollars for each day of actual service in the business of the board.

E. In order to carry out the board's duties and functions, the chairman may establish committees from the board membership and define the duties of these committees.

32-1504. Powers and duties

A. The board shall:

1. Adopt rules that are necessary or proper for the administration of this chapter.
2. Administer and enforce all provisions of this chapter and all rules adopted by the board under the authority granted by this chapter.
3. Adopt rules regarding the qualifications of medical assistants who assist doctors of naturopathic medicine and shall determine the qualifications of medical assistants who are not otherwise regulated.
4. Adopt rules for the approval of schools of naturopathic medicine. The board may incorporate by reference the accrediting standards for naturopathic medical schools published by accrediting agencies recognized by the United States department of education or recognized by the council for higher education accreditation.
5. Adopt rules relating to clinical, internship, preceptorship and postdoctoral training programs, naturopathic graduate medical education and naturopathic continuing medical education programs. The rules for naturopathic continuing medical education programs shall require at least ten hours each year directly related to pharmacotherapeutics.
6. Periodically inspect and evaluate clinical, internship, preceptorship and postdoctoral training programs and naturopathic graduate medical education programs and randomly evaluate naturopathic continuing medical education programs.
7. Adopt rules relating to the dispensing of natural substances, drugs and devices.
8. Adopt rules necessary for the safe administration of intravenous nutrients. These rules shall identify and exclude substances that do not meet the criteria of nutrients suitable for intravenous administration.
9. Adopt and use a seal.
10. Have the full and free exchange of information with the licensing and disciplinary boards of other states and countries and with the American association of naturopathic physicians, the Arizona naturopathic medical association, the association of naturopathic medical colleges, the federation of naturopathic medical licensing boards and the naturopathic medical societies of other states, districts and territories of the United States or other countries.

B. The board may:

1. Adopt rules that prescribe annual continuing medical education for the renewal of licenses issued under this chapter.
2. Employ permanent or temporary personnel it deems necessary to carry out the purposes of this chapter and designate their duties.
3. Adopt rules relating to naturopathic medical specialties and determine the qualifications of doctors of naturopathic medicine who may represent or hold themselves out as being specialists.
4. If reasonable cause exists to believe that the competency of an applicant or a person who is regulated by the board is in question, require that person to undergo any combination of physical, mental, biological fluid and laboratory tests.
5. Be a dues paying member of national organizations that support licensing agencies in their licensing and regulatory duties and pay the travel expenses involved for a designated board member or the executive director to represent the board at the annual meeting of these organizations.
6. Adopt rules for conducting licensing examinations required by this chapter.
7. Delegate to the executive director the board's authority pursuant to sections 32-1509 and 32-1551.

32-1527. Fees

A. The board by a formal vote at an open public meeting shall establish fees, except as provided in section 32-1530, that the board determines are necessary to provide monies to conduct its business and which do not exceed the following:

1. For application for a license to practice naturopathic medicine and for certification to practice as a specialist, four hundred dollars.
2. For application for a certificate to dispense, four hundred dollars.
3. For issuance of a duplicate license or certificate, one hundred dollars.
4. For endorsement of an Arizona license or certificate for the purpose of applying for a license, certificate or registration in another state or country, fifty dollars.
5. For initial issuance of a license or a certificate, fifty dollars.
6. For any annual renewal of a license or a certificate, four hundred dollars.
7. For any late renewal of a license or an additional certificate, a fee of two hundred dollars.
8. For an initial application to conduct or engage in an internship, a preceptorship, a clinical training program or a postdoctoral training program, one hundred dollars.

9. For examination of applicants, the cost of giving the examination to each applicant.
10. For an initial application to be certified as a naturopathic medical assistant, one hundred dollars.
11. For application for examination without a licensure application by a naturopathic medical student, one hundred dollars.
12. For a copy of the minutes of board meetings during the calendar year, twenty-five dollars for each set of minutes.
13. For copying records, documents, letters, minutes, applications and files, twenty-five cents per page.
14. For a copy of tapes or computerized diskettes not requiring programming, one hundred dollars.
15. For written verification of a certificate or license, five dollars.
16. For submitting fingerprint cards to the department of public safety, the cost required by that department.

B. The board may charge a fee for services it is not required to provide pursuant to this chapter but which the board determines are appropriate to carry out the intent and purpose of this chapter. A fee imposed pursuant to this subsection shall not exceed the board's costs of rendering the service.

32-1522. Basic qualifications for license

A. To be eligible for a license to practice naturopathic medicine pursuant to this chapter, the applicant shall:

1. Be a graduate of an approved school of naturopathic medicine.
2. Have satisfactorily completed an approved internship, preceptorship or clinical training program in naturopathic medicine.
3. Possess a good moral and professional reputation.
4. Be physically and mentally fit to practice as a doctor of naturopathic medicine.
5. Not be guilty of any act of unprofessional conduct or any other conduct that would be grounds for refusal, suspension or revocation of a license under this chapter.
6. Not have had a license to practice any profession refused, revoked or suspended by any other state, district or territory of the United States or another country for reasons that relate to the applicant's ability to skillfully and safely practice as a physician in this state.
7. File a completed application pursuant to section 32-1524 and meet the examination requirements provided for in section 32-1525.

B. The board may:

1. Require an applicant to submit credentials or other written or oral proof.
2. Make investigations it deems proper to adequately advise itself with respect to the qualifications of an applicant.
- C. Within ninety days after it receives a completed application for initial licensure, the board shall issue a license if the application demonstrates to the board's satisfaction that the applicant complies with this chapter and board rules.

32-1523. Qualifications for license to practice by endorsement; restrictions

A. To be eligible for a license to practice naturopathic medicine pursuant to this chapter by endorsement, the applicant shall:

1. Qualify under section 32-1522.
2. Be licensed to practice as a doctor of naturopathic medicine by either:
 - (a) Another state, district or territory of the United States.
 - (b) Another country that requires a written examination that is substantially equivalent to the written examination provided for in section 32-1525.
3. Be continuously active, for at least three years immediately preceding the application, in one or more of the following:
 - (a) Active practice as a doctor of naturopathic medicine.
 - (b) An approved internship, preceptorship or clinical training program in naturopathic medicine.
 - (c) An approved postdoctoral training program in naturopathic medicine.
 - (d) The resident study of naturopathic medicine at an approved school of naturopathic medicine.
4. Pass the examinations provided for in section 32-1525.

B. If an applicant for licensure pursuant to this section is licensed in another state, district or territory of the United States or another country that does not require that competency be shown in the same elective practice areas as this state, the applicant shall be required to successfully complete examinations in these elective practice areas or, if otherwise qualified, be issued a license that does not include these elective practice areas.

32-1525. Examinations

A. The board shall use the naturopathic physicians licensing examination conducted by the North American board of naturopathic examiners, or its successor agency, for the national examinations required under sections 32-1522, 32-1523 and 32-1523.01. The board may administer its own examination only for those areas that are determined by the board to be necessary for the safe practice of naturopathic medicine and not covered on the naturopathic physicians licensing

examination. The board must accept the grade issued by the North American board of naturopathic examiners without adjustment. A board member or staff member shall not have any financial interest in the North American board of naturopathic examiners or the naturopathic physicians licensing examination.

B. An individual who is applying for licensure under section 32-1522 or 32-1523.01 shall take and pass the following portions of the naturopathic physicians licensing examinations or other examinations:

1. Part I basic biomedical science examination.
2. Part II core science and core clinical science examinations.
3. Clinical elective examinations of minor surgery and acupuncture.

C. An individual who is applying for licensure under section 32-1523:

1. Shall take and pass both:

- (a) Part I basic biomedical science examination.
- (b) Part II core science and core clinical science examinations.

2. Shall take and pass the clinical elective examinations of minor surgery and acupuncture if the person is applying for a license that includes those elective practice areas.

D. An individual who is applying for a license by endorsement pursuant to section 32-1523 and who was licensed in another state or a Canadian province before January 1, 2005, in addition to meeting the requirements of subsection C of this section, shall take and pass an additional sixty-hour course and examination in pharmacotherapeutics.

E. The examinations required for a license under section 32-1522, 32-1523 or 32-1523.01 shall include an examination in Arizona naturopathic jurisprudence that is administered by the board.

F. Examinations for licensure under this chapter shall:

1. Be practical in character and consist of multiple choice and true and false questions.
2. Be designed to ascertain the applicant's knowledge of naturopathic medicine and the applicant's ability to practice naturopathic medicine.
3. Include examination questions that are generally accepted as necessary for a competent knowledge of the practice of naturopathic medicine.

G. The board by rule shall prescribe any subjects on which the applicant must be tested in addition to those required by this section. The board may prescribe rules for conducting its own examinations.

H. An applicant shall obtain a passing score on the national examination and shall obtain a grade of seventy-five percent or more in each subject administered by the board that is not covered on the national examination.

I. An applicant may challenge the applicant's grade on an examination conducted by the board by submitting a written request to the board within sixty days of receiving the grade. If the board upholds the applicant's challenge, it may change, within one hundred twenty days of the challenge, the grade on the examination on the vote of a majority of the full board.

J. An individual applying for licensure under section 32-1522 or 32-1523.01 shall take and complete all of the examinations required by this section within a five-year period immediately preceding the submission of an application for licensure. Each time an applicant files a request with the board to retake any part of an examination, the applicant shall pay the examination fee pursuant to section 32-1527.

K. All examination materials and records of examination grading are confidential and are not public records.

32-1526. Licenses; certificates; issuance; renewal; failure to renew

A. The board shall issue licenses and certificates to applicants who are qualified under this chapter. The board shall only issue licenses under this chapter on the vote of a majority of the full board. Subject to review by the board at its next board meeting, the executive director may issue temporary licenses pursuant to section 32-1522.01, license renewals and certificates to qualified applicants.

B. Except as provided in section 32-4301, a license or certificate issued by the board expires unless renewed each year.

C. Each physician who holds an active license to practice naturopathic medicine in this state shall renew the license on or before January 1 of each year by supplying the executive director with information the board determines is necessary and payment of the annual renewal fee prescribed in section 32-1527.

D. A person who holds a certificate issued by the board other than as provided in subsection F of this section shall renew the certificate on or before July 1 of each year by supplying the executive director with information the board determines is necessary and payment of the annual fee prescribed in section 32-1527.

E. A licensee or certificate holder whose license or certificate is current and who is not currently the subject of a probationary order or licensure suspension by the board may request, at any time, and shall be granted cancellation of the license or certificate.

F. Except as provided in section 32-4301, a naturopathic medical student who holds a certificate to engage in a clinical training program shall renew the certificate for each year of the student's clinical training by supplying the executive director with information the board determines is necessary and paying the annual renewal fee prescribed in section 32-1527. The initial annual renewal date shall be one year after the board approved the application for the clinical training program.

G. A person who fails to renew a license or certificate by the due date shall pay a late renewal fee as prescribed in section 32-1527. Except as provided in section 32-4301, a license or certificate automatically expires if not renewed within sixty days after the due date.

H. The board may reinstate a license or certificate on payment of all renewal and penalty fees as prescribed in section 32-1527 and, if requested by the board, presentation of evidence satisfactory to the board that the applicant for reinstatement of an expired license is professionally able to engage or assist in the practice of naturopathic medicine and still possesses the professional knowledge required. If an applicant for reinstatement of an expired license has not been licensed and actively practicing in a jurisdiction of the United States or Canada in the three years immediately preceding the application, the board may issue a limited license that requires a period of general supervision by another licensed naturopathic physician not to exceed one year.

I. After a hearing, the board may refuse to reinstate a license or certificate for any grounds prescribed in section 32-1551.

J. The board and the executive director may prorate initial annual fees when a new application is approved by dividing the annual amount by twelve and multiplying the results by the number of months remaining until the next annual renewal date.

32-1528. Retired licensee; waiver of fees; reinstatement

A. The board may waive a physician's annual renewal fee if the physician has paid all past fees and presents an affidavit to the board that the physician has permanently retired from the practice of naturopathic medicine.

B. A physician whose annual renewal fee has been waived by the board and who is permanently retired from the practice of naturopathic medicine is not required to comply with any continuing medical education requirements of this chapter.

C. If a retired physician who has had the annual renewal fee waived by the board engages in the practice of naturopathic medicine, the physician is subject to the same penalties that are imposed under this chapter on a person who practices naturopathic medicine without a license or without being exempt from licensure.

D. The board may reinstate a retired physician to active practice on payment of the annual renewal fee as prescribed in section 32-1527 and, if requested by the board, on presentation of evidence satisfactory to the board that the applicant for reinstatement of a retired license is professionally able to engage or assist in the practice of naturopathic medicine and possesses the professional knowledge required.

E. If an applicant for reinstatement of a retired license has not been licensed and actively practicing in a jurisdiction of the United States or Canada in the three years immediately preceding the application, the board may issue a limited license that requires a period of general or direct supervision by another licensed naturopathic physician not to exceed one year.

32-1529. Specialists; certification; qualifications

A. To be eligible for a certificate to practice as a specialist an applicant shall:

1. Hold a current valid license to practice naturopathic medicine under this chapter.
2. Have satisfactorily completed an approved postdoctoral training program in the specialty.
3. Be board certified in the specialty by a specialty board of examiners that is recognized by the board.
4. Possess a good moral and professional reputation.
5. Be physically and mentally fit to practice the specialty.
6. Not be guilty of any act of unprofessional conduct or any other conduct that would be grounds for refusal, suspension or revocation of a license under this chapter.
7. Not have had any license to practice any profession refused, revoked or suspended by any other state, district or territory of the United States or another country for reasons that relate to the person's ability to skillfully and safely practice as a physician in this state.
8. File a completed application pursuant to section 32-1524.

B. The board may:

1. Require an applicant to submit credentials or other written or oral proof.
2. Make investigations it deems necessary to adequately advise it with respect to an applicant's qualifications.

C. A certificate issued to a physician pursuant to this section shall be concurrently renewed, suspended or revoked, with that physician's license to practice naturopathic medicine.

32-1551. Disciplinary action; duty to report; investigatory powers; immunity; hearing; appeal; notice

A. The board on its own motion may investigate any evidence that appears to show that a doctor of naturopathic medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to engage safely in the practice of naturopathic medicine. Any person may, and a doctor of naturopathic medicine, the Arizona naturopathic medical association, a component society of that association and any health care institution shall, report to the board any information that appears to show that a doctor of naturopathic medicine is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to engage safely in the practice of naturopathic medicine. The board or the executive director shall notify the doctor as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. If requested, the board shall not disclose the name of a person who supplies information regarding a licensee's drug or alcohol impairment. It is an act of unprofessional conduct for any doctor of naturopathic medicine to fail to report as required by this section. The board shall report any health care institution that fails to report as required by this section to that institution's licensing agency.

B. The board or, if delegated by the board, the executive director shall require any combination of mental, physical or oral or written medical competency examinations and conduct necessary

investigations including investigational interviews between representatives of the board and the doctor to fully inform itself with respect to any information filed with the board under this section. These examinations may include biological fluid testing and psychological or psychiatric evaluation. The board or, if delegated by the board, the executive director may require the doctor, at the doctor's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program.

C. If the board finds, based on the information it receives under this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict, limit or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection it shall also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge.

D. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the license of the doctor, the board may take any of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.
2. File a letter of concern.
3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

E. If the board finds that it can take rehabilitative or disciplinary action without the presence of the doctor at a formal interview, it may enter into a consent agreement with the doctor to limit or restrict the doctor's practice or to rehabilitate the doctor in order to protect the public and ensure the doctor's ability to safely engage in the practice of naturopathic medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program.

F. If after completing its investigation the board believes that the information is or may be true, it may request a formal interview with the doctor. If the doctor refuses the invitation or accepts and the results indicate that grounds may exist for revocation or suspension of the doctor's license for more than twelve months, the board may issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If after completing a formal interview the board finds the information provided under this section is not of sufficient seriousness to merit suspension for more than twelve months or revocation of the license, it may take the following actions:

1. Dismiss if, in the opinion of the board, the complaint is without merit.
2. File a letter of concern.
3. File a letter of reprimand.
4. Issue a decree of censure. A decree of censure is an official action against the doctor's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.

5. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the doctor concerned. Probation may include temporary license suspension for not to exceed twelve months, restriction of the doctor's license to practice naturopathic medicine, a requirement for restitution of fees to a patient or education or rehabilitation at the licensee's own expense. If a licensee fails to comply with the terms of probation, the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter including noncompliance with the terms of probation, a consent agreement or a stipulated agreement.

6. Enter into an agreement with the doctor to restrict or limit the doctor's practice or medical activities in order to rehabilitate, retrain or assess the doctor, protect the public and ensure the physician's ability to safely engage in the practice of naturopathic medicine. The board may also require the doctor to successfully complete a board approved rehabilitative, retraining or assessment program at the doctor's own expense pursuant to subsection E of this section.

7. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If the board finds that the information provided in an investigation warrants suspension or revocation of a license issued under this chapter, it must initiate formal proceedings pursuant to title 41, chapter 6, article 10.

H. Any doctor of naturopathic medicine who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable to safely engage in the practice of naturopathic medicine or to be medically incompetent is subject to censure, probation as provided in this section, suspension or revocation of a license or any combination of these under any conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. The board may charge the costs of formal hearings to the licensee who it finds to be in violation of this chapter.

I. If the naturopathic physicians board of medical examiners acts to modify any doctor's prescription writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

J. If the board, during the course of any investigation, determines that a criminal violation may have occurred involving the delivery of health care, it shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.

K. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

L. Notice of a complaint and hearing is effective by a true copy of it being sent by certified mail to the doctor's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail.

M. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

1. Being unable to safely engage in the practice of naturopathic medicine.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

N. The board may administer the oath to all witnesses and shall keep a written transcript of all oral testimony submitted at the hearing and the original or a copy of all other evidence submitted. The board may waive the technical rules of evidence at any hearing conducted under this section.

O. Except as provided in section 41-1092.08, subsection H, an appeal to the superior court in Maricopa county may be taken from decisions of the board pursuant to title 12, chapter 7, article 6.

32-3208. Criminal charges; mandatory reporting requirements; civil penalty

A. A health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after receiving or renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed.

B. An applicant for licensure or certification as a health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after submitting the application must notify the regulatory board in writing within ten working days after the charge is filed.

C. On receipt of this information the regulatory board may conduct an investigation.

D. A health professional who does not comply with the notification requirements of this section commits an act of unprofessional conduct. The health professional's regulatory board may impose a civil penalty of not more than one thousand dollars in addition to other disciplinary action it takes.

E. The regulatory board may deny the application of an applicant who does not comply with the notification requirements of this section.

F. On request a health profession regulatory board shall provide an applicant or health professional with a list of misdemeanors that the applicant or health professional must report.

DEPARTMENT OF TRANSPORTATION (F-18-0306)
Title 17, Chapter 4, Article 8, Motor Vehicle Records



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: March 6, 2018

AGENDA ITEM: G-2

TO: Members of the Governor's Regulatory Review Council

FROM: Council Staff

DATE : February 20, 2018

SUBJECT: DEPARTMENT OF TRANSPORTATION (F-18-0306)
Title 17, Chapter 4, Article 8, Motor Vehicle Records

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report:

This five-year-review report from the Arizona Department of Transportation (Department) covers two rules that relate to the process of requesting motor vehicle records in A.A.C. Title 17, Chapter 4, Article 8.

The Department's purpose is to "provide for an integrated and balanced state transportation system." See A.R.S. § 28-331. The Director is also tasked with establishing and maintaining a program for the "management of the department's record." See A.R.S. § 28-443. The Director is authorized to adopt rules for the enforcement of provisions and laws administered or enforced by director. See A.R.S. § 28-366(3).

The Department indicates that it did not complete any of their proposed actions from their previous five-year review report regarding these two rules because the changes were noncritical and did not rise to the level of importance above other agency rulemaking priorities. Since 2012, the Department indicates that it has completed 20 rulemaking packages.

Proposed Action

The Department indicates that it plans to initiate an expedited rulemaking within 180 days of Council approval of this report, and submit Notices of Final Expedited Rulemaking to the Council by December 2018. The Department plans to relocate R17-1-202, "MVD Record Copy Charges," and its corresponding "Table 1" to Article 8. The Department also plans to change all references to "Division" in R17-1-202 to "Department" to reflect organizational change.

Regarding **R17-4-801**, the Department plans to:

- Amend the definition of “customer number” to indicate that it is the number assigned to a person with a record on the Department’s database.
- Remove the term, and definition for, “Director” since it is not used in the two rules.
- Remove the term, “Division” because the term is being replaced by “Department,” which is defined in A.R.S. § 28-101.
- Add a definition for “commercial driver license record.”
- Move definitions for “batch,” “interactive,” “reasonable costs,” and “support document” from R17-1-201 to R17-4-801 because of the move of R17-1-202 to Article 8 (See above).

Regarding **R17-4-802**, the Department plans to:

- In subsection (A), change “valid photo identification” to “valid identification information as indicated on the form or by the Department.”
- In subsection (C), add “uncertified commercial driver license” and uncertified and certified “support documents” as records that can be requested and change “driver history record” to “driver extended history record.”
- In subsection (D), clarify that a requester with a permissible use may need to provide additional information to locate a record.
- In subsection (E), change the title to “consent to release motor vehicle record” to clear up confusion. Additionally, the Department will revise and restructure the first sentence to indicate how a requester with a general consent from and a requester with a one-time consent are different for purposes of the rule. Additionally, update the language to make clear that a requester need not provide both the vehicle identification number and the license plate number.
- In subsection (E), update the website address.
- In subsection (F), modify the mailing address for the “general consent to release form” to be more consistent with other rules.
- Replace “Division” with “Department” throughout the rules to reflect organizational changes.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. A.R.S. § 28-366 requires the Director to adopt rules necessary to enforce the laws the Director administers or enforces. A.R.S. § 28-455 provides the Department general criteria for the release of person information relating to a motor vehicle record.

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

A major component of the Department is the Motor Vehicle Division (MVD), which provides title, registration and driver-license services in Arizona. Article 8 pertains to the issuance of motor vehicle records by the MVD. The Department has determined that the

economic impacts of the most recent rule changes do not differ significantly from those described in the original statement. Furthermore, the Department determines that agency rules are effective, clear, and minimally intrusive. Key stakeholders include the Department, and individuals that are attempting to obtain uncertified or certified title and registration motor vehicle records, driver motor vehicle records, or hybrid motor vehicle records.

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 and governmental agencies 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 reports that it has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the rules are generally clear, concise, and understandable, are consistent with other rules and statutes, and are generally effective in achieving their objectives. Further, the Department indicates that the proposed changes will address minor issues.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department has identified two subsections of R17-4-802 that are not currently enforced as written. Under subsection (A), a requester is required to present a valid photo identification but a requester cannot do this when requesting online or through the mail. Under subsection (E), requesters do not need to provide all the information requested in subsection (E)(1) and subsection (E)(1) & (E)(2) only apply to requestors who provide a "general consent form" but not a "one-time consent form" but the rule as written applies to both. The Department indicates that it intends to fix both issues through rulemaking proposed in this report.

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

No. The Department indicates that the rules are not more stringent than corresponding federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Department indicates that the rules were adopted before July 29, 2010.

9. Conclusion

The Department plans to file final Notices of Expedited Rulemaking by December 2018. Many of the proposals are the same as in the last five-year review report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.

December 21, 2017

Ms. Nicole O. Colyer, Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 305
Phoenix, Arizona 85007

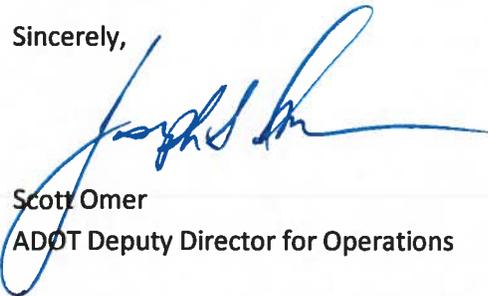
Re: Five-Year Review of 17 A.A.C. Chapter 4, Article 8

Dear Ms. Colyer:

The Arizona Department of Transportation submits for Council approval the accompanying Five-Year Review Report of 17 A.A.C. Chapter 4, Article 8. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with Candace Olson, Rules Analyst, at (602) 712-4534.

Sincerely,



Scott Omer
ADOT Deputy Director for Operations

Enclosure: ADOT Five-year Review Report



Government Relations and Policy Development Office

A.A.C. Title 17 – Transportation

Chapter 4

Department of Transportation

Title, Registration, and Driver Licenses

Article 8 – Motor Vehicle Records

Five-Year Review Report

Douglas A. Ducey

Governor

John S. Halikowski

ADOT Director

Governor's Regulatory Review Council

Five-Year-Review Report

17 A.A.C. Chapter 4, Article 8

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 28-366

Specific Statutory Authority: A.R.S. § 28-455

2. The objective of each rule:

Rule	Objective
R17-4-801	This rule provides industry representatives and the public with a better understanding of terms specific to the rules contained in this Article.
R17-4-802	This rule identifies the identification and criterion requirements for requesting and releasing a motor vehicle record.

3. Are the rules effective in achieving their objectives?

Yes X No ___

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. Are the rules consistent with other rules and statutes?

Yes X No ___

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. Are the rules enforced as written?

Yes ___ No X

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation
R17-4-802(A)	While this requirement is enforced when a requester makes the request in person with Department personnel, it is not applicable to requests received in the mail, from an electronic service, or have been dropped off, as such the Department needs to amend this to be more general to allow for the other instances.
R17-4-802(E)	Requesters do not need to provide all the information as indicated in subsection (E)(1) and subsections (E)(1) and (2) pertain only to requests in which an individual has provided a general consent to the Department.

6. **Are the rules clear, concise, and understandable?** Yes ___ No X

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

While the Department believes both rules under this Article are generally clear, concise, and understandable, the Department has determined that further clarity is needed with the following for better understandability and accuracy.

Rule	Explanation
R17-4-801	<p>The Department has determined to amend the following terms:</p> <ul style="list-style-type: none"> a. Customer number: Amend it to indicate that a customer number is assigned to a person with a record on the Department’s database. b. Director: Remove the term since it is not used in the rest of the Article. c. Division: Remove the term since the Department proposes to replace all “Division” references with “Department” to reflect organizational changes made within the Department and “Department” is already defined in A.R.S. § 28-101. <p>The Department will add definitions for “commercial driver license record” and “support document” due to the addition of these record types to R17-4-802, see below.</p>
R17-4-802	<p>The Department has determined the following amendments will enhance the clarity of the rule:</p> <ul style="list-style-type: none"> a. Identification requirements: Change “valid photo identification” into “valid identification information as indicated on the form or by the Department” since not all requesters can provide a photo, for example, requests received in the mail. b. Motor vehicle record types: Add language to include uncertified commercial driver license record and uncertified and certified support documents as an available motor vehicle record type and relabel “driver history record” as “driver extended history record.” c. Permissible use record request: Add a clarifying statement that the requester may need to provide additional information in order to locate a record. d. Non-permissible use record request: To clarify any confusion by the use of “non-permissible” and direct the focus on the Department’s use of the consent to release forms, change the header to “Consent to release motor vehicle record”, revise and restructure the first sentence to indicate that under the use of the permissible use under A.R.S. § 28-455(C)(13) the one-time consent form is used and then create another sentence detailing the use of the general consent form. Add the provision that a requester using the permissible use under A.R.S. § 28-455(C)(11) shall provide the detailed items of information, which needs to be clarified for the title and registration motor vehicle record since it is not necessary to provide both the vehicle identification number and license plate number. Update the website address. e. General consent to release information: Modify the mailing address to be more consistent with other rules. f. “Division”: The term needs to be replaced by “Department” to reflect organizational changes made within the Department.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. Economic, small business, and consumer impact comparison:

The economic impact of the rules in Article 8 has essentially remained the same as estimated in the original economic impact statement prepared for the rules.

No additional costs have incurred as a result of these rules and costs imposed are minimal. In fiscal year 2017, the Department issued approximately 71,526 uncertified Special Motor Vehicle Records (MVRs), 497,918 uncertified Title and Registration MVRs, 1,018 certified Title and Registration MVRs, 221,759 uncertified Driver MVRs, 27,930 certified Driver MVRs, and 917 fee-exempted MVRs.

In addition, in fiscal year 2017, there was the issuance of 2,332,353 uncertified Title and Registration MVRs, 1,187 certified Title and Registration MVRs, 3,959,112 uncertified Driver MVRs, 352,305 certified Driver MVRs, and 183,408,306 hybrid MVRs to companies with access to the Motor Vehicle Record Request System (MVRRS) through the State Portal. A hybrid MVR occurs when a Department's Motor Vehicle Division Electronic Data Services customer requests a revised or modified version of the current MVR, for example the customer may require some data elements from a Driver MVR combined with some data elements from the Title and Registration MVR. An additional 273,468,755 bulk Title and Registration MVRs are provided to Arizona Game and Fish Department and R.L. Polk. In addition, a number of MVRs are obtained by additional authorized government agencies, fee exempt under A.R.S. § 28-466, through an electronic data interface system and that, while the Department is unable to determine the specific number of MVRs obtained by these agencies due to system limitations, those numbers are significant.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No X

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

The Department proposed to make and submit rule changes to the Council by December 2014. The Department did not complete the course of action indicated in the previous five-year review report for the rules because the indicated amendments were noncritical and did not rise to the level of importance above other agency rulemaking priorities. The following indicated amendments were intended only to improve rule clarity, conciseness, and understandability of the rules:

1. R17-4-801, to clarify the following terms: "Customer number", "Director", and "Division".
2. R17-4-802, provide further clarity to the following:
 - a. Identification requirements: Additional language needs to be added to clarify that an MVR request received in the mail or has been dropped off does not require the presentation of valid photo identification instead the request must be notarized.
 - b. Motor vehicle record types: Additional language needs to be added to include uncertified and certified support documents as an available motor vehicle record type.

- c. Non-permissible use record request: Language regarding the items of information required to request a title and registration motor vehicle record needs to be modified since it is not necessary to provide both the vehicle identification number and license plate number; the requester needs to either submit all three of the items listed in subsections (E)(1)(a) and (E)(1)(b) or just two of the items listed in subsections (E)(1)(a) and (E)(1)(b) and the item listed in subsection (E)(1)(c).
- d. General consent to release information: A mail drop number needs to be added to the mailing address provided in subsection (F)(2)(b).
- e. "Division": The term needs to be replaced by "Department" to reflect organizational changes made within the Department.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

In rulemaking, the Department routinely adopts the least costly and burdensome options for any process or procedure required of the regulated public or industry. These rules impose very minimal costs. MVR requesters are directed to pay the charges imposed under A.A.C. R17-1-202 unless exempt under A.R.S. § 28-446. The highest fee charged is \$5 per record, which is required under A.R.S. § 28-446. There is also the potential for a very minimal cost for an individual that must submit a written notice in order to revoke the individual's general consent to release information. Therefore, the Department has determined that the rules in Article 8 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The manner in which the Department may release information from motor vehicle records is regulated by the Federal Driver's Privacy Protection Act of 1994 (DPPA), 18 USC 2721-2725, and A.R.S. Title 28, Chapter 2, Article 5. The DPPA stipulates who may receive personal information from MVRs and the penalties. These rules follow the permissible uses as prescribed in A.R.S. § 28-455, which is in keeping with the DPPA. The DPPA does not impose the criteria needed to request a record nor the length of time covered in a Driver MVR. Therefore, the Department has determined that the rules in Article 8 are not more stringent than the corresponding federal law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The whole Article was adopted prior to July 29, 2010.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department proposes to amend both rules in Article 8 as identified in item 6. In addition, while reviewing Article 8, the Department made the determination that it would be more appropriate and would better serve the public to relocate R17-1-202, MVD Record Copy Charges and its corresponding Table 1, which details the fees charged by the Department for copies of the various types of records, to Article 8. This relocation would require the removal of the following definitions from R17-1-201, Definitions, to R17-4-801: “batch”, “interactive”, “reasonable costs”, and “support document”. The Department will also need to change the use of “Division” to “Department in the text of the relocated MVD Record Copy Charges and change the use of “agency” in the definition of “support document” to “department”. The Department plans to request a Moratorium exemption from the Governor’s Office, pursuant to Executive Order 2018-02, and file together a Notice of Proposed Expedited Rulemaking for Chapter 4, Article 8 and a Notice of Proposed Expedited Rulemaking for Chapter 1, Article 2, within 180 days of approval of this report and have the Notices of Final Expedited Rulemaking filed for the Council’s December 2018 agenda.

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Article 8

Rule Text

ARTICLE 8. MOTOR VEHICLE RECORDS

R17-4-801. Definitions

In addition to the definitions under A.R.S. §§ 28-101 and 28-440, the following definitions apply to this Article, unless otherwise specified:

“Certified record” means a copy of a document designated as a true copy by the agency officer entrusted with custody of the original to be used for purposes prescribed under A.R.S. § 28-442.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Division to each person conducting business with the Division.

“Director” means the Arizona Department of Transportation’s Motor Vehicle Division Director or the Director’s designee.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Driver license number” means the system-generated, or other distinguishing number, assigned by the Division to a person for a driver license, identification card, or instruction permit record.

“Driver record” means a motor vehicle record more specifically defined to include any data that pertains to a driver license, identification card, instruction permit, or driver related activities.

“Requester” means the person, as defined under A.R.S. § 41-1001, requesting a motor vehicle record.

“Special MVR” means a motor vehicle record that is comprised of the least possible subset of information necessary to respond to the type of request received.

“Title and registration record” means a motor vehicle record more specifically defined to include any data that pertains to a vehicle title or registration record.

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-701 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4).

R17-4-802. Motor Vehicle Record Request

- A.** Identification requirements. The requester of a motor vehicle record shall present valid photo identification at the time a motor vehicle record request is made.
- B.** Charges and exemptions. The requester of a motor vehicle record shall pay the appropriate motor vehicle record copy charge under A.A.C. R17-1-202, unless exempt under A.R.S. § 28-446.
- C.** Motor vehicle record types. Under this Article, the Division may release any of the following motor vehicle record types:
 - 1. Title and Registration record, uncertified;
 - 2. Title and Registration record, certified;
 - 3. Driver 39-month record, uncertified;
 - 4. Driver five-year record, certified;

5. Driver history record, certified; and
 6. Special MVR, uncertified.
- D.** Permissible use record request. A requester who has a permissible use under A.R.S. § 28-455 shall provide at least one of the items of information listed in this subsection when requesting a motor vehicle record.
1. For a title and registration motor vehicle record:
 - a. Vehicle identification number,
 - b. License plate number, or
 - c. Vehicle owner's full name.
 2. For a driver motor vehicle record:
 - a. The name of the person whose record is requested,
 - b. Driver license number, or
 - c. Customer number.
- E.** Non-permissible use record request. A requester who does not have a permissible use under A.R.S. § 28-455, but who presents either a notarized Consent To Release Motor Vehicle Record - General form #96-0276 or a Consent To Release Motor Vehicle Record - One-Time form #96-0463 from the person whose motor vehicle record is requested shall provide the items of information listed in this subsection when requesting a motor vehicle record. The Consent To Release Motor Vehicle Record forms are available at all Customer Service and Third Party Provider offices and online at <http://mvd.azdot.gov/mvd/FormsandPub/mvd.asp>.
1. For a title and registration motor vehicle record:
 - a. The vehicle identification number and license plate number, and
 - b. The vehicle owner's full name, or
 - c. The vehicle owner's residence address.
 2. For a driver motor vehicle record:
 - a. The name and driver license number or customer number of the person whose record is requested, and
 - b. The person's date of birth, or
 - c. The person's address, or
 - d. The person's Arizona driver license expiration date.
- F.** General consent to release information. The Division shall record a person's general consent to release information on the person's driver and title and registration records.
1. The general consent to release information is valid until revoked, in writing, by the person.
 2. A person may submit the written notice of revocation:
 - a. In person, at a Customer Service office or Authorized Third Party Provider; or
 - b. By mail, at Motor Vehicle Division, 1801 W. Jefferson St., P.O. Box 2100, Phoenix, Arizona 85007-2100.
- G.** Insurance companies requesting a driver or title and registration record. The Division shall not release to an insurer, broker, managing general agent, authorized agent or insurance producer any information in a person's

driving record pertaining to a traffic violation that occurred 40 months or more before the date of a request for the release of the information.

Historical Note

Adopted effective August 16, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 19, 1994 (Supp. 94-2). Section recodified to R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4).

R17-4-803. Reserved

R17-4-804. Repealed

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Repealed effective November 21, 1995 (Supp. 95-4).

R17-4-805. Recodified

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-702 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-806. Recodified

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-702 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-807. Recodified

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-702 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-808. Recodified

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-702 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Article 8

Statutory Authority

Arizona Department of Transportation
Five-year Review Report
17 A.A.C. Chapter 4, Article 8

Statutory Authority

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

Specific Authority for Rulemaking

A.R.S. § 28-455. Release of personal information; fees

A. In accordance with section 28-458 and the driver's privacy protection act of 1994 (18 United States Code sections 2721 through 2725) and notwithstanding section 28-447, the department shall not knowingly disclose or otherwise make available to any person:

1. Personal information obtained by the department in connection with a motor vehicle record except as otherwise provided in this section.
2. Highly restricted personal information obtained by the department in connection with a motor vehicle record without the express consent of the person to whom the information applies except for uses allowed in subsection C, paragraphs 1, 4, 6 and 9 of this section. This paragraph does not affect the use of organ donation information on an individual's driver license or affect the administration of organ donation in this state.

B. The department shall disclose personal information for use in connection with the following matters:

1. Motor vehicle or driver safety and theft.
2. Motor vehicle emissions.
3. Motor vehicle product alterations, recalls or advisories.
4. Performance monitoring of motor vehicles and dealers by motor vehicle manufacturers.
5. Removal of nonowner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the anti car theft act of 1992 (18 United States Code sections 2311 through 2322), the automobile information disclosure act (15 United States Code sections 1231, 1232 and 1233), the clean air act of 1963 (42 United States Code sections 7401 through 7671q) and 49 United States Code chapters 301, 305 and 321 through 331.

C. Subject to subsection A of this section, the department may disclose personal information as follows:

1. For use by any government agency, including any court or law enforcement agency, in carrying out its functions or any private person or entity acting on behalf of a government agency in carrying out its functions.
2. For use in connection with matters of:
 - (a) Performance monitoring of motor vehicles, motor vehicle parts and dealers.
 - (b) Motor vehicle market research activities, including survey research.
 - (c) Removal of nonowner records from the original owner records of motor vehicle manufacturers.
3. For use in the normal course of business by a legitimate business or its agents, employees or contractors, but only:
 - (a) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors.
 - (b) If the information submitted is not correct or is no longer correct, to obtain the correct information for the purpose of preventing fraud by, pursuing legal remedies against or recovering on a debt or security interest against the individual.
4. For use by an attorney licensed to practice law or by a licensed private investigator in connection with any civil, criminal, administrative or arbitration proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation and the execution or enforcement of judgments and orders, or pursuant to a court order.
5. For use in research activities and for use in producing statistical reports if the personal information is not published, redisclosed or used to contact individuals.
6. For use by any insurer that writes automobile liability or motor vehicle liability policies and that is under the jurisdiction of the department of insurance or insurance support organization or by a self-insured entity or its agents, employees or contractors in connection with claims investigation activities, antifraud activities, rating or underwriting.
7. For use in providing notice to the owners of towed or impounded vehicles.
8. For use by any licensed private investigative agency or licensed security service for any purpose allowed under this section.
9. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver license that is required under 49 United States Code sections 31301 through 31317.
10. For use by a toll operator as defined in section 28-7751 in connection with the operation of a toll facility or the enforcement of tolls, administrative charges and penalties as defined in section 28-7751.
11. For any other use in response to requests for individual motor vehicle records if the state has obtained the express consent of the person to whom the personal information pertains.
12. For bulk distribution for surveys, marketing or solicitations if the department has obtained the express consent of the person to whom the personal information pertains.
13. For use by any requester if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

14. For any other use that is specifically authorized by law and that is related to the operation of a motor vehicle or public safety, including the following:
 - (a) Use by a financial institution or enterprise under the jurisdiction of the department of financial institutions or a federal monetary authority.
 - (b) Use by a motor vehicle dealer who is licensed and bonded by the department or a state organization of licensed and bonded motor vehicle dealers.
 - (c) Use by a person who is involved in an accident or the owner of a vehicle involved in an accident if the person who requests the information submits proof to the department of involvement in the accident.
 - (d) Use by a person applying for a bonded title if all of the following conditions exist:
 - (i) The requester verifies to the satisfaction of the director that the vehicle on which the requester is requesting the record is in the requester's possession.
 - (ii) The record is requested in order for the requester to notify the registered owner of the requester's intent to apply to the department for a bonded title.
 - (iii) The requester provides a verification of a vehicle inspection that was performed by an authorized department employee or agent.
 - (e) Use by an operator of a self-service storage facility who alleges both of the following:
 - (i) That the vehicle on which the operator is requesting the record is in the operator's possession.
 - (ii) That the record is requested to allow the operator to notify the registered owner and any lienholders of record of the operator's intent to foreclose its lien and to sell the vehicle.
 - (f) For any other use as determined by the director and established by rule.
- D.** The department may establish and carry out procedures under which the department, on receiving a request for personal information that does not fall within one of the exceptions prescribed in subsection B or C of this section, may mail a copy of the request to the individual about whom the information was requested. The mailing shall inform the individual of the request and contain a statement that the information will not be released unless the individual waives the individual's right to privacy under this section.
- E.** In addition to the permissible uses prescribed in subsection C of this section, the department may disclose its motor vehicle records information, including personal information, as a bulk record only under any of the following conditions:
 1. If the director determines either of the following:
 - (a) The sale or release of the record is necessary for the public health or safety.
 - (b) The use is for general research or general statistical purposes that do not provide specific factors from a record.
 2. For surveys, marketing or solicitations if the department has obtained the express consent of the person to whom the personal information pertains.
 3. For the release of motor vehicle title and motor vehicle registration information, vehicle identification numbers, title brands, odometer readings and brands and title lien information to a requester if the requester is in the business of preparing vehicle history reports and the information is used to develop a vehicle history report.

- F.** The director shall provide in a clear and conspicuous manner on forms for the issuance or renewal of driver licenses, nonoperating identification licenses and title and registration the opportunity for express consent so that each person who is the subject of a record of the department may opt in, for any purpose as prescribed by the director. Express consent shall be conveyed in a form prescribed by the director and shall include at least the following:
1. Clear and conspicuous notice informing the person who is giving express consent that by giving express consent the person is allowing the department to disclose information contained in the person's motor vehicle record to any person requesting information for any purpose.
 2. A written signature or an electronic signature.
 3. An explanation of the difference between a one-time authorization and general consent or opt in.
- G.** Subject to the requirements of subsection F of this section, express consent may be conveyed as either of the following:
1. A one-time authorization submitted by a requester on a consent to release form or by other written format as prescribed by the director.
 2. General consent or opt in on certain department forms.
- H.** Driver histories shall not be disclosed under subsection E of this section.
- I.** Except as provided in subsection J of this section and section 28-446, subsection B, records provided pursuant to subsections B and C of this section are subject to the fees prescribed in section 28-446, subsections A and C.
- J.** For records searched and provided for the purposes described in subsection E of this section, the director:
1. Shall charge a search fee that is a minimum of six hundred dollars per million records searched.
 2. Shall charge a records fee that is a minimum of thirty dollars per thousand records provided.
 3. May prorate the charge for fractional quantities that are searched or provided.
 4. May charge only the search fee if the request is in accordance with subsection E, paragraph 2 of this section.
- K.** Records requests that require a database search for specific criteria within a record are subject to a search fee. In addition to this search fee, each motor vehicle record provided to a records requester as a result of a criteria search incurs record fees in accordance with subsection I of this section.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-18-0303)

Title 9, Chapter 22, Article 5, General Provisions and Standards



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: March 6, 2018

AGENDA ITEM: G-3

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

FROM: Council Staff

DATE : February 20, 2018

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-18-0303)
Title 9, Chapter 22, Article 5, General Provisions and Standards

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Health Care Cost Containment System (AHCCCS) is "to promote a comprehensive health care system to eligible citizens of this state." Laws 2013, 1st S.S., Ch. 10, § 53. This system is managed by the Director of the AHCCCS Administration (Administration), which is established under A.R.S. § 36-2902(A). The Director has the powers and duties prescribed in A.R.S. §§ 36-2903 and 2903.01.

This five-year-review report covers 10 rules in A.A.C. Title 9, Chapter 22, Article 5. As of July 2017, AHCCCS provides, directly or through contracts, health care coverage for approximately 2 million Arizonans. The rules in Article 5 establish definitions, preclude pre-existing condition exclusion, impose provider requirements regarding records, limit marketing and refer to sanctions related to regulated marketing practices, prescribe licensure or accreditation of providers, require coordination of care, limit the release of confidential information, require that certain information be provided to enrolled members, regulate program compliance audits, and facilitate management of quality and utilization of health care services. All rules, except for Section 502, were last amended in 2009. Section 502 was last amended in 2013.

In the previous five-year-review report, the Administration proposed action on Sections 505, 512, and 521. The Administration did not follow through with the proposed course of action and believes that Section 512 and 521 no longer need to be amended. In regards to Section 505, the Administration has proposed new amendments to the rule, which it intends to complete in the next rulemaking.

Proposed Action

The Administration plans to request an exemption from the Governor's Office, to amend Sections 502 and 505, within 180 days following Council approval of the report.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Administration cites to general and specific authority for the rules. Under A.R.S. § 36-2903.01(F), in relevant part, “[i]n addition to the rules otherwise specified in this article [Arizona Health Care Cost Containment System], the [Administration] may adopt necessary rules pursuant to [T]itle 41, [C]hapter 6 to carry out this article.”

2. Summary of the agency's economic impact comparison and identification of stakeholders:

In FY17 nearly 1.6 million Arizonans were eligible for AHCCCS acute services.

The key stakeholders are the Administration, contractors, providers, and members.

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

Yes. The Administration indicates that the underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Administration has not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Administration indicates that the rules are effective in achieving their objectives. The Administration also indicates that Section 505 is inconsistent with federal regulation and should be amended to allow referenced hospitals to be accredited by “a national accreditation organization,” rather than limiting to the Joint Commission on Accreditation of Healthcare Organization (JCAHO). Additionally, the incorporation of federal regulations by reference should be removed from Section 505.

The rules are clear, concise, and understandable, with one exception. Section 502 should be amended to replace “psychiatric condition” with “behavioral health condition” to reflect verbiage used in AHCCCS publications. In addition, “behavioral health condition” allows for a broader coverage of conditions.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Administration indicates that the rules are enforced as written.

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

Yes. Section 505 is arguably more stringent than corresponding federal law, 42 CFR 482, which allows hospitals to meet Medicare certification requirements when accredited by any national accreditation organization. The current rule limits accreditation to JCAHO.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No. The rules do not require a regulatory permit, license, or agency authorization.

9. **Conclusion**

As mentioned above, the Administration plans to initiate the rulemaking process to make the changes identified in this memo within 180 days following Council approval of the report. This report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

December 27, 2017

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

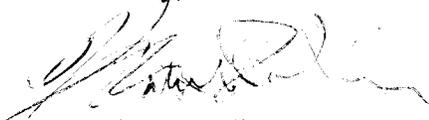
Dear Ms. Ong:

Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 22, Article 5. The report includes all of the documentation required by R1-6-301 (C) and (D).

As required by A.R.S. § 41-1056, the Administration certifies that the agency is in compliance with A.R.S. § 41-1091.

If you need any further information regarding this report, please contact Gina Relkin, Office of Administrative Legal Services at (602) 417-4575.

Sincerely,



Matthew Devlin
Assistant Director

Attachments

	Organization (JCAHO). Therefore, the regulation should be updated to read that the referenced hospitals may be accredited by “a national accreditation organization.” In addition, we recommend removal of the specific dates of the regulations which are incorporated by reference.
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5. **Are the rules enforced as written?** Yes No

6. **Are the rules clear, concise, and understandable?** Yes No

Rule	Explanation
R9-22-502	Recommending a change from ‘psychiatric condition’ to ‘behavioral health condition’ so verbiage is consistent between the ruling and AHCCCS publications. In addition ‘behavioral health condition’ allows for a broader coverage of conditions.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

8. **Economic, small business, and consumer impact comparison:**

The prior EIS stated that the impact would be minimal on the state economy and small businesses and consumers because the changes were designed to understand and use. Similarly, the changes suggested in this report will not have an economic impact because the phrasing aligns with current AHCCCS policy and is a broadening, instead of restricting, change to the text of the rule.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

The prior 5 Year Review Report planned to amend R9-22-505 and 512 to “update incorporated materials,” and stated: “R9-22-521 – Compliance Audits are completed by the Administration at least once every three years during the term of a contract, but the compliance is not necessarily completed ‘onsite’. The Administration recommends removal of this term. The Administration intends to amend rule R9-22-521 and submit rulemaking to Council by April 2016.”

The prior course of action planned for R9-22- 521 was not completed but the Administration no longer believes it is necessary because although not all audits are completed onsite, the flexibility that an audit may be completed onsite can be pertinent in certain circumstances. The prior course of action for R9-22-512 is not necessary since the incorporations by reference are still correct, and the prior course of action for R9-22-505 has been replaced by the course of action suggested in section 6.

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 benefits of these rules outweigh the costs, impose the least burden and cost on those regulated, and any costs are necessary to achieve the regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Federal law 42 CFR Part 482 (which also refers to Part 488) allows for hospitals to meet Medicare certification requirements when accredited by national accreditation organizations. Therefore, we recommend aligning the rule with the federal provision by not limiting the national accreditation organization to JCAHO.

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:**

No permit, license, or authorization applies.

14. **Proposed course of action**

AHCCCS plans to make a change from 'psychiatric condition' to 'behavioral health condition' so verbiage is consistent between the ruling and AHCCCS publications in R9-22-502. AHCCCS also plans to change than the current requirement in regulation to read "accredited through a nationally recognized accreditation organization." In addition, AHCCCS plans to remove the incorporation of federal regulations by reference in R9-22-505. AHCCCS plans to make the above changes by requesting an exemption from the Governor's office for the rulemaking moratorium within 180 days following GRRC's approval of this report.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

ARTICLE 5. GENERAL PROVISIONS AND STANDARDS**R9-22-501. General Provisions and Standards - Related 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:

“Quality management” means a process used by professional health personnel through a formal program involving multiple organizational components and committees to:

Assess the degree to which services provided conform to desired medical standards and practices; and

Quality improvement or maintenance of care and services.

“Quality Improvement” means a process designed to achieve, through ongoing measurements and intervention, significant improvement that is sustained over time, in the areas of clinical care and non-clinical care and is expected to have a favorable effect on health outcomes and member satisfaction. Quality Improvement includes focusing organizational efforts on improving performance and utilizing data to develop intervention strategies to improve performance and outcomes.

“Utilization management/review” means a methodology used by professional health personnel to assess the medical indications, appropriateness, and efficiency of care provided. Utilization management applies to a contractor’s process to evaluate and approve or deny the medical necessity, appropriateness, efficacy and efficiency of health care services, procedures, or settings. Utilization review includes processes for prior authorization, concurrent review, retrospective review, and case management.

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 R9-22-501 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-501 repealed, former Section R9-22-502 renumbered and adopted without change as Section R9-22-501 effective October 1, 1983 (Supp. 83-5). Former Section R9-22-501 repealed, former Section R9-22-526 renumbered and amended as Section R9-22-501 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

R9-22-502. Pre-existing Conditions

- A. A contractor shall not impose a pre-existing condition exclusion with respect to covered services.
- B. A contractor or subcontractor shall not adopt or use any procedure to identify a person who has an existing or anticipated medical or psychiatric condition in order to discourage or exclude the person from enrolling in the contractor’s health plan or encourage the person to enroll in another health plan.

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 R9-22-502 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-502 renumbered without change as Section R9-22-501, former Sec-

tion R9-22-503 renumbered and amended as Section R9-22-502 effective October 1, 1983 (Supp. 83-5). Former Section R9-22-502 repealed, new Section R9-22-502 adopted effective October 1, 1985 (Supp. 85-5).

Amended effective December 8, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4). Amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-503. Provider Requirements Regarding Records

The provider shall maintain records that meet uniform accounting standards and generally accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery, and the service date. A provider shall maintain and upon request, make available to a contractor and to the Administration, financial and medical records relating to payment for not less than five years from the date of final payment, or for records relating to costs and expenses to which the Administration has taken exception, five years after the date of final disposition or resolution of the exception. Providers shall provide one copy of a medical record at no cost if requested by the member.

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 R9-22-503 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-503 renumbered and amended as Section R9-22-502, new Section R9-22-503 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective May 30, 1986 (Supp. 86-3). Amended subsection (D) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (F) and (G) effective December 22, 1987 (Supp. 87-4). Amended subsection (I) effective May 30, 1989 (Supp. 89-2).

Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). New Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

R9-22-504. Marketing; Prohibition Against Inducements; Misrepresentations; Discrimination; Sanctions

- A. A contractor or the contractor’s marketing representative shall not offer or give any form of compensation or reward, or engage in any behavior or activity that may be reasonably construed as coercive, to induce or procure AHCCCS enrollment with the contractor. Any marketing solicitation offering a benefit, good, or service in excess of the covered services in Article 2 is deemed an inducement.
- B. A marketing representative shall not misrepresent itself, the contracting health plan represented, or the AHCCCS program, through false advertising, false statements, or in any other manner to induce a member of another contractor to enroll in the represented health plan. Violations of this subsection include, but are not limited to, false or misleading claims, inferences, or representations such as:
 1. A member will lose benefits under the AHCCCS program or lose any other health or welfare benefits to which a member is legally entitled, if the member does not enroll in the represented contracting health plan;

Arizona Health Care Cost Containment System - Administration

2. Marketing representatives are employees of the state or representatives of the Administration, a county, or any health plan other than the health plan by which they are employed, or by which they are reimbursed; and
 3. The represented health plan is recommended or endorsed as superior to its competition by any state or county agency, or any organization, unless the organization has certified its endorsement in writing to the health plan and the Administration.
- C.** A marketing representative shall not engage in any marketing or pre-enrollment practice that discriminates against a member because of race, creed, age, color, sex, religion, national origin, ancestry, marital status, sexual preference, physical or mental disability, or health status.
- D.** The Administration shall hold a contractor responsible for a violation of this Section resulting from the performance of any marketing representative, subcontractor, agent, program, or process under the contractor's employ or direction and shall impose contract sanctions on the contractor as specified in contract.
- E.** A contractor shall produce and distribute informational materials that are approved by the Administration to each enrolled member or designated representative after the contractor receives notification of enrollment from the Administration. The contractor shall ensure that the informational materials include, at a minimum:
1. A description of all covered services as specified in contract;
 2. An explanation of service limitations and exclusions;
 3. An explanation of the procedure for obtaining services;
 4. An explanation of the procedure for obtaining emergency services;
 5. An explanation of the procedure for filing a grievance and appeal; and
 6. An explanation of when plan changes may occur as specified in contract.

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 R9-22-504 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-504 repealed, former Section R9-22-505 renumbered and adopted without change as Section R9-22-504 effective October 1, 1983 (Supp. 83-5). Former Section R9-22-504 repealed, former Section R9-22-528 renumbered and amended as Section R9-22-504 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

R9-22-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services

A provider shall not provide hospital or medical services to a member unless the provider is licensed by the Arizona Department of Health Services and meets the requirements in 42 CFR 441 and 482, as of October 1, 2007, and 42 CFR 456 Subpart C, as of October 1, 2007, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments. An Indian Health Service (IHS) hospital and a Veterans Administration hospital shall not provide services to a member unless accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

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 R9-22-505 adopted as an emergency expired, former Section R9-22-506 adopted as an emergency now adopted, amended and renumbered as Section R9-22-505 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-505 renumbered without change as Section R9-22-504, new Section R9-22-505 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-505 renumbered and amended as Section R9-22-509, former Section R9-22-527 renumbered and amended as Section R9-22-505 effective October 1, 1985 (Supp. 85-5). Editorial correction, spelling of "paraphernalia" in subsection (A) (Supp. 87-4). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). New Section made by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

R9-22-506. 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 R9-22-506 adopted as an emergency adopted, amended and renumbered as Section R9-22-505, former Section R9-22-507 adopted as an emergency now adopted, amended and renumbered as Section R9-22-506 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-506 repealed, new Section R9-22-506 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-506 repealed, new Section R9-22-506 adopted effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (D) effective December 22, 1987 (Supp. 87-4). Repealed effective April 13, 1990 (Supp. 90-2). New Section adopted effective December 13, 1993 (Supp. 93-4). Repealed effective December 8, 1997 (Supp. 97-4).

R9-22-507. 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 R9-22-507 adopted as an emergency adopted, amended and renumbered as Section R9-22-506, former Section R9-22-508 adopted as an emergency now adopted, amended and renumbered as Section R9-22-507 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-507 repealed, new Section R9-22-507 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

R9-22-508. 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 R9-22-508 adopted as an emergency adopted, amended and renumbered as Section R9-22-507, former Section R9-22-509 adopted as an emergency now adopted, amended and renumbered as Section R9-22-508 as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective December 8, 1997 (Supp. 97-4).

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Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

R9-22-509. Transition and Coordination of Member Care

- A.** A contractor shall assist in the transition of members to and from other AHCCCS contractors.
1. Both the receiving and relinquishing contractor shall:
 - a. Coordinate with the other contractor to facilitate and schedule appointments for medically necessary services for the transitioned member within the Administration's timelines specified in the contract. If requested by the Administration, a contractor shall submit the policies and procedures regarding transition of members to the Administration for review and approval;
 - b. Assist in the referral of transitioned members to other community health agencies or county medical assistance programs for medically necessary services not covered by the Administration, as appropriate; and
 - c. Develop policies and procedures to be followed when transitioning members who have significant medical conditions; are receiving ongoing services; or have, at the time of the transition, received prior authorization or approval for undelivered, specific services.
 2. The relinquishing contractor shall notify the receiving contractor of relevant information about the member's medical condition and current treatment regimens within the timelines defined in contract;
 3. The relinquishing contractor shall forward medical records and other relevant materials to the receiving contractor. The relinquishing contractor shall bear the cost of reproducing and forwarding medical records and other relevant materials;
 4. Within the timelines specified in contract, the receiving contractor shall ensure that the member selects or is assigned to a primary care provider, and provide the member with:
 - a. Information regarding the contractor's providers,
 - b. Emergency numbers, and
 - c. Instructions about how to obtain services.
- B.** A contractor shall not use a county or noncontracting provider health resource alternative to diminish the contractor's contractual responsibility or accountability for providing the full scope of covered services. The Administration may impose sanctions as described in contract if a contractor makes referrals to other agencies or programs to reduce expenses incurred by the contractor on behalf of its members.

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 R9-22-509 adopted as an emergency adopted, amended and renumbered as Section R9-22-508, former Section R9-22-510 adopted as an emergency now adopted and renumbered as Section R9-22-509 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-509 repealed, former Section R9-22-505 renumbered and amended as Section R9-22-509 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

R9-22-510. 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 R9-22-510 adopted as an emergency adopted and renumbered as Section R9-22-509, former Section R9-22-511 adopted as an emergency now adopted, amended and renumbered as Section R9-22-510 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-510 repealed, new Section R9-22-510 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

R9-22-511. 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 R9-22-511 adopted as an emergency adopted, amended and renumbered as Section R9-22-510, former Section R9-22-512 adopted as an emergency now adopted, amended and renumbered as Section R9-22-511 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-511 repealed, new Section R9-22-511 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

R9-22-512. Release of Safeguarded Information

- A.** The Administration, contractors, providers, and noncontracting providers shall limit the release of safeguarded information to persons or agencies for the following purposes in accordance with 45 CFR 160 and 45 CFR 164, October 1, 2004, and 42 CFR 431.300 through 431.307, October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments:
1. Official purposes directly related to the administration of the AHCCCS program including:
 - a. Establishing eligibility and post-eligibility treatment of income, as applicable;
 - b. Determining the amount of medical assistance;
 - c. Providing services for members;
 - d. Performing evaluations and analysis of AHCCCS operations;
 - e. Filing liens on property as applicable;
 - f. Filing claims on estates, as applicable; and
 - g. Filing, negotiating, and settling medical liens and claims.
 2. Law enforcement. The Administration may release safeguarded information without the applicant's or member's written or verbal consent, for the purpose of conducting or assisting an investigation, prosecution, or criminal or civil proceeding related to the administration of the AHCCCS program.
 3. The Administration may release safeguarded member information to a review committee in accordance with the provisions of A.R.S. § 36-2917, without the consent of the applicant or member.
- B.** Except as provided in subsection (A), the Administration, contractors, providers, and noncontracting providers shall disclose safeguarded information only to:
1. An applicant;
 2. A member;

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3. An unemancipated minor, with written permission of a parent, custodial relative, or designated representative, if:
 - a. An Administration employee, authorized representative, or responsible caseworker is present during the examination of the safeguarded information; or
 - b. After written notification to the provider, and at a reasonable time and place.
 4. Persons authorized by the applicant or member; or
 5. A court order or subpoena compliant with 45 CFR 164.512(e), October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.
- C.** The Administration, contractors, providers, and noncontracting providers shall safeguard identifiable information, protected health information as specified in 45 CFR 160, and information obtained in the course of application for or re-determination of eligibility concerning an applicant or member, that includes, but is not limited to the following:
1. Name and address;
 2. Social Security number;
 3. Social and economic conditions or circumstances;
 4. Agency evaluation of personal information;
 5. Medical data and information concerning medical services received, including diagnosis and history of disease or disability;
 6. State Data Exchange (SDX) tapes, and other types of information received from outside sources for the purpose of verifying income eligibility and amount of medical assistance payments; and
 7. Any information received in connection with the identification of legally liable third-party resources.
- D.** The restriction upon disclosure of information in this Section does not apply to:
1. De-identified information as described by 45 CFR 164.514, October 1, 2004, incorporated by reference in subsection (A); or
 2. A disclosure, in response to a request for information, that complies with 45 CFR 160 and 45 CFR 164, October 1, 2004, and 42 CFR 431.300 through 431.307, October 1, 2004, incorporated by reference in subsection (A).
- E.** A provider shall furnish records requested by the Administration or a contractor to the Administration or the contractor at no charge.

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 R9-22-512 adopted as an emergency adopted, amended and renumbered as Section R9-22-511, former Section R9-22-513 adopted as an emergency now adopted and renumbered as Section R9-22-512 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-512 repealed, new Section R9-22-512 adopted effective October 1, 1985 (Supp. 85-5).
 Amended effective December 13, 1993 (Supp. 93-4).
 Amended effective December 8, 1997 (Supp. 97-4).
 Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

R9-22-513. 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 R9-22-513 adopted as an emergency adopted and renumbered as Section R9-22-512, former Section R9-22-514 adopted as an emergency now adopted, amended and renumbered as Section R9-22-513 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-513 repealed, former Section R9-22-526 renumbered and amended as Section R9-22-513 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

R9-22-514. 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 R9-22-514 adopted as an emergency adopted, amended and renumbered as Section R9-22-513, former Section R9-22-515 adopted as an emergency now adopted, amended and renumbered as Section R9-22-514 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-514 repealed, former Section R9-22-517 renumbered and amended as Section R9-22-514 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

R9-22-515. 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 R9-22-515 adopted as an emergency adopted, amended and renumbered as Section R9-22-514, former Section R9-22-517 adopted as an emergency now adopted, amended and renumbered as Section R9-22-515 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-515 repealed, former Section R9-22-522 renumbered and amended as Section R9-22-515 effective October 1, 1985 (Supp. 85-5). Repealed effective December 8, 1997 (Supp. 97-4).

R9-22-516. Renumbered**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 R9-22-516 adopted as an emergency expired, former Section R9-22-518 adopted as an emergency now adopted, amended and renumbered as Section R9-22-516 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-516 renumbered as Section R9-22-513 effective October 1, 1985 (Supp. 85-5).

R9-22-517. Renumbered**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 R9-22-517 adopted as an emergency adopted, amended and renumbered as Section R9-22-515, former Section R9-22-519 adopted as an emergency now adopted and renumbered and amended as Section R9-22-

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517 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-517 renumbered and amended as Section R9-22-514 effective October 1, 1985 (Supp. 85-5).

R9-22-518. Information to Enrolled Members

- A.** Each contractor shall produce and distribute printed informational materials to each member or family unit no later than 10 days of receipt of notification of enrollment from the Administration. The contractor shall ensure that the informational materials meet the requirements specified in the contractor's current contract.
- B.** A contractor shall provide a member with the name, address, and telephone number of the member's primary care provider no later than 10 days from the date of enrollment. The contractor shall include information on how the member may change primary care providers.

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 R9-22-518 adopted as an emergency adopted, amended and renumbered as Section R9-22-516, former Section R9-22-520 adopted as an emergency now adopted, amended and renumbered as Section R9-22-518 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-518 repealed, new Section R9-22-518 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

R9-22-519. 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 R9-22-519 adopted as an emergency adopted, amended and renumbered as Section R9-22-517, former Section R9-22-521 adopted as an emergency now adopted, amended and renumbered as Section R9-22-519 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-519 repealed, new Section R9-22-519 adopted effective October 1, 1985 (Supp. 85-5). Repealed effective December 8, 1997 (Supp. 97-4).

R9-22-520. Expired**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 R9-22-520 adopted as an emergency adopted, amended and renumbered as Section R9-22-518, former Section R9-22-522 adopted as an emergency now adopted, amended and renumbered as Section R9-22-520 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-520 repealed, new Section R9-22-520 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4851, effective October 9, 2002 (Supp. 02-4).

R9-22-521. Program Compliance Audits

- A.** The Administration shall conduct an onsite program compliance audit of a contractor at least once every three years during the term of the Administration's contract with the contractor.

The Administration may conduct, without prior notice, inspections of contractor facilities or perform other elements of a program compliance audit.

- B.** An audit team may perform any or all of the following procedures:

1. Conduct private interviews and group conferences with members, physicians, other health professionals, and members of the contractor's administrative staff including, but not limited to, the contractor's principal management persons;
2. Examine records, books, reports, and papers of the contractor and any management company, and all providers or subcontractors providing health care and other services. The examination may include, but need not be limited to: minutes of medical staff meetings, peer review and quality of care review records, duty rosters of medical personnel, appointment records, written procedures for the internal operation of the health plan, contracts and correspondence with members and with providers of health care services and other services to the plan, and additional documentation deemed necessary by the Administration to review the quality of medical care.

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 R9-22-521 adopted as an emergency adopted, amended and renumbered as Section R9-22-519, former Section R9-22-523 adopted as an emergency now adopted, amended and renumbered as Section R9-22-521 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-521 repealed, new Section R9-22-521 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General has not certified this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-522. Quality Management/Utilization Management (QM/UM) Requirements

- A.** A contractor shall comply with Quality Management/Utilization Management (QM/UM) requirements specified in this Section and in contract. The contractor shall ensure compliance with QM/UM requirements that are accomplished through delegation or subcontract with another party.
- B.** In addition to any requirements specified in contract, a contractor shall:
1. Submit to the Administration a written QM/UM plan that includes a description of the systems, methodologies, protocols, and procedures to be used in:
 - a. Monitoring and evaluating the types of services provided,
 - b. Identifying the numbers and costs of services provided,
 - c. Assessing and improving the quality and appropriateness of care and services,

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- d. Evaluating the outcome of care provided to members, and
- e. Determining the actions necessary to improve service delivery;
2. Submit the QM/UM plan to the Administration on an annual basis within timelines specified in contract. If the QM/UM plan is changed during the year, the contractor shall submit the revised plan to the Administration before implementation;
3. Receive approval from the Administration before implementing the initial or revised QM/UM plan;
4. Ensure that a QM/UM committee operates under the control of the contractor's medical director and includes representation from medical and executive management personnel. The committee shall:
 - a. Oversee the development, revision, and implementation of the QM/UM plan; and
 - b. Ensure that there are qualified QM/UM personnel and sufficient resources to implement the contractor's QM/UM activities; and
5. Ensure that the QM/UM activities include at least:
 - a. Prior authorization for non-emergency or scheduled hospital admissions;
 - b. Concurrent review of inpatient hospitalization;
 - c. Retrospective review of hospital claims;
 - d. Program and provider audits designed to detect over- or under-utilization, service delivery effectiveness, and outcome;
 - e. Medical records audits;
 - f. Surveys to determine satisfaction of members;
 - g. Assessment of the adequacy and qualifications of the contractor's provider network;
 - h. Review and analysis of QM/UM data;
 - i. Measurement of performance using objective quality indicators;
 - j. Ensuring individual and systemic quality of care;
 - k. Integrating quality throughout the organization;
 - l. Process improvement;
 - m. Credentialing a provider network;
 - n. Resolving quality of care grievances; and
 - o. Quality improvement activities focused on improving the quality of care and the efficient, cost-effective delivery and utilization of services.
- C. A member's primary care provider shall maintain medical records that:
 1. Conform to professional medical standards and practices for documentation of medical diagnostic and treatment data;
 2. Facilitate follow-up treatment; and
 3. Permit professional medical review and medical audit processes.
- D. Within 30 days following termination of the contract between a subcontractor and a contractor, the subcontractor or the subcontractor's designee shall forward to the primary care provider medical records or copies of medical records of all members assigned to the subcontractor or for whom the subcontractor has provided services.
- E. The Administration shall monitor each contractor and the contractor's providers to ensure compliance with Administration QM/UM requirements and adherence to the contractor's QM/UM plan.
 1. A contractor and the contractor's providers shall cooperate with the Administration in the performance of the Administration's QM/UM monitoring activities; and
2. A contractor and the contractor's providers shall develop and implement mechanisms for correcting deficiencies identified through the Administration's QM/UM monitoring.

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 R9-22-522 adopted as an emergency adopted, amended and renumbered as Section R9-22-520, former Section R9-22-524 adopted as an emergency now adopted and renumbered as Section R9-22-522 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-522 renumbered and amended as Section R9-22-515, new Section R9-22-522 adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

R9-22-523. Expired**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 R9-22-523 adopted as an emergency adopted, amended and renumbered as Section R9-22-521, former Section R9-22-525 adopted as an emergency now adopted, amended and renumbered as Section R9-22-523 as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4851, effective October 9, 2002 (Supp. 02-4).

R9-22-524. 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 R9-22-524 adopted as an emergency adopted and renumbered as Section R9-22-522, former Section R9-22-526 adopted as an emergency now adopted, amended and renumbered as Section R9-22-524 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-524 repealed, new Section R9-22-524 adopted effective October 1, 1985 (Supp. 85-4). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

R9-22-525. 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 R9-22-525 adopted as an emergency adopted, amended and renumbered as Section R9-22-523, former Section R9-22-527 adopted as an emergency now adopted, amended and renumbered as Section R9-22-525 as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1985 (Supp. 85-5).

R9-22-526. Renumbered

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Historical Note

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of the permanent rule identical to the emergency (Supp. 83-3). Former Section R9-22-526 repealed, new Section R9-22-526 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-526 renumbered and amended as Section R9-22-501 effective October 1, 1985 (Supp. 85-1).

R9-22-527. Renumbered**Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-527 renumbered and amended as Section R9-22-505 effective October 1, 1985 (Supp. 85-5).

R9-22-528. Renumbered**Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-528 renumbered and amended as Section R9-22-504 effective October 1, 1985 (Supp. 85-5).

R9-22-529. Renumbered**Historical Note**

Adopted as Section R9-22-529 effective October 1, 1985, then renumbered as Section R9-22-1002 effective October 1, 1985 (Supp. 85-5).

ARTICLE 6. RFP AND CONTRACT PROCESS**R9-22-601. General Provisions**

- A. The Director has full operational authority to adopt rules for the RFP process and the award of contracts under A.R.S. § 36-2906.
- B. This Article applies to the award of contracts under A.R.S. §§ 36-2904 and 36-2906 to provide services under A.R.S. § 36-2907 and the expenditure of public monies by the Administration pertaining to covered services when the procurement so states. The Administration shall establish conflict-of-interest safeguards for officers and employees of this state with responsibilities relating to contracts that comply with 42 U.S.C. 1396u-2(d)(3).
- C. The Administration is exempt from the procurement code under A.R.S. § 41-2501.
- D. The Administration and contractors shall retain all contract records for five years under A.R.S. § 36-2903 and dispose of the records under A.R.S. § 41-2550.
- E. The following terms are defined as related to this Article: "Procurement file" means the official records file of the Director whether located in the Office of the Director or at the public procurement unit. The procurement file shall include in electronic or paper form a list of notified vendors, final solicitation, solicitation amendments, bids/offers, final proposal revisions, clarifications, and final evaluation report.

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 R9-22-601 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424,

effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

R9-22-602. RFP

- A. RFP content. The Administration shall include the following items in any RFP under this Article:
 1. Instructions and information to an offeror concerning the proposal submission including:
 - a. The deadline for submitting a proposal,
 - b. The address of the office at which a proposal is to be received,
 - c. The period during which the RFP remains open, and
 - d. Any special instructions and information;
 2. The scope of covered services under Article 2 of this Chapter and A.R.S. §§ 36-2906 and 36-2907, covered populations, geographic coverage, service and performance requirements, and a delivery or performance schedule;
 3. The contract terms and conditions, including bonding or other security requirements, if applicable;
 4. The factors used to evaluate a proposal;
 5. The location and method of obtaining documents that are incorporated by reference in the RFP;
 6. A requirement that the offeror acknowledge receipt of all RFP amendments issued by the Administration;
 7. The type of contract to be used and a copy of a proposed contract form or provisions;
 8. The length of the contract service;
 9. A requirement for cost or pricing data;
 10. The minimum RFP requirements; and
 11. A provision requiring an offeror to certify that a submitted proposal does not involve collusion or other anti-competitive practices.
- B. Proposal process.
 1. After the deadline for submitting proposals, the Administration may open a proposal publicly and announce and record the name of the offeror. The Administration shall keep all other information contained in a proposal confidential. The Administration shall open a proposal for public inspection after contract award unless the Administration determines that disclosure is not in the best interest of the state.
 2. The Administration shall evaluate a proposal based on the GSA and the evaluation factors listed in the RFP.
 3. The Administration may initiate discussions with a responsive and responsible offeror to clarify and assure full understanding of an offeror's proposal. The Administration shall provide an offeror fair treatment with respect to discussion and revision of a proposal. The Administration shall not disclose information derived from a proposal submitted by a competing offeror.
 4. The Administration shall allow for the adjustment of covered services by expansion, deletion, segregation, or combination in order to secure the most financially advantageous proposals for the state.
 5. The Administration may conduct an investigation of a person or organization who has ownership or management interests in corporate offerors or affiliated corporate organizations of an offeror.
 6. The Administration may issue a written request for best and final offers. The Administration shall state in the request the date, time, and place for the submission of best and final offers.
 7. The Administration shall not request best and final offers more than once unless the Administration determines that it is advantageous to the state to request additional best

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.

36-2907. Covered health and medical services; modifications; related delivery of service requirements; definition

A. Subject to the limitations and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital for the care and treatment of inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.
2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner, including occupational therapy.
3. Other laboratory and X-ray services ordered by a physician or a primary care practitioner.
4. Medications that are ordered on prescription by a physician or a dentist licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.
5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.
6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.
7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.
8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.
9. Podiatry services that are performed by a podiatrist who is licensed pursuant to title 32, chapter 7 and ordered by a primary care physician or primary care practitioner.
10. Nonexperimental transplants approved for title XIX reimbursement.
11. For persons who are at least twenty-one years of age, emergency dental care and extractions in an annual amount of not more than one thousand dollars per member.
12. Ambulance and nonambulance transportation, except as provided in subsection G of this section.
13. Hospice care.
14. Orthotics, if all of the following apply:

(a) The use of the orthotic is medically necessary as the preferred treatment option consistent with medicare guidelines.

(b) The orthotic is less expensive than all other treatment options or surgical procedures to treat the same diagnosed condition.

(c) The orthotic is ordered by a physician or primary care practitioner.

B. The limitations and exclusions for health and medical services provided under this section are as follows:

1. Circumcision of newborn males is not a covered health and medical service.

2. For eligible persons who are at least twenty-one years of age:

(a) Outpatient health services do not include speech therapy.

(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to twelve thousand five hundred dollars per contract year.

(c) Percussive vests are not covered health and medical services.

(d) Durable medical equipment is limited to items covered by medicare.

(e) Nonexperimental transplants do not include pancreas-only transplants.

(f) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.

C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.

D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum limitations for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.

E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules for the provision of transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for

medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. Additional, reduced or modified hospitalization and medical care benefits may be provided under the system to enrolled members who are eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c), (d) or (e).

K. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:

1. Emergency services and specialty services provided pursuant to section 36-2908.

2. That the director may permit the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.

L. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.

M. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for the transfer of patients, the transfer of medical records and the initiation of medical care.

N. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-18-0304)

Title 9, Chapter 28, Article 5, Program Contractor and Provider Standards



**GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT**

MEETING DATE: March 6, 2018

AGENDA ITEM: G-4

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

FROM: Council Staff

DATE : February 20, 2018

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-18-0304)
Title 9, Chapter 28, Article 5, Program Contractor and Provider Standards

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Health Care Cost Containment System (AHCCCS) is "to promote a comprehensive health care system to eligible citizens of this state." Laws 2013, 1st S.S., Ch. 10, § 53. This system is managed by the Director of the AHCCCS Administration (Administration), which is established under A.R.S. § 36-2902(A). The Director has the powers and duties prescribed in A.R.S. §§ 36-2903 and 2903.01.

This five-year-review report covers 14 rules in A.A.C. Title 9, Chapter 28, Article 5. As of July 2017, AHCCCS provides, directly or through contracts, health care coverage for approximately 2 million Arizonans. The rules in Article 5 establish definitions, preclude pre-existing condition exclusion, impose provider requirements regarding authorization for services and records, prescribe licensure or certification for long-term care institutional facilities and other providers, establish case management and quality management requirements, and provide requirements for the release of safeguarded information. The rules were either amended or newly made at various times between 2005 and 2013.

In the previous five-year-review report, the Administration proposed action on Sections 501, 502, 503, 504, 505, and 511. The Administration did not complete the proposed course of action and believes that the actions are no longer necessary, except for Section 504. In this report, the Administration proposes new amendments to Sections 503, 504, 505, and 506.

Proposed Action

The Administration plans to request an exemption from the Governor's Office within 180 days following Council approval of the report.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Administration cites to A.R.S. § 36-2932(M) as general authority for the rules. Under A.R.S. § 36-2932(M), the director has the authority to "adopt necessary rules pursuant to [T]itle 41, [C]hapter 6 to carry out this article [Arizona Long Term Care System]."

The Administration cites to A.R.S. §§ 36-2903, 36-2939, 36-2938 as specific authority for the rules. Of particular significance is § 36-2903(K), which requires the director to adopt rules "that set forth procedures and standards for used by the system in requesting county long-term care for members or persons determined eligible."

2. Summary of the agency's economic impact comparison and identification of stakeholders:

In FY17, approximately 60,000 Arizonans were enrolled with program vendors in the Arizona Long-Term Care System.

The key stakeholders are the Administration, program contractors, providers, and members.

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

Yes. The Administration indicates that the underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Administration has not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Administration indicates that the rules are effective in achieving their objectives. The Administration also indicates that Section 505 is inconsistent with federal regulation and should be amended to allow referenced hospitals to be accredited by "a national accreditation organization," rather than limiting to the Joint Commission on Accreditation of Healthcare Organization (JCAHO). Additionally, the incorporation of federal regulations by reference should be removed from Section 505.

The rules are clear, concise, and understandable, with the following exceptions:

- Section 503: References to Intermediate Care Facilities for Individuals with Mental Retardation (ICF-MR) should be changed to Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF-IID) through the rule to comply with AHCCCS policy.
- Section 504: Subsections B(4) and (5) should be amended to eliminate the phrase “between the person and the Administration,” as a contract is not always between the provider and the Administration. In addition, cross-references to other rules should be updated. The term “speech therapist” should be changed to “speech pathologist” due to federal regulation amendments.
- Section 506: Subsection B(6)(c) should be updated to remove “registered with AHCCCS as an independent provider,” as independent providers can no longer register with AHCCCS in this context.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Administration indicates that the rules are enforced as written.

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

Yes. Section 505 is arguably more stringent than corresponding federal law, 42 CFR 482, which allows hospitals to meet Medicare certification requirements when accredited by any national accreditation organization. The current rule limits accreditation to JCAHO. The Administration plans to align the rule with the federal regulation by not limiting the national accreditation organization to JCAHO.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

No. The rules do not require a regulatory permit, license, or agency authorization.

9. Conclusion

As mentioned above, the Administration plans to initiate the rulemaking process to make the changes identified in this memo within 180 days following Council approval of the report. This report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

December 27, 2017

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

Dear Ms. Ong:

Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 28, Article 5. The report includes all of the documentation required by R1-6-301 (C) and (D).

As required by A.R.S. § 41-1056, the Administration certifies that the agency is in compliance with A.R.S. § 41-1091.

If you need any further information regarding this report, please contact Gina Relkin, Office of Administrative Legal Services at (602) 417-4575.

Sincerely,



Matthew Devlin
Assistant Director

Attachments

**Governor's Regulatory Review Council
Five-Year-Review Report R9-28-Article 5**

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2932(M).

Specific Statutory Authority: A.R.S. § 36-2903, 36-2939, 36-2938.

2. The objective of each rule:

Rule	Objective
R9-28-501	Provides definitions related to the general provisions within Article 5 that a program contractor must follow.
R9-28-501.01	Provides requirements for services to treat pre-existing conditions.
R9-28-502	Provides the requirement for a provider or program contractor to maintain records for 5 years and make them available to the Administration.
R9-28-503	Provides licensure and certification requirements for LTC institutional facilities.
R9-28-504	Provides licensure and certification requirements for HCBS Providers.
R9-28-505	Provides licensure and certification requirements for providers of hospital and medical services.
R9-28-506	Provides requirements for a spouse to be paid caregivers for personal care services.
R9-28-507	Provides general requirements for Program Contractors.
R9-28-508	Provides general requirements for Self-Directed Attendant Care (SDAC).
R9-28-509	Provides general requirements for the Agency with Choice program.
R9-28-510	Provides case management requirements.
R9-28-511	Provides quality management requirements.
R9-28-513	Provides cross-referenced requirements regarding when the Administration will conduct program compliance audits.
R9-28-514	Provides cross-referenced requirements for the release of safeguarded information.

3. Are the rules effective in achieving their objectives?

Yes X No

4. Are the rules consistent with other rules and statutes?

Yes No X

R9-28-505	Federal regulation requires hospitals that participate in Medicaid to meet Medicare conditions of participation which are set forth in 42 CFR Parts 441 and 482. Medicare standards also permit deemed status through accreditation by national accreditation organizations which are not limited to the Joint Commission on Accreditation of Healthcare Organization (JCAHO). Therefore, the regulation should be updated to read that the referenced hospitals may be
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	accredited by “a national accreditation organization.” In addition, we recommend removal of the specific dates of the regulations which are incorporated by reference.
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5. **Are the rules enforced as written?** Yes X No ___

6. **Are the rules clear, concise, and understandable?** Yes ___ No X

Rule	Explanation
R9-28-503	Recommending a change from ICF-MR to ICFIID to comply with AHCCCS policy and federal regulations.
R9-28-504	Recommending a changes to align with better specificity since these contracts are not always between the provider and AHCCCS: “4. A person providing a homemaker service shall meet the requirements specified in contract; 5. A person providing a personal care service shall meet the requirements specified in contract;” Cross-reference to R9-33-107 needs to be updated to R9-33-102 and strike reference to R6-6-714 as it has expired. Cross-reference under R9-28-504(B)(10) must be changed to 9 A.A.C. 8, Article 1. Cross-reference under R9-28-504(B)(12) must be changed to 9 A.A.C. 25 for licensure requirement for emergency medical services. Where the term “speech therapist” exists it needs to be changed to “speech pathologist” per 42 CFR 440.100(c)(2) and “speech therapy” as “speech-language pathology” per A.R.S. §36-1901(23) and 9A.A.C. 16, Article 2.
R9-28-506	Remove part of B(6)(c) which reads, “or registered with AHCCCS as an independent provider;” because independent providers cannot register with AHCCCS in this context anymore.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

8. **Economic, small business, and consumer impact comparison:**

The prior EIS stated that the impact would be minimal on the state economy and small businesses and consumers because the changes were designed to understand and use. Similarly, the changes suggested in this report will not have an economic impact because the phrasing aligns with current AHCCCS policy and are a broadening, instead of restricting, change to the text of the rule.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?

The prior 5 Year Review Report stated:

“R9-28-501 – CMS federal regulations state that an individual rep cannot be a paid caregiver as well. This needs to be applied to all of the ALTCS program, currently CMS agreed that we would only apply this regulation to the Agency with Choice attendant care option. AHCCCS will work with the DDD to transition into separating paid caregivers from individual representatives.

R9-28-502 – After review of this rule the Administration recommends that a cross-reference be added to the parallel rules in Chapter 22. Also, a pre-existing condition provision should be listed in Chapter 28 and cross-referenced to Chapter 22, since they are the same.

R9-28-503 – Where ICF/MR exists it should be ICF only. Reference to mentally retarded is no longer used and inappropriate.

The Administration intends to amend the above rules and submit the rulemaking to Council by April 2016.”

The Administration also intended to make changes to R9-28-504, 505, and 511. The Administration had not completed this course of action however it no longer believes these changes are necessary, except for the changes to R9-28-504 which are necessary to update cross references between AHCCCS regulation and federal regulations. The changes that have carried over to this 5 Year Review Report for R9-28-504 are reflected in section 6. Regarding the course of action for R9-28-501, these changes have been made programmatically and no recommended textual changes were included in the action. Regarding R9-28-502, AHCCCS does not believe that cross-references are necessary because the articles are not entirely the same and function well as-is. Regarding R9-28-503, this text still should be removed, however AHCCCS recommends replacing it with ICFIID instead. Regarding R9-28-505 and 511, these changes are not necessary because the regulations function well as-is.

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 benefits of these rules outweigh the costs, impose the least burden and cost on those regulated, and any costs are necessary to achieve the regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

Federal law 42 CFR Part 482 (which also refers to Part 488) allows for hospitals to meet Medicare certification requirements when accredited by national accreditation organizations. Therefore, we recommend aligning the rule with the federal provision by not limiting the national accreditation organization to JCAHO.

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:**

No permit, license, or authorization applies.

14. **Proposed course of action**

AHCCCS plans to make the above changes by requesting an exemption from the Governor's office for the rulemaking moratorium within 180 days following GRRC's approval of this report.

Arizona Health Care Cost Containment System – Arizona Long-term Care System

1. Lives on-reservation of a tribe participating as an ALTCS tribal program contractor, or
 2. Lived on-reservation of a tribe participating as an ALTCS tribal program contractor immediately prior to placement in an off-reservation NF or alternative HCBS setting.
- B.** Off-reservation. The Administration shall enroll an American Indian ALTCS member who is elderly or physically disabled with an EPD program contractor under R9-28-413, if the member lives off-reservation, and does not have on-reservation status as specified in subsection (A)(2).

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended 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).

R9-28-416. Enrollment with the Fee-for-Service (FFS) Program

- A.** No tribal or EPD program contractor in GSA. The Administration shall enroll an ALTCS elderly or physically disabled member who resides in an area with no ALTCS tribal program contractor or EPD program contractor in the AHCCCS FFS program under A.R.S. § 36-2945.
- B.** Prior period coverage. The Administration shall enroll a member in AHCCCS fee-for-service program if a member is eligible for ALTCS services only during prior period coverage.
- C.** The Administration shall enroll a member in the AHCCCS fee-for-service program if the member is eligible for ALTCS services during the prior quarter period.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). 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).

R9-28-417. Notification Requirements

- A.** Administration responsibilities. The Administration shall notify a member's program contractor when a member is enrolled or disenrolled from the ALTCS program. The Administration shall include the following in the notification:
1. The member's name,
 2. The member's identification number,
 3. The member's effective date of enrollment or disenrollment, and
 4. The member's share-of-cost on a monthly enrollment roster.
- B.** Program contractor's responsibilities. The program contractor shall notify the Administration if an ALTCS member has any change that may affect eligibility including but not limited to:
1. A change in residential address,
 2. A change in medical or functional condition,
 3. A change in living arrangement including:
 - a. Alternative HCBS setting,
 - b. Home,
 - c. Nursing facility, or
 - d. Other living arrangement not specified in this subsection,
 4. Change in resource or income, or
 5. Death.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28 418. Disenrollment

The Administration shall disenroll an ALTCS member on the last day of the month following receipt of appropriate notification under R9-28-411 except:

1. The Administration shall disenroll an ALTCS member who dies. A member's last day of enrollment shall be the date of death.
2. The Administration shall disenroll a member immediately when the member voluntarily withdraws from the ALTCS program.
3. If ALTCS benefits have been continued pending an eligibility appeal decision and the discontinuance is upheld as specified in 9 A.A.C. 34, the Administration shall disenroll a member effective on the date of the hearing decision.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended 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).

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS**R9-28-501. Program Contractor and Provider Standards – Related Definitions**

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

“Certification” means a voluntary process by which a federal or state regulatory entity grants recognition to a person, facility, or organization that has met certain qualifications specified by the regulatory entity, allowing the person, facility, or organization to use the word “certified” in a title or designation.

“Therapeutic leave” means that a member leaves an institutional facility for a period that does not exceed nine days per contract year.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).
New Section made by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

Amended by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

R9-28-501.01. Pre-Existing Conditions

A program contractor shall comply with the pre-existing condition requirements in A.A.C. R9-22-502.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

R9-28-502. Long-term Care Provider Requirements

- A.** A provider shall obtain any necessary authorization from the program contractor or the Administration for services provided to a member.
- B.** A provider shall maintain and make available to a program contractor and to the Administration, financial, and medical records for not less than five years from the date of final payment, or for records relating to costs and expenses to which the Administration has taken exception, five years after the date of final disposition or resolution of the exception. The provider

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shall maintain records that meet uniform accounting standards and generally accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery, and the service date.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (E) effective June 6, 1989 (Supp. 89-2). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-503. Licensure and Certification for Long-term Care Institutional Facilities

- A. A nursing facility shall not provide services to a member unless the facility is licensed by Arizona Department of Health Services, Medicare- and Medicaid-certified, and meets the requirements in 42 CFR 442, as of October 1, 2004, and 42 CFR 483, as of October 1, 2004, incorporated by reference, on file with the Administration, and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.
- B. An ICF-MR shall not provide services to a member unless the ICF-MR is Medicaid-certified and meets the requirements in A.R.S. § 36-2939(B)(1) and 42 CFR 442, Subpart C, as of October 1, 2004, and 42 CFR 483, as of October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.
- C. A nursing facility or ICF-MR that provides services to a member shall register as a provider with the Administration to receive reimbursement. The Administration shall not register a provider unless the provider meets the licensure and certification requirements of subsection (A) or (B).

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

R9-28-504. Standards of Participation, Licensure, and Certification for HCBS Providers

- A. A noninstitutional long-term care provider shall not register with the Administration unless the provider meets the requirements of the Arizona Department of Health Services' rules for licensure, if applicable.
- B. Additional qualifications to provide services to a member:
 1. A community residential setting and a group home for a person with developmental disabilities shall be licensed by the appropriate regulatory agency of the state as described in A.A.C. R9-33-107 and A.A.C. R6-6-714;
 2. An adult foster care home shall be certified or licensed under 9 A.A.C. 10;
 3. A home health agency shall be Medicare-certified and licensed under 9 A.A.C. 10;
 4. A person providing a homemaker service shall meet the requirements specified in the contract between the person and the Administration;
 5. A person providing a personal care service shall meet the requirements specified in the contract between the person and the Administration;

6. An adult day health care provider shall be licensed under 9 A.A.C. 10;
7. A therapy provider shall meet the following requirements:
 - a. A physical therapy provider shall meet the requirements in 4 A.A.C. 24;
 - b. A speech therapist provider shall meet the applicable requirements under 9 A.A.C. 16, Article 2.
 - c. An occupational therapy provider shall meet the requirements in 4 A.A.C. 43; and
 - d. A respiratory therapy provider shall meet the requirements in 4 A.A.C. 45;
8. A respite provider shall meet the requirements specified in contract;
9. A hospice provider shall be Medicare-certified and licensed under 9 A.A.C. 10;
10. A provider of home-delivered meal service shall comply with the requirements in 9 A.A.C. 8;
11. A provider of non-emergency transportation shall be licensed by the Arizona Department of Transportation, Motor Vehicle Division;
12. A provider of emergency transportation shall meet the licensure requirements in 9 A.A.C. 13;
13. A day care provider for the developmentally disabled under A.R.S. § 36-2939 shall meet the licensure requirements in 6 A.A.C. 6;
14. A habilitation provider shall meet the requirements in A.A.C. R6-6-1523 or the therapy requirements in this Section;
15. A service provider, other than a provider specified in subsections (B)(1) through (B)(14), approved by the Director shall meet the requirements specified in a program contractor's contract with the Administration;
16. A behavioral health provider shall have all applicable state licenses or certifications and meet the service specifications in A.A.C. R9-22-1205; and
17. An assisted living home or a residential unit shall meet the requirements as defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939.

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). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services

A provider shall not provide hospital services to a member unless the hospital is licensed by the Arizona Department of Health Services, and meets the requirements in 42 CFR 441 and 482, as of October 1, 2004, and 42 CFR 456, Subpart C, as of October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments. An Indian Health Service (IHS) hospital and a Veterans Administration hospital shall not provide services to a member unless accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997

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(Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

R9-28-506. Requirements for Spouse as Paid Caregiver

- A.** For purposes of this Section, the following definitions apply:
1. "Extraordinary care" means care that exceeds the range of activities that a spouse would ordinarily perform in the household on behalf of the ALTCS member if the member did not have a disability or chronic illness, and that is necessary to ensure the health and welfare of the member and avoid institutionalization.
 2. "Personal care or similar services" means assistance provided to an ALTCS member with a disability or chronic illness to enable the member to perform Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL) that the member would normally perform for himself or herself if the member did not have a disability or chronic illness. Assistance may involve performing a personal care task for the member or cueing the member so that the member performs the task for himself or herself.
- B.** As authorized by the Section 1115 Waiver, a member may choose to have personal care or similar services provided by the member's spouse as a paid caregiver if the following conditions and limitations are met:
1. The member resides in his or her own home;
 2. The Administration or a Program Contractor offers the member the choice of a provider of personal care or similar services other than the member's spouse;
 3. The personal care or similar services is described in the member's plan of care prepared by the member's case manager;
 4. The case manager records at least annually in the member's plan of care the member's choice to have personal care or similar services provided by the member's spouse as a paid caregiver;
 5. The personal care or similar services provided by the spouse are extraordinary care;
 6. The spouse is one of the following:
 - a. Employed by a provider that subcontracts with the member's Program Contractor;
 - b. If the member is developmentally disabled, the spouse is either employed by a provider that subcontracts with the member's Program Contractor, or registered with AHCCCS as an independent provider; or
 - c. If the member is a Native American enrolled in FFS, the spouse is either employed by an AHCCCS registered provider or registered with AHCCCS as an independent provider;
 7. The spouse meets the training and other qualifications that apply to other providers of personal care or similar services registered with AHCCCS;
 8. The Program Contractor does not pay a spouse providing personal care or similar services at a rate that exceeds the rate that would be paid to a provider of personal care or similar services who is not a spouse and the Administration does not pay a spouse providing personal care or similar services at a rate that exceeds the capped fee-for-service payment for personal care or similar services; and
 9. A spouse providing personal care or similar services as a paid caregiver is not paid for more than 40 hours of services in a seven-day period.
- C.** For a member who elects to have the member's spouse provide personal care or similar services as a paid caregiver, personal

care or similar services in excess of 40 hours in a seven-day period are not covered. If a spouse elects to provide less than the hours authorized by the Administration or Program Contractor, the remaining hours of medically necessary personal care or similar services may be provided by another personal caregiver, but the total hours of care provided by the spouse and any other personal caregiver shall not exceed 40 hours in a seven-day period.

- D.** By electing to have the member's spouse provide personal care and similar services as a paid caregiver, the member is not precluded from receiving medically necessary, cost effective home and community based services other than personal care or similar services.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3587, effective October 2, 2007 (Supp. 07-4).

R9-28-507. Program Contractor General Requirements

- A.** To participate in the ALTCS program, through a program contractor or directly through the Administration, a provider of ALTCS-covered services shall be registered with the Administration.
- B.** An ALTCS program contractor shall ensure that providers of service meet the requirements of this Article.
- C.** Each ALTCS program contractor shall maintain member service records for five years, that include, at a minimum, a case management plan, medical records, encounter data, grievances, complaints, and service information for each ALTCS member.
- D.** An ALTCS program contractor shall produce and distribute informational materials that are approved by the Administration to each enrolled ALTCS member or designated representative within 12 business days after the program contractor receives notification of enrollment from the Administration. The program contractor shall ensure that the informational materials include:
1. A description of all covered services as specified in contract;
 2. An explanation of service limitations and exclusions;
 3. An explanation of the procedure for obtaining services, including a notice stating that the program contractor is liable only for those services authorized by an ALTCS member's case manager;
 4. An explanation of the procedure for obtaining emergency services;
 5. An explanation of the procedure for filing a grievance and appeal; and
 6. An explanation of when plan changes may occur as specified in contract.
- E.** A subcontractor shall collect the member's share of cost and report to the program contractor the amount collected as specified in the subcontractor contract. The program contractor shall report the share of cost collected to the Administration.
- F.** An ALTCS program contractor shall monitor a trust fund account for an institutionalized ALTCS member to verify that expenditures from the member's trust fund account are in compliance with federal regulations 42 U.S.C. 1396p(d)(4) and A.R.S. § 36-2934.01.
- G.** A program contractor shall ensure that an institutionalized ALTCS member transferred to an acute care facility to receive services is, whenever possible, returned to the original institution upon completion of acute care.
- H.** A program contractor shall ensure that an institutionalized ALTCS member granted therapeutic leave is, whenever medically appropriate, returned to the same bed in the original institution upon completion of the therapeutic leave.

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- I. A program contractor shall ensure that services are paid under A.A.C. R9-22-705.
- J. A program contractor shall comply with the marketing provisions in A.A.C. R9-22-504.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-508. Self-directed Attendant Care (SDAC)

- A. For purposes of this Article the following terms are defined:
 - “Competent member” means a person who is oriented, exhibits evidence of logical thought, and can provide directions.
 - “Fiscal and Employer Agent” or “FEA” is a company specified by the program contractor or the Administration in contract to serve as an employment/payroll processing center for attendant care workers employed by the member to provide SDAC services.
 - “Medically stable” means the member’s skilled-care medical needs are routine and not subject to frequent change because of health issues.
 - “Personal care” means activities of daily life such as dressing, bathing, eating and mobility.
- B. In lieu of receiving other attendant care services a competent member who meets the requirements of A.R.S. § 36-2951 or the member’s legal guardian may choose to employ through the FEA a person to provide Self-directed Attendant Care (SDAC) services. A paid caregiver described under R9-28-506 and a parent of a minor child shall not receive reimbursement for SDAC services.
- C. The attendant care worker chosen to provide SDAC services does not need to be a registered provider. The attendant care worker shall have, at a minimum, hands-on training in First Aid, CPR, Universal Precautions, and state and federal laws regarding privacy of health information or training of similar efficacy as approved by the Administration.
- D. The Administration or Program Contractor shall cover SDAC services only if the member resides in the member’s home, and shall not cover SDAC services if the member is institutionalized or residing in an alternative residential setting. If the member has a legal guardian, the legal guardian shall be present when SDAC services are provided.
- E. A member who chooses to receive SDAC services is not precluded from receiving medically necessary, cost-effective home health services from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the program contractor.
- F. A competent member or legal guardian may employ an SDAC attendant care worker to provide personal care, homemaker and general supervision services.
- G. A competent member, who is medically stable, or the member’s legal guardian may employ an attendant care worker to also provide the following skilled services:
 1. Bowel care, including suppositories, enemas, manual evacuation, and digital stimulation;
 2. Bladder catheterizations (non-indwelling) that do not require a sterile procedure;
 3. Wound care (non-sterile);
 4. Glucose monitoring;
 5. Glucagon as directed by the health care provider;

6. Insulin by subcutaneous injection only if the member is not able to self-inject;
7. Permanent gastrostomy tube feeding; and
8. Additional services requested in writing with the approval of the Director and the Arizona State Board of Nursing.

- H. The Administration or program contractor shall not cover services under subsection (G) unless:
 1. For each SDAC attendant care worker employed by a member or legal guardian, a registered nurse licensed under A.R.S. Title 32, Chapter 15 visits the member and SDAC attendant care worker before a skilled service is provided. The registered nurse will assess, educate, and train the member and SDAC attendant care worker regarding the specific skilled service that the member requires; and
 2. The registered nurse determines in writing that the attendant care worker understands how and demonstrates the skill to perform the processes or procedures required to provide the specific skilled service.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). New Section made by final rulemaking at 16 A.A.R. 2386, effective January 16, 2011 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 2344, effective November 11, 2012 (Supp. 12-3).

R9-28-509. Agency with Choice

- A. Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings specific to this Section:
 - “Agency” means a provider of home and community based services, other than an individual, that has a co-employment relationship with one or more members for purposes of this Section.
 - “Co-employment relationship” means a situation where the Agency serves as the legal employer of record and the ALTCS member or authorized representative assumes certain responsibilities related to directing and or managing care.
 - “Individual’s representative” means a parent, family member, guardian, advocate, or other person authorized by the member to serve as a representative in connection with the provision of services and supports. This authorization should be in writing, when feasible, or by another method that clearly indicates the individual’s free choice. An individual’s representative may not also be a paid caregiver of an individual receiving services and supports.
 - “Standardized training” means minimum training standards required of all paid caregivers by the Administration as specified in contract.
- B. Purpose. The Agency with Choice program is an ALTCS member directed service model for the provision of home and community based services. Under this model, the ALTCS member or individual’s representative and the agency enter into a co-employment relationship.
- C. In lieu of receiving HCBS services under a traditional service model, a member or the member’s individual’s representative

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may choose to participate in the Agency with Choice service model. Under the Agency with Choice service model, the agency shall maintain the authority to hire and fire paid caregivers and provide standardized training to the caregiver, and the member or individual representative may elect to recruit, select, dismiss, determine duties, schedule, specify training to meet the unique needs of the member, and supervise the paid caregivers on a day-to-day basis.

- D. Setting. This program is applicable to ALTCS members who reside in their own home.
- E. A member who chooses to receive services under the Agency with Choice service model is not precluded from receiving medically necessary, cost-effective services and supports from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the contractor.

Historical Note

Section made by final rulemaking at 18 A.A.R. 3380, effective January 1, 2013 (Supp. 12-4).

R9-28-510. Case Management

- A. A program contractor shall assign to each member a case manager to identify, plan, coordinate, monitor, and reassess the need for and provision of long-term care services.
- B. A case manager shall:
 1. Ensure that appropriate ALTCS placement and services are provided for a member within 30 days of enrollment;
 2. Develop a service plan by:
 - a. Completing a case management plan when a member is enrolled in ALTCS and authorizing services for a member who continues to be financially and medically eligible for services;
 - b. Ensuring that a member participates in the preparation of the member's case management plan;
 - c. Specifying the paid and natural support services to be received by the member, including the duration, scope of services, units of service, frequency of service delivery, provider of services, and effective time period; and
 - d. Coordinating with the primary care provider in determining the necessary services for the member, including hospital and medical services;
 3. Submit a written justification to the case manager's supervisor to include HCBS in the case management plan if the services exceed 80 percent of the institutional cost;
 4. Manage a case management plan by:
 - a. Re-evaluating and revising the case management plan when the member transfers to another facility, transfers to a hospital, has a change in level of care; and
 - b. Monitoring receipt of services by a member;
 5. Assist the member to maintain or progress toward the highest level of functioning;
 6. Ensure that records are transferred when the member is transferred from a facility or provider to a new facility or provider;
 7. Perform additional monitoring of a member with rehabilitation potential and whose condition is fragile or unstable, whose case management plan is marginally cost effective, or whose use of medical and hospital services is unusual;
 8. Arrange behavioral health services, if necessary. The case manager shall have initial and quarterly consultation and collaboration with a behavioral health professional to review the treatment plan, unless the case manager meets

the definition of a behavioral health professional under A.A.C. R9-20-101.

- C. A program contractor shall submit a service plan and other information related to the case management plan upon request to the Administration.

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). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 18 A.A.R. 3380, effective January 1, 2013 (Supp. 12-4).

R9-28-511. Quality Management/Utilization Management (QM/UM) Requirements

A program contractor shall:

1. Comply with all requirements specified in A.A.C. R9-22-522; and
2. Submit a quarterly utilization control report within time lines specified in contract, and meet the requirements in 42 CFR 456 Subparts C, D, and F, October 1, 2004, incorporated by reference in R9-28-505.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-512. Expired**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4851, effective October 9, 2002 (Supp. 02-4).

R9-28-513. Program Compliance Audits

The Administration shall meet the requirements specified under A.A.C. R9-22-521 for a program contractor.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-514. Release of Safeguarded Information by the Administration and Contractors

The Administration, program contractors, providers, and noncontracting providers shall meet the requirements specified under A.A.C. R9-22-512 for an ALTCS applicant, or member.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-515. Repealed

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Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

ARTICLE 6. RFP AND CONTRACT PROCESS

Article 6, consisting of Sections R9-28-601 through R9-28-610, repealed; new Article 6, consisting of Sections R9-28-601 through R9-28-608, adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28-601. General Provisions

- A. The Director has full operational authority to adopt rules for the RFP process and the award of contract under A.R.S. § 36-2944.
- B. The Administration shall follow the provisions under 9 A.A.C. 22, Article 6 for members, subject to limitations and exclusions under that Article, unless otherwise specified in this Chapter.
- C. The Administration shall award contracts under A.R.S. § 36-2932 to provide services under A.R.S. § 36-2939.
- D. The Administration is exempt from the procurement code under A.R.S. § 41-2501.
- E. The Administration and contractors shall retain all records relating to contract compliance for five years under A.R.S. § 36-2932 and dispose of the records under A.R.S. § 41-2550.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-602. RFP

The ALTCS RFP for a program contractor serving members who are EPD shall meet the requirements of A.R.S. §§ 36-2944, A.R.S. § 36-2939, A.A.C. R9-22-602, and Articles 2 and 11 of this Chapter.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-603. Contract Award

The Administration shall award a contract under A.R.S. § 36-2944 and A.A.C. R9-22-603.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-604. Contract or Proposal Protests; Appeals

Contract or proposal protests or appeals shall be under A.A.C. R9-22-604 and 9 A.A.C. 34.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

R9-28-605. Waiver of Contractor's Subcontract with Hospitals

A contractor's subcontract with hospitals may be waived under A.A.C. R9-22-605.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-606. Contract Compliance Sanction

- A. The Administration shall follow sanction provisions under A.A.C. R9-22-606.
- B. The Administration shall apply remedies found in 42 CFR 488, Subpart F, effective January 1, 2012, incorporated by reference and on file with the Administration and the Office of the Secretary of State, for a nursing facility that does not meet requirements of participation under 42 U.S.C. 1396r. This incorporation by reference contains no future editions or amendments.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

R9-28-607. Repealed**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-608. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-609. Repealed

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.

36-2932. 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.

36-2938. Case management; definition

A. The director shall adopt rules establishing a uniform statewide case management program to ensure the most appropriate placement and cost effective delivery of services to members by the program contractors pursuant to this article. The case management program shall include the development by the program contractor of a long-term care service plan for each member. This plan shall include a cost benefit analysis for institutional or home and community based services. In developing this plan, the program contractor may use the information obtained from the preadmission screening conducted pursuant to section 36-2936 to determine the types of services a member should receive.

B. Each program contractor shall provide continual case management services to members in compliance with the uniform statewide case management program established pursuant to subsection A of this section.

C. Except for retroactive coverage, a program contractor shall only provide payment or reimbursement for services provided pursuant to this article under referral from its case management unit.

D. For the purposes of this section, "case management" means a service that will direct members to the most appropriate amount, duration and type of services and continually monitor and reassess a member's need for services provided pursuant to this article.

36-2939. Long-term care system services

A. The following services shall be provided by the program contractors to members who are determined to need institutional services pursuant to this article:

1. Nursing facility services other than services in an institution for tuberculosis or mental disease.
2. Notwithstanding any other law, behavioral health services if these services are not duplicative of long-term care services provided as of January 30, 1993 under this subsection and are authorized by the program contractor through the long-term care case management system. If the administration is the program contractor, the administration may authorize these services.
3. Hospice services. For the purposes of this paragraph, "hospice" means a program of palliative and supportive care for terminally ill members and their families or caregivers.
4. Case management services as provided in section 36-2938.
5. Health and medical services as provided in section 36-2907.
6. Dental services in an annual amount of not more than one thousand dollars per member.

B. In addition to the services prescribed in subsection A of this section, the department, as a program contractor, shall provide the following services if appropriate to members who have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article:

1. Intermediate care facility services for a member who has a developmental disability as defined in section 36-551. For purposes of this article, a facility shall meet all federally approved standards and may only include the Arizona training program facilities, a state owned and operated service center, state owned or operated community residential settings and private facilities that contract with the department.
2. Home and community based services that may be provided in a member's home, at an alternative residential setting as prescribed in section 36-591 or at other behavioral health alternative residential facilities licensed by the department of health services and approved by the director of the Arizona health care cost containment system administration and that may include:
 - (a) Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.
 - (b) Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.
 - (c) Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.
 - (d) Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.
 - (e) Day care for persons with developmental disabilities, which means a service that provides planned care supervision and activities, personal care, activities of daily living skills training and habilitation services in a group setting during a portion of a continuous twenty-four-hour period.

- (f) Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.
- (g) Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.
- (h) Transportation, which means a service that provides or assists in obtaining transportation for the member.
- (i) Other services or licensed or certified settings approved by the director.

C. In addition to services prescribed in subsection A of this section, home and community based services may be provided in a member's home, in an adult foster care home as prescribed in section 36-401, in an assisted living home or assisted living center as defined in section 36-401 or in a level one or level two behavioral health alternative residential facility approved by the director by program contractors to all members who do not have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article. Members residing in an assisted living center must be provided the choice of single occupancy. The director may also approve other licensed residential facilities as appropriate on a case-by-case basis for traumatic brain injured members. Home and community based services may include the following:

1. Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.
2. Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.
3. Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.
4. Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.
5. Adult day health, which means a service that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four-hour period. Adult day health may also include preventive, therapeutic and restorative health related services that do not include behavioral health services.
6. Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.
7. Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.
8. Transportation, which means a service that provides or assists in obtaining transportation for the member.
9. Home delivered meals, which means a service that provides for a nutritious meal that contains at least one-third of the recommended dietary allowance for an individual and that is delivered to the member's residence.
10. Other services or licensed or certified settings approved by the director.

D. The amount of money expended by program contractors on home and community based services pursuant to subsection C of this section shall be limited by the director in accordance with the federal monies made available to this state for home and community based services pursuant to subsection C of this section. The director shall establish methods for the allocation of monies for home and community based services to program contractors and shall monitor expenditures on home and community based services by program contractors.

E. Notwithstanding subsections A, B, C and F of this section, no service may be provided that does not qualify for federal monies available under title XIX of the social security act or the section 1115 waiver.

F. In addition to services provided pursuant to subsections A, B and C of this section, the director may implement a demonstration project to provide home and community based services to special populations, including persons with disabilities who are eighteen years of age or younger, are medically fragile, reside at home and would be eligible for supplemental security income for the aged, blind or disabled or the state supplemental payment program, except for the amount of their parent's income or resources. In implementing this project, the director may provide for parental contributions for the care of their child.

G. Subject to section 36-562, the administration by rule shall prescribe a deductible schedule for programs provided to members who are eligible pursuant to subsection B of this section, except that the administration shall implement a deductible based on family income. In determining deductible amounts and whether a family is required to have deductibles, the department shall use adjusted gross income. Families whose adjusted gross income is at least four hundred percent and less than or equal to five hundred percent of the federal poverty guidelines shall have a deductible of two percent of adjusted gross income. Families whose adjusted gross income is more than five hundred percent of adjusted gross income shall have a deductible of four percent of adjusted gross income. Only families whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section may be required to have a deductible for services. For the purposes of this subsection, "deductible" means an amount a family, whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section, pays for services, other than departmental case management and acute care services, before the department will pay for services other than departmental case management and acute care services.

G-5

DEPARTMENT OF HEALTH SERVICES (F-18-0302)

Title 9, Chapter 5, Article 1, General; Article 2, Facility Licensure; Article 3, Facility Administration; Article 4, Facility Staff; Article 5, Facility Program and Equipment; Article 6, Physical Plant of a Facility



GOVERNOR'S REGULATORY REVIEW COUNCIL ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: March 6, 2018

AGENDA ITEM: G-5

TO: Members of the Governor's Regulatory Review Council

FROM: Council Staff

DATE : February 20, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0302)
Title 9, Chapter 5, Article 1, General; Article 2, Facility Licensure; Article 3, Facility Administration; Article 4, Facility Staff; Article 5, Facility Program and Equipment; Article 6, Physical Plant of a Facility

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The five-year review report from the Arizona Department of Health Services (Department) covers 49 rules and three tables regarding the regulation of child care facilities in A.A.C. Title 9, Chapter 5. Article 1 has two rules regarding general definition. Article 2 has ten rules and two tables regarding licensing requirements. Article 3 has ten rules regarding the administration of licensed facilities. Article 4 has four rules regarding the staff at licensed facilities. Article 5 has eighteen rules and one table regarding the programs and equipment of licensed facilities. Article 6 has five rules regarding the physical requirements of the facility.

The Department must "prescribe reasonable rules regarding the health, safety and well-being of the children to be cared for in a child care facility." See A.R.S. § 36-833. The Department amended all rules in 2010 to comply with Laws 2010, Ch. 248 and Laws 2009, Ch. 10. R9-5-203 and R9-5-402 were last amended in 2013 to comply with Laws 2012, Ch. 188 and Laws 2013, Ch. 151. This 2013 rulemaking was the one action proposed in the Department's last five-year-review report regarding this chapter.

The Department also stated in its previous five-year-review report that it might take another action to address changes to A.R.S. § 28-907 by Laws 2012, Ch. 13 § 1, which made R9-5-517 inconsistent with statute. The Department stated that it did not take any action regarding this because Laws 2012, Ch. 314, § 1 did not provide the Department with an exemption from the requirements in A.R.S. Title 4, Chapter 6.

Proposed Action

The Department plans to submit a Notice of Final Expedited Rulemaking to the Council by November 2018 to address statutory inconsistency issues and issue with clarity, understanding, and conciseness. The Department has identified numerous changes that should be made. The matters identified by the Department in the five-year-review report are:

- **R9-5-101:** Change the reference in the definition for “electronic signature” from A.R.S. § 41-132(E) to A.R.S. § 41-359(9) and change the reference in definition for “pesticides” from A.R.S. § 32-230 to A.R.S. § 32-3601. Remove the citation in “licensed applicator” as the cited statute has been deleted. Change the titles for four of the six regional accreditation associations in the definition for “accredited” since the titles have changed.
- **R9-5-201:** Add the word “current” to clarify which local building, fire code, and zoning laws are to be followed in subsection (A)(5)(h)(ii). Remove the reference to R9-5-206 in subsection (A)(5)(k) and replace it with the word “form.”
- **R9-5-203:** Amend the section title to include a reference to the criteria used in subsection (F) that prevents an individual from becoming a staff member employed by a child care facility.
- **R9-5-301:** Change “Child Protective Services” to “Department of Child Safety.”
- **R9-5-303:** Change the reference in subsection A(4) from A.R.S. § 36-882(O) to A.R.S. § 36-882(P) to address a statutory change.
- **R9-5-307:** Change “Child Protective Services” to “Department of Child Safety.”
- **R9-5-310:** Remove the term “material safety data sheet” for subsection (A)(3) because the Environmental Protection Agency no longer requires the sheet from manufactures or distributors of pesticides.
- **R9-5-402:** Remove the requirement that a mailing address be provided in subsection (A)(4) because a mailing address is not necessary when attempting to contact an individual in an emergency.
- **R9-5-403:** Delete the language “issued by the agency or instructor” in subsection (E)(4) and replace it with “issued to the staff member upon completing first aid and CPR training.”
- **R9-5-501:** Amend this rule to make it consistent with A.R.S. § 36-894.01.
- Table 5.1: Update meal pattern requirements for children and infants to be consistent with the Department of Agriculture’s Meal Patterns for Children and Infants.
- **R9-5-517:** Amend this rule to make it consistent with A.R.S. § 28-907.
- **R9-5-517:** Change the reference to R17-8-110 in subsection (F) to R13-13-110.
- **R9-5-601:** Move subsection (5) of this rule to R9-5-208. The Department anticipates that it will become the new subsection (F).

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. A.R.S. § 36-833 requires the Director to “prescribe reasonable rules regarding the health, safety and well-being of the children to be cared for in a child care facility.”

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

As of October 2017, the Department has licensed 2,505 child care facilities. In FY 2016, the Department indicates that it approved 870 child care facilities for initial, extended, and amended licenses. There were 106 new facilities opened and 136 initial applications received. The Department did not deny any applications, 16 applicants withdrew their initial application, and 72 licensees elected to close. The Department performed 2,250 annual inspections and 560 complaint-based inspections on facilities in FY 2016. The Department’s inspection led to 303 enforcement actions, with some consolidating multiple complaints.

Key stakeholders include the Department, applicants, child care facility (includes licensees, facilities, and staff members), enrolled children, and enrolled children's parents (parents).

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 person 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?

Yes. The Department indicates that it received four written criticisms in 2015 regarding R9-5-404, “Staff-to-children Ratios.” The commenters expressed concern with the “bonus child” policy. Under the rule, staff-to-children ratio for infants is one adult to five infants or two adults to 11 infants and one adult to six one-year-olds or two adults to 13 one-year-olds. The commenters are concerned that allowing a “bonus child” undermines the needs of infants and one-year-olds and prevents staff from having small groups that allow for necessary and frequent individual interaction with each infant and one-year-old.

In response to the 2015 comments, the Department indicates that it plans to assess whether there is a health and safety concern. The Department indicates that the reason the written criticisms have yet to be addressed is that there has been a moratorium on rulemakings since 2015 and that the matter addressed in the written criticisms did not meet any justifications listed. If the Department determines there is a health and safety concern, then the Department plans to request an exception to the rulemaking moratorium and would amend the rule through a regular rulemaking.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Department indicates that the rules are generally clear, concise, and understandable, are consistent with other rules and regulations, and generally effective. Where

the rules are not clear, consistent, or effective, the Department indicates that it plans to make the necessary changes.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are generally enforced as written with the exception of:

- **R9-5-501(C)(9)**: which conflicts with a A.R.S. § 36-894.01. The Department enforces R9-5-501(C)(9) consistent with A.R.S. § 36-894.01.
- **R9-5-517(A)(8)**: which conflicts with A.R.S. § 28-907. The Department enforces R9-5-517 consistent with A.R.S. § 28-907.

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

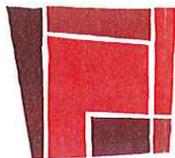
No. The Department indicates that the rules are not more stringent than corresponding federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes. The licenses and permits issued by the Department through these rules comply with A.R.S. § 41-1037 because they are specifically authorized to do so by A.R.S. §§ 36-881 through 36-894.01.

9. Conclusion

As noted above, the Department intends to submit a Notice of Final Expedited Rulemaking to the Council by November 2018. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

December 21, 2017

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 5, Child Care Facilities

Dear Ms. Coyle:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 5 is due to the Council no later than December 31, 2017. The Arizona Department of Health Services (Department) reviewed A.A.C. Title 9, Chapter 5 and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. The report contains a five-year-review summary, information identical for all rules, and information for individual rules. In addition to the report, the packet includes the rules reviewed; general and specific authorities; and written criticisms. As described in the report, the Department plans to amend the rules in 9 A.A.C. 5, through expedited rulemaking.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Lane".

Robert Lane
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

**FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 5. DEPARTMENT OF HEALTH SERVICES
CHILD CARE FACILITIES**

DECEMBER 2017

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 5. DEPARTMENT OF HEALTH SERVICES
CHILD CARE FACILITIES
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FIVE-YEAR-REVIEW REPORT SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-883 requires the Arizona Department of Health Services (Department) to “define and prescribe reasonable rules regarding the health, safety and well-being of the children to be cared for in a child care facility.” A.R.S. § 36-883.04 requires the Department to “prescribe reasonable rules and standards regarding the health, safety and well-being of children cared for in any public school child care program.” Accordingly, the Department implemented A.R.S. §§ 36-883 and 36-883.04 and promulgated rules specifying licensure requirements for child care facilities at Arizona Administrative Code (A.A.C.) Title 9, Chapter 5, Articles 1 through 6. The rules provide definitions; application requirements for licensure, including fingerprinting; facility administration requirements; facility staff and training requirements; facility program and equipment requirements; and requirements for the physical plant of a facility.

All the rules in the Chapter 5 were amended by exempt rulemaking at 16 *Arizona Administrative Register* (A.A.R.) 1564, effective September 30, 2010, to comply with Laws 2010, Ch. 248. The rules in R9-5-206 and R9-5-208 were last amended by exempt rulemaking at 16 A.A.R. 2350, effective December 3, 2010, to comply with Laws 2009, Ch. 10, and the rules in R9-5-203 and R9-5-402 were last amended at 19 A.A.R. 2612, effective August 1, 2013, to comply with Laws 2012, Ch. 188 and Laws 2013, Ch. 151.

After review of the Chapter 5 rules, the Department has determined that the rules are effective, clear, concise, and understandable. The Department has received four written criticisms regarding the rules. The Department addressed the written criticisms in R9-5-404, Information for Individual Rules. The Department enforces the rules as written and, except for R9-5-501 and R9-5-517, the rules are consistent with state and federal statutes and other rules. The rules adequately protect public health and impose the least burden on the regulated community. In this five-year-review report, the Department identifies changes that could improve the rules and make the rules consistent with state statutes. The Department plans to amend the rules to address the changes identified in this five-year-review report through expedited rulemaking and anticipates submitting a Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council by November 2018.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Statutory authority for the rules

The general statutory authority for the rules are in A.R.S. §§ 36-132(A) and 36-136(G).
The specific statutory authority for the rules are in A.R.S. §§ 36-883 through 36-894.01.

2. The purpose of the rules

The purpose of the rules is to protect the health, safety, and well-being of the children to be cared for in an Arizona licensed child care facility, including public school child care programs, and to establish licensure requirements for a person or a governmental agency requesting a license to operation a child care facility.

3. Analysis of effectiveness of the rules

The rules are effective; however, as identified in this report the rules could be improved by updating outdated citations and making other minor technical or grammatical changes.

4. Analysis of consistency with state and federal statutes and rules

Except as described for R9-5-501 and R9-5-517, the rules are consistent with state statutes and other rules.

5. Status of enforcement of the rules

The rules are enforced as written.

6. Analysis of clarity, conciseness, and understandability

The rules are clear, concise, and understandable; however, they could be improved in some instances by making minor technical or grammatical changes and updating citations as identified in this report.

7. Summary of the written criticisms of the rules received within the last five years

The Department received four written criticisms within the last five years. A summary of the written criticisms and the Department's response is included in R9-5-404, Information for Individual Rules.

8. Economic, small business, and consumer impact comparison

The Chapter 5 rules were amended by exempt rulemaking at 16 A.A.R. 1564, effective September 2010, to streamline regulations by eliminating obsolete, inefficient, or ineffective requirements and by amending and updating remaining licensing requirements consistent with current statutory authority, industry standards, and Department policies for child care facilities licensed under A.R.S. Title 36, Chapter 7.1, Article 1. The rules in R9-5-206 and R9-5-208 were again amended by exempt rulemaking at 16 A.A.R. 2350, effective December 3, 2010, and established a process that allows a licensee to increase a child care facility's licensed capacity and related fee. The rules in R9-5-203 and R9-5-402 were last amended at 19 A.A.R. 2612, effective August 1, 2013, to require licensees that do not contract with the state and who employ individuals who provide direct services to children to submit information necessary to conduct central registry background checks for such individuals and requires the Department to verify child care licensees compliance with new requirement to submit necessary information. No economic, small business, and consumer impact statements were prepared as part of the rulemakings.

The Department identified persons who are directly affect by, bear the costs of, or directly benefit from the rules as: the Department, applicants, child care facility (includes licensees, facilities, and staff members), enrolled children, and enrolled children's parents (parents). This analysis of estimated annual cost/benefit changes are designated as minimal when less than \$1,000; moderate when \$1,000 to \$10,000; and substantial when greater than \$10,000. A cost or benefit is designated as significant when meaningful or important but not readily subject to quantification. In general, the rules imposed some new costs upon some affected persons while providing benefits to all affected persons, as identified in the following economic impact comparison.

In fiscal year 2016, the Department approved 870 child care facilities for initial, extended, and amended licenses. There were 106 new facilities opened and 136 initial applications received. The Department did not deny any applications, 16 applicants withdrew their initial application, and 72 licensees elected to close. Additionally, during the 2016 fiscal year, the Department performed 2,250 annual inspections and 560 complaint-based inspections on facilities. The inspection figures are in addition to the inspection accompanying each application for licensing indicated above. The Department inspections resulted in 303 enforcement actions, with some consolidating multiple complaints. As of October 2017, the Department has licensed 2,505 child care facilities.

Article 1. General

Article 1 rules were significantly changed by the September 2010 rulemaking. In R9-5-101, 12 definitions were deleted to eliminate outdated language or were no longer necessary, six definitions were updated to correct outdated citations, and more than 50 other definitions were updated or added to provide for better understandability of newly added or amended rules. In its totality, the changes to the definitions in R9-5-101 increased the effectiveness, clarity, and conciseness of the rules and made the rules consistent with other state statutes and rules. Changes in R9-5-102, amended rule to consolidate old subsections and types of applicants or licensees, and clarified a designated agent as a person who meets requirement in A.R.S. § 36-889(D). R9-5-102 also deleted subsection (10) that requires a business organization to have two individuals who are members of the business organization rather than one designated agent according to A.R.S. § 36-889(D). Because the changes made increased the rules effectiveness, the Department expects that affected persons did not incur an increase in costs associated with the amended rules in Article 1. The Department believes that the Department, applicants, licensees, staff members, and parents received a significant benefit for new and updated definitions that direct them to the correct rules and statutes, and most likely, received an additional benefit for new definitions that are more specific and clear. The Department expects that applicants and licensees may have received a moderate-to-substantial benefit for consolidating and clarifying rules in R9-5-102 regarding business organization.

Article 2. Facility Licensure

In the September 2010 rulemaking, Article 2 rules were changed to consolidate the child care licensing application processes and licensing applications. In R9-5-201, an applicant's age requirement was changed from age 18 to age 21 and requirements for two supplements forms submitted with an applicant's application packet were removed. The requirements for site plan and floor plan were moved from R9-5-606 to R9-5-201, and were further amended to clarify that all applicants are required to provide such documents, including documentation that a facility is approved for occupancy. R9-5-201 added information required for responsible party. The Department expects that new R9-5-201 change requiring an applicant to be at least 21 years of age to have a no affect. Since the Department does not maintain applicants' personal data, to determine the effect to persons, the Department looked at the numbers of new applications received each year since the rule change. The Department found that there has been no decline in the number of new applications submitted and expects no economic impact to affected persons or

if any, nominal. The Department expects that deleting the forms may have provided minimal benefits to applicants that now spend less time completing an application, and for applicants, who are required to provide information for an responsible party, an individual(s) having oversight of a child care facility, has had a moderate benefit to the Department for having ability to contact a responsible party in a timely matter.

The application consolidation removed requirements for license renewal in R9-5-202 and R9-5-205, significantly decreasing both time-frames in R9-5-202 and licensees' burden in R9-5-205 by no longer requiring a renewal application. The Department anticipates that deleting the renewal application and the late filing fee and establishing a three year licensing fee has had a substantial benefit to the Department, applicants, and facilities by eliminating related administrative tasks, costs, and time-frames. Changes to new R9-5-203 were made to clarify fingerprinting requirements and to make the rule consistent with statutes for central registry background checks. Changes in R9-5-203, amended in the August 2013 exempt rulemaking to make compliant with Laws 2012, Ch. 188 and Laws 2013, Ch. 151, added a citation to A.R.S. 8-804(I), requiring licensees and staff members to submit information for central registry background checks. The Department believes the new requirement to submit information for central registry background checks will likely result in a minimal increase in cost for licensees and staff members. Additionally, the Department incurred a minimal increase in cost to verify that licensees and staff members had complied with A.R.S. 8-804.

Changes to R9-5-204 clarified child care service classifications for specific age groups and added weekend care. The Department anticipates that enrolled children and parents may have received a minimal-to-moderate benefit for having written requirements regarding how a facility classifies younger enrolled children. The Department expects facilities might have experienced a minimal increase in costs to revise or establish proper range of activities and programs for enrolled children. Changes to R9-5-206 included establishing a licensing discount fee, making the rule consist with Laws 2009, 3rd SS, Ch. 10, and establishing requirements for a licensee requesting an increase in facility's licensed capacity to submit request to change and a fee for the increased licensed capacity. The Department expects that the discount fee may have provided a substantial benefit for licensees who would have paid higher licensing fees. Additionally, the Department expects that a licensee that submitted a licensed capacity change request and paid a licensing fee based on an increase in the number of enrolled children most likely received a benefit of increased revenue, and, most likely, the increased revenue far exceed additional licensing fee

paid. The new R9-5-207 added clarification that a facility's license is no longer valid if the fee required in R9-5-205 is not submitted.

Article 3. Facility Administration

The September 2010 rulemaking simplified the rules for facility administration in Article 3 by moving requirements for facility director designee qualification to R9-5-401, parent notification to R9-5-302, and parent notification of injury to R9-5-514. Also in R9-5-301, a requirement from R9-5-207 was added for a licensee to provide a written notice to the Department before changing a facility director and director designates and the requirement to provide the written notice within 48 hours after a licensee becomes aware a facility director leaving employment was increased to 72 hours. The Department does not expect that the reorganization of a rule to another rule section to have had an effect on enrolled children and parents, but may have a minimal effect for the Department, licensees, and staff members who need to know and understand the new rules. Also, the Department expects that a facility may have received a minimal benefit for having more time to report a change in a facility director.

Additionally in new R9-5-301, a requirement for a specific retention period for attendance record was added; tuberculosis screening requirements were updated; requirements for a staff member to have current training in first aid and CPR was clarified; and the use or possession of a dangerous drug was amended to allow the use of a prescription medication. Other changes in R9-5-301 included removing a requirement for a licensee to perform annual staff member evaluations; adding a requirement for a licensee to provide parents with an annual influenza vaccination recommendation for enrolled children; adding a requirement restricting the presence of a staff member, who lacks proof of immunity, in the facility during an outbreak of disease; and adding a requirement for a licensee to notify the Department if an enrolled child dies at the facility during hours of operation. The Department does expect that combined changes to R9-5-301 may have had substantial benefits for licensees, staff members, enrolled children, and their parents. The Department expects licensees and staff members may have received increased benefits for no longer having to perform annual staff member evaluations, having authorization to administer prescription medications to enrolled children, and having current tuberculosis screening requirements consistent with CDC recommendation that reduced exposure to disease. Likewise, the Department expects enrolled children and parents may have received significant benefits from the administration of prescription medications, current tuberculosis screening, and having staff members present that have current first aid and CPR credentials. The Department expects that a

licensee may have incurred a minimal cost for new requirements for attendance record retention, providing annual influenza vaccination notification to parents, and notifying the Department if an enrolled child dies at the facility. Additionally, the Department expects the changes in the new R9-5-301 and R9-5-303, restricting staff members and enrolled children, who lack proof of immunity, from attending or being present at a facility during an outbreak of a disease, provides a minimal-to-substantial benefit for the facility, staff members, enrolled children, and their parents by remaining healthy and not being exposed to disease, which could be costly depending on the need for physicians, other required medical services, medication, and, for staff members, extended loss of work.

Changes made in R9-5-302 added a requirement for a licensee to provide physical information for a facility's location to appear on the statement of child care services and a requirement for parents to have access to areas where their enrolled child is receiving care. The Department expects that these changes most likely did not increase costs or benefits to licensees, staff members, parents, and the Department, because the information for a facility's location is generally included on the statement of child care services, even though not required. In R9-5-303 a requirement for a notice of an intermediate sanction to be posted within 10 days after the licensee received the notice was added. For a licensee, the Department expects that the time required to post a notice of an intermediate sanction is nominal, and a licensee should not experience any economic impact. To make rule consistent with A.R.S. § 36-3009, in R9-5-304, a requirement was added allowing for an exception that prevents a licensee from collecting information that may disclose the location of a shelter for victims of domestic violence. The Department believes the exception for a licensee to collect location information for a parent who is a victim of domestic violence has most likely had a nominal decrease in cost for a licensee who no longer has to collect and retain parent's location information; and for the parent, the exception has likely had a significant benefit for having ones location remain unknown. The changes in R9-5-305 included adding a requirement allowing parents to provide documentation from the Arizona State Immunizations System (ASIS) that demonstrates their child has had all required immunizations and a requirement to not allow an enrolled child who lacks proof of immunity to attend a facility during an outbreak of a disease until documentation is provided. The Department expects that a parent who obtains an enrolled child's immunization documentation from the ASIS may incur a minimal cost for time spent to acquire their child's immunization documentation from ASIS, and for a licensee, the Department expects a minimal decrease in costs may occur due to spending less time verifying the accuracy of an enrolled child's immunization documentation.

Changes to R9-5-306 includes adding a requirement that allows a licensee to accept electronic signatures used by parents or designated individuals to admit or release an enrolled child; removing a requirement for an individual picking up an enrolled child to provide picture identification; and adding a requirement that a licensee document the means of verification as agreed to by licensee and parent when an enrolled child is released to an individual other than a parent or other designated individual. The Department anticipates that the change that allows a facility to accept an electronic signature might provide a minimal benefit, which may offset the cost facility will incur for purchasing the software allowing the facility to accept electronic signature. In R9-5-307, a requirement to notify the Department if child abuse or neglect is suspected or alleged was removed, while a requirement that a licensee maintain documentation of the insurance on the facility premises was added to R9-5-308. In R9-5-309, a requirement for annual sanitation inspection by a local health department was removed and a requirement for documentation that verifies annual inspection of gas pipes by a licensed plumber or individual authorized by local jurisdiction was added. The Department anticipates that the remaining changes made to Article 3 have had essentially none-to-minimal benefit or cost. The benefit from removing the requirement for a licensee to collect picture identification from an individual prior to releasing an enrolled child to the individual was offset by the cost from adding the requirement for a licensee to document the means of verification of the enrolled child's Emergency, Information, and Immunization Record card. Additionally, the benefit from removing requirement for a licensee to notify the Department if child abuse or neglect is suspected or alleged was offset by the cost from the added requirement for the licensee to maintain documentation of insurance on the facility premises. Lastly, the Department expects that the benefit from removing the requirement for a licensee to have an annual sanitation inspection may provide a minimal benefit to facilities. The Department believes enrolled children and parents most likely received a moderate benefit for facilities having updated rules that consistent, clear, and effective throughout the Chapter.

Article 4. Facility Staff

Article 4 was changed to better clarify requirements for staff qualifications, staff records and reports, staff training, and staff-to-children ratio. Specifically, new R9-5-401 removed outdated credential for Certified Professional in Childcare; removed enrollment in a STRIVE program as an acceptable qualification for assistant teacher caregivers and student aides; and added requirements for new category of facility staff, teacher-caregiver aide. Additionally, new R9-5-

401 added additional methods an individual may qualify as an assistant teacher-caregiver and the age requirement for a volunteer was reduced from 16 years of age to 15 years old or older. The Department expects that removing qualifications that are no longer offered or no longer provide adequate child care training, increases the safety for an enrolled child and decreases the potential liability of a licensee who has well-trained staff members. Likewise, adding an additional staff member category, training that meets current standards within the child care industry, and adjusting the age requirement for volunteers further increases the quality of a facility's child care services for enrolled children and parents. Licensees and staff members may receive a minimal benefit from operating or working at a child care facility that has a good reputation.

In new R9-5-402, a requirement for individuals seeking employment to provide "at least four" references was changed to provide "two" references. In addition the changes in new R9-5-402, added a requirement for an individual to provide documentation of fingerprint clearance card; updated a requirement for where and how long staff members' records and reports are maintained; and added a requirement for providing a staff member's records and reports request by the Department. The Department anticipates the changes to R9-5-402 related to references may decrease costs for individuals applying for employment and for licensees that no longer having to provide or verify "four references." Depending on the position being applied for, some individuals might not have had four references and would have been disqualified from employment, so these individuals might have received a greater benefit from the change. The Department expects the updated rules for staff members to provide documentation of fingerprint clearance card to have none-to-minimal effect, since the requirement for documentation has always existed, just not listed in R9-5-402 as a required record kept in a staff member's file. The Department expects the clarification of requirements for maintaining records and providing records to the Department to have none-to- minimal effect for facilities and the Department. Changes in new R9-5-403 added a requirement for a licensee to train staff members on facility policies regarding transportation and field trip procedures; increased staff member training requirements from 12 hours to 18 hours every 12 months; added an additional topic for child growth and development as a category of training a staff member may choose; and added required training for staff members and facility director based on their experience and duties. The Department anticipates that the added training on transportation and field trip policies, and increased annual training, may have had an overall increased benefit for facilities, staff members, enrolled children, and parents. The increased annual training hours from 12 to 18 hours; added child growth and development topic, and clarification of annual training for staff members

provides facilities with better trained staff members; provides staff members with additional experience allowing staff members to have future, positive career changes; and provides enrolled children and parents with increased safety and better child care. The Department expects that for facilities, there may have been an initial increase in administrative costs to revise other facility policies and training, but would have been minimal compared to the moderate-to-substantial benefit.

The new R9-5-404 changes included clarification that: volunteers who are qualified as a director, teacher-caregiver, or an assistant-teacher caregiver be counted as staff in the staff-to-children ratio while new teacher-caregiver aide not be counted; a facility director or director designee be present at a facility when six or more enrolled children are present was added; and if a lifeguard is a staff member, the lifeguard-staff member may not be counted in the staff-to-children ratio. The Department anticipates that the clarification regarding staff-to-children ratio may have had a minimal benefit for parents, if more staff are attending to fewer enrolled children. The Department expects that facilities may have had incurred a minimal increase in costs for no longer counting volunteers in the staff-to-children ratio who may have been counted previously. The Department expects that the clarification that a facility director or director designee be present at a facility when six or more enrolled children are present may have caused a minimal-to-moderate increase in costs depending on the facility. Additionally, the Department expects that a lifeguard who is staff member and is not counted in the staff-to-children ratio may have caused a minimal-to-moderate increase in costs for facilities that have a staff member who is also a certified lifeguard. The Department expects enrolled children and parents may have received a minimal-to-moderate benefit since enrolled children under the new rule are safer when attending a licensed child care facility having appropriate staff-to-children ratios.

Article 5. Facility Program and Equipment

In the September 2010 rulemaking, standards for heating and cooling, combustible materials, designated routes of escape, swimming activity, electrical, plumbing, toilet rooms, and storage space were moved to R9-5-605 from R9-5-501. Changes in R9-5-501 clarify requirements for drinking water to be accessible to school-aged children, indoor activity areas for enrolled children, feeding chairs, pacifiers, and large muscle physical activities. Changes in R9-5-501 also added standards for hand sanitizers, and clarified when schedules and lesson plans are not required for an indoor areas used for other purposes. The Department expects, depending on the facility, the effects of the changes in R9-5-501 will vary since many of the changes are generally

apparent and typical, such as providing sufficient drinking water for school-aged children, use of a feeding chair, labeling an infant's pacifiers, providing time for infants and enrolled children to take part in large muscle physical activities, and having and implementing schedules and lesson plans for enrolled children's indoor and outdoor physical activities. For these changes, the Department expects that the economic impact may have varied from minimal-to-substantial depending on whether a facility's current policies and procedures included some, all, or none of the new changes. The Department expects that a facility may incur a minimal-to-moderate cost for enrolled children who use, or over use, hand sanitizers provided by the facility. Mostly likely, facilities who incur a greater cost will stop providing hand sanitizers. It is uncertain if hand sanitizers used by enrolled children provide a significant benefit due to a decrease in exposure to illnesses or infections.

Changes in R9-5-502 included adding a requirement that a facility develop policies and procedures for an infant to spend time on the infant's stomach; clarifying standards for cribs and infant food containers; adding standards for placing an infant on an infant's back to sleep, restrictions on the use of positioning devices for sleeping infants, prohibiting screen time in an infant room, and standards for handling infant milk, formula, and other foods. In addition, new R9-5-502 amended requirement to allow an indoor activity area be substituted for an outdoor activity area that is used by infants for large muscle development and increased the retention period for infant documentation to 12 months from 3 months after the date on the document. The Department anticipates child care facilities that provide child care services to infants may have incurred a minimal increase in costs, if any. The Department expects most of these facilities are aware of the increased liability that comes with providing child care services to infants and are aware of and comply with best practices established by the Early Childhood Development Program, the Network of Infant/Toddler Research, and other such national associations.

In new R9-5-503, standards for diaper changing were updated; a requirement to use antibacterial soap was deleted based on United States Food and Drug Administration (FDA) studies that antibacterial washes contain ingredients that can no longer be marketed; and child care services provided to an infant by a staff member were clarified. The Department expects these updated and clarified rules may have had no increase in costs to facilities that provide diaper changing, and rather, facilities may have received a moderate benefit for having clearer and more effective rules. The Department also expects that facilities may have received a moderate benefit for no longer being required to use an antibacterial soap and rather, may have received a moderate

benefit for providing a healthier environment for staff members and enrolled children. Additionally, new R9-5-504 added a requirement that prohibits screen time in an activity area used to provide child care services to 1-year-old enrolled children and added how a sippy cup provided by a parent is required to be labeled. The Department anticipates that facilities have received a minimal benefit from these R9-5-504 changes. Prohibiting screen time in an activity area for 1-year-old enrolled children increases the quality of care a facility provided to 1-year-old enrolled children and ensuring proper labeling of sippy cups most likely decreases the possibility of illnesses and infections being spread among 1-year-old enrolled children and staff members.

Outdated language in old R9-5-505 was updated and duplicative language for self-release for an enrolled school-age in R9-5-506 was removed. Changes in R9-5-507 clarified a staff member's requirements when tube feeding an enrolled child and added a requirement to verify that an enrolled child's wheelchair is manufactured to be secured in a motor vehicle. Changes in R9-5-508 clarified when meals are to be served; amended the meal pattern requirement table; added an allowance for substituting equivalent food for second servings, and if food substitution, documented on the posted weekly menu. The Department expects that the changes in R9-5-505, R9-5-506, and R9-5-507 has not increased costs for facilities and rather, most likely has had a minimal benefit for having more consistent and clearer rules. The Department expects the changes in R9-5-508 regarding meal times, second servings, and amending meal pattern table to be consistent with recommendations from the FDA might have a none-to-minimal increase in costs for facilities, and rather, might have had a minimal benefit for enrolled children that will receive meals based on FDA recommendations.

Changes in R9-5-509 included adding a requirement that a facility that prepares food on facility premises provide documentation of food establishment permit; a provision allowing single-use paper towels for washing a child's hands. New R9-5-509 also added requirements related to family-style meals; added provisions that a parent may request the type of milk provided to the child; restricts the use of fruit juice; and prohibits a facility from serving a beverage sweetened with any kind of sugar product. The Department expects that facilities may have incurred a none-to-minimal cost due to change for a facility that prepares food on facility premises to provide documentation of a food establishment permit. The Department expects facilities may have received a minimal-to-substantial benefit from provision allowing for single-use paper towels for washing a child's hands and from serving family-style meals service. Additionally, the Department expects that enrolled children and parents may have received a significant benefit

from changes that allow a parent to request the type of milk provided to their child, restrict the use of fruit juice, and prohibit serving a beverage sweetened with any kind of sugar product.

In R9-5-510, a requirement was added restricting abusive language by staff members. In R9-5-511, a requirement that a staff member remain awake while supervising an enrolled sleeping child was added, and in R9-5-512, a provision was added allowing hand-washing sinks outside a toilet room if an enrolled child can access the sink without crossing space used for an activity. The Department expects enrolled children and parents may have received a moderate-to-substantive benefit for new rules that protect enrolled children from abusive language and ensure an enrolled sleeping child's safety by requiring supervising staff member to remain awake. The Department expects that many facilities have received a significant benefit associated with new R9-5-512 that allows hand-washing sinks outside a toilet room, since many facilities already have such a layout and are no longer in noncompliance with Chapter 5.

Changes in R9-5-514 clarified first aid supplies requirements for the first aid kit kept on a facility premises, clarified types of communication devices required to be available where fire and emergency plans are posted, and added a requirements to document and maintain information received from a parent who reports that their enrolled child received medical treatment for an injury that occurred while at the facility. Also, new R9-5-514 decreased the retention period from 24 months to 12 months for documents related to medical treatment an enrolled child received while at the facility. The Department expects that facilities may have received a minimal benefit from having a shorter retention period enrolled children medical documents and that parents may have received a minimal benefit for facilities now having to document an enrolled children's injury that occurred at the facility and not treated by a staff member.

In the new R9-5-516, a requirement related to the administration of a nonprescription medication was clarified and a provision was added to allow medication for an individual's life-threatening symptoms to be in the activity area where the individual is present, but inaccessible to enrolled children. The Department expects that staff members, enrolled children, and parents have experienced a significant benefit from these changes. For staff members, the ability to provide appropriate medical care to enrolled children and to themselves when needed; and for enrolled children and parents, better medical care results in healthy and safer enrolled children. A change in new R9-5-517 clarified that prior to transporting an enrolled child, the facility obtain written permission from parent and maintain the written permission on the facility premises for 12

months. The Department expects that these changes most likely provided a moderate-to-significant benefit for facilities that may experience a decreased chance of being sued for transporting an enrolled child without parents' permission, and for parents having accurate knowledge of their enrolled child's location. In R9-5-518, the retention period for a parent's written permission for an enrolled child to participate in a field trip was changed from 3 months to 12 months and a provision for a staff member to carry a copy of the written field trip plan during the field trip was added. The Department anticipates that the changes in new R9-5-518 may have had a minimal increase in cost for facilities that may have added administrative responsibilities and may have had a significant benefit for parents having increased access to records and knowing that a staff member having the field trip plan is more informed at all times during the field trip.

Article 6. Physical Plant of a Facility

The rules in old R9-5-601, regarding local building and fire codes and zoning requirements, were moved to R9-5-202 and the requirement restricting the use of manufactured homes was deleted. In new R9-5-601, requirements for a hand-washing sink and diaper changing areas for enrolled children were clarified. The Department expects that facilities, staff members, and enrolled children may have received a minimal-to-moderate benefit for new rules in R9-5-601 that clarifies sanitary requirements for hand-washing sinks and for diaper changing areas. Facilities may benefit from containing and eliminating bacteria and viruses that are potentially hazardous to individuals; and staff members and enrolled children may benefit from decreased exposure to potential health hazards. In new R9-5-602, the requirements for outdoor activity areas, indoor areas substituted for outdoor activity areas, and impact protection in the fall zone were clarified. The Department expects R9-5-602 changes have had a minimal-to-moderate benefit for facilities by eliminating confusion caused by duplicative requirements and by providing other options for facilities so outdoor and indoor activity areas are best utilized. The Department anticipates that enrolled children may have received a moderate-to-significant benefit from having flooring that provides impact protection in the fall zone of swings and climbing equipment for indoor activity area.

Changes in new R9-5-603 clarified the requirement that a facility have an outdoor activity area on facility premises and clarified outdoor play equipment not be located in the fall zone of another piece of outdoor play equipment. The Department anticipates that the new rules in R9-5-603 may have provided a minimal-to-moderate cost for facilities that were required to relocate outdoor

play equipment to comply with the new requirement and enrolled children may have received a moderate-to-substantial benefit for increased safety. In new R9-5-604, changes included updated disinfecting agents levels, clarified when pool water is to be tested, and clarified what actions to take if pool water does not meet pool water chemical range. The Department expects that these changes may have created a minimal cost to facilities, who may have to test and treat pool water more frequently, and a minimal-to-significant benefit to staff members and enrolled children who should have clean water in which to swim. In new R9-5-605 changes included adding: an exemption from a requirement for outlet covers for a room used only by school-aged children; requirements for smoke detectors and sprinkler systems; and a documentation requirement for smoke detector testing, sprinkler system testing and servicing, and fire extinguisher testing. The Department anticipates that facilities that are exempt from having to provide outlet covers for a room used only by enrolled school-aged children may have received a minimal-to-moderate benefit in cost reductions depending on the number of rooms a facility has designated for enrolled school-aged children use only. Also, the Department expects that the updated requirements for smoke detectors and sprinkler systems for facilities may have had no economic impact since they are consistent with Arizona county codes and ordinances. However, for facilities that may have to install one or both to meet the requirements, the Department expects those facilities may have incurred up to a moderate cost to do so. The Department expects that staff members, enrolled children, and parents may have experienced a significant benefit from having increased safety.

Lastly with the repeal of old R9-5-607, some requirements were removed, such as a requirements for a public school's site plan to include each doorway, each door's swing, and plumbing fixtures; an applicant to submit additional information for a facility located in a factory built building; and a facility larger than 3,000 square feet to provide a seal from an architect or engineer verifying compliance with local codes and requirements. Other rules in old R9-5-607 were moved to R9-5-201, R9-5-208, and R9-5-501. The Department expects that the repeal of unnecessary requirements and moving other requirements to other Articles in the Chapter made the rules more clear, concise, and understandable, and most probably provided a significant benefit for all affected persons.

Through these rulemakings, the Department planned to minimize or eliminate non-compliance. The Department believes that failure of a licensee to meet prescribed requirements and standards poses a threat to the welfare of enrolled children. The rules impose administrative and other costs, as discussed in the summary, and consolidated and simplified compliance and reporting

requirements throughout Chapter 5. The Department does not believe that any further reduction in the cost or stringency of compliance or reporting is possible at this time.

9. Summary of business competitiveness analysis of the rules

The Department has not received any business competitiveness analysis for the rules during the past five years.

10. Status of the completion of action indicated in the previous five-year-review report

In its 2012 five-year-review report, the Department planned to conduct an exempt rulemaking as required in Laws 2012, Ch. 188 by August 1, 2013 to add provisions to the Child Care Facilities rules requiring licensees to verify the status of employees with the Department of Child Safety's Central Registry. Additionally, the Department stated that in the course of the exempt rulemaking, the Department might address changes in A.R.S. § 28-907, as amended by Laws 2012, Ch. 314, § 1. The Department did not plan to amend the remaining rules until further substantive issues arise. On July 30, 2013, the Department filed a Notice of Final Exempt Rulemaking with the Secretary of State amending rules in 9 A.A.C. 5 to comply with Laws 2012, Ch. 188 and Laws 2013, Ch. 151. Laws 2012, Ch. 314, § 1 did not provide the Department with an exemption from the requirements in A.R.S. Title 4, Chapter 6, and for that reason, the Department did not address changes to A.R.S. § 28-907, as amended by Laws 2012, Ch. 314, § 1, in the Notice of Final Exempt Rulemaking.

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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

The Department has determined that the benefit of the rules outweigh the cost and impose the least burden and costs to persons and governmental agencies regulated by the rules and achieve the regulatory objective of protecting the health, safety, and well-being of children in licensed child care facility.

12. Analysis of stringency compared to federal laws

The rules are not related to federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

All the rules were last adopted by exempt rulemaking before July 29, 2010. The rules in R9-5-206 and R9-5-208 were last amended by exempt rulemaking, effective December 3, 2010 and the rules in R9-5-203 and R9-5-402 were last amended by exempt rulemaking, effective August 1, 2013. A.R.S. §§ 36-881 through 36-894.01 require the licensure of child care facilities to specific person or government agency for facilities at specific addresses, accordingly a general permit is not applicable and is not used.

14. Proposed course of action

The Department plans to amend the rules in 9 A.A.C. 5 to address the changes in this five-year-review report through expedited rulemaking, including changes to the rules to make consistent with Laws 2017, Ch. 193 and Laws 2012, Ch. 314. The Department does not plan to address through expedited rulemaking the written criticisms identified in R9-5-404. Should the Department determine a health and safety concern exists due to the rule that allows for a "bonus child," the Department would amend R9-5-404 through a regular rulemaking. The Department expects to submit a Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council by November 2018.

INFORMATION FOR INDIVIDUAL RULES

ARTICLE 1. GENERAL

R9-5-101. Definitions

2. Objective

The objective of the rule is to define the terms used in the Chapter so that a reader may consistently interpret requirements in the Chapter.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matters identified in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is clear and understandable. However, a few of the definitions have outdated citations. The definition for "electronic signature" cites A.R.S. § 41-132(E) that is now A.R.S. § 41-351(9); "licensed applicator" cites A.R.S. § 32-2301 which was deleted by Laws 2013, Ch. 125; and "pesticide" cites A.R.S. § 32-2301 that is now A.R.S. § 3-3601. Also, other definitions in the rule contain outdated information. These include the definitions of: "accredited" that lists six regional accreditation association titles, four of which have had title changes in the past five years; "CCP" Certified Childcare Professional is no longer credentialed by the Council for Professional Recognition, instead by the Early Childhood Program Accreditation; "Child Protective Services" with Department of Economic Security is now Department of Child Safety; and "N.A.C." National Administrator Credential, a credential issued by the National Child Care Association, now issued by the National Institute of Child Care Management. Amending this rule to update citations and information where needed, would increase the rules clarity and understandability for affected persons.

R9-5-102. Individuals to Act for Applicant or Licensee Regarding Document, Fingerprinting, and Department-provided Training Requirements

2. Objective

The objective of the rule is to identify the individuals who are required to act in representation of an applicant or licensee to provide information to the Department, a signature, a fingerprint clearance card, or Department-provided training on an applicant or licensee's behalf.

ARTICLE 2. FACILITY LICENSURE

R9-5-201. Application for a License

2. Objective

The objectives of the rule are to provide licensing application requirements and process for an entity wishing to operate a child care facility.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matters identified in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is clear and concise. However, the rule would be improved if subsection (A)(5)(h)(iii) included the word "current" to clarify which "local building and fire codes and local zoning requirements," are to be followed and if in subsection (A)(5)(k), the citation to R9-5-206 were removed and the word "form" added.

R9-5-202. Time-frames

2. Objective

The objectives of the rule are to establish the requirements for the administrative completeness review, substantive review, and overall licensing time-frames for approval or denial of a licensing application and approval of change affecting a license in R9-5-208.

Table 2.1. Time-frames (in days)

2. Objective

The objective of the rule is to present a chart of the types of approvals related to this Chapter and the related time periods for approval.

R9-5-203. Fingerprinting Requirements

2. Objective

The objective of the rule is to establish requirements for a licensee to ensure that each staff member has and maintains a current-valid fingerprint clearance card before the staff member's starting date of employment or volunteer service.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matters identified in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is concise and understandable. However, the rule would be clear if the section title included a reference to the criteria used in subsection (F) that prevents an individual from becoming a staff member employed by a child care facility.

R9-5-204. Child Care Service Classifications

2. Objective

The objective of the rule is to identify the types of child care service classifications a licensee may provide at a child care facility licensed by the Department.

R9-5-205. Submission of Licensure Fees

2. Objective

The objective of the rule is to establish licensure fee submission requirements for licensees.

R9-5-206. Licensure Fees

2. Objective

The objective of the rule is to establish licensure fees for child care facility licenses, and the rule includes provisions for an applicant or licensee whom the Department may discount required fee.

R9-5-207. Invalid License

2. Objective

The objective of the rule is to inform a licensee what will happen if the licensee does not submit the required fee as specified in R9-5-205.

R9-5-208. Changes Affecting a License

2. Objective

The objectives of the rule are to identify the types of changes a licensee may make to an existing facility license; establish the requirements for providing the Department with a written notice or request for change being made; and the Department review process for changes other than a change made to a facility's name.

R9-5-209. Inspections; Investigations

2. Objective

The objective of the rule is to establish requirements for a licensee to cooperate with and provide appropriate access to the Department for inspections and investigations.

R9-5-210. Denial, Revocation, or Suspension of License

2. Objective

The objective of the rule is to inform a licensee of the criteria by which the Department may deny, revoke, or suspend a license.

ARTICLE 3. FACILITY ADMINISTRATION

R9-5-301. General Licensee Responsibilities

2. Objective

The objective of the rule is to establish a licensee's requirements regarding a facility's director, policies and procedures, access to and supervision of applicable individuals, staff members, fire and emergency evacuation drills, and related matters.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matter identified in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is clear and understandable. However, the rule would be improved if in subsection (D)(2)(c), the outdated title "Child Protective Services" were updated to "Department of Child Safety."

R9-5-302. Statement of Child Care Services

2. Objective

The objective of the rule is to require a licensee to prepare a written statement of child care services containing specified items and to provide copies of the written statement to the Department and parents as established in the rule.

R9-5-303. Posting of Notices

2. Objective

The objective of the rule is to establish requirements for a licensee to post specified information in specified locations in a facility.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matter identified in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is clear and understandable. However, the rule would be improved if in subsection (A)(4), the outdated citation to A.R.S. § 36-882(O) were changed to A.R.S. § 36-882(P).

R9-5-304. Enrollment of Children

2. Objective

The objective of the rule is to establish requirements for a licensee for the enrollment of children at a facility to receive child care services.

R9-5-305. Child Immunization Requirements

2. Objective

The objective of the rule is to establish requirements for when a licensee must exclude an enrolled child from attending a facility and the applicable documentation.

R9-5-306. Admission and Release of Children; Attendance Records

2. Objective

The objectives of the rule are to establish requirements for documenting an enrolled child's admission to and release from a facility, including implementing policies and procedures that govern who may admit or collect an enrolled child and the retention of attendance, admissions, and release records.

R9-5-307. Suspected or Alleged Child Abuse or Neglect

2. Objective

The objective of the rule is to establish requirements for a licensee to document and report all suspected or alleged cases of child abuse or neglect.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matter identified in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is clear and understandable. However, the rule would be improved if in subsection (1), the outdated title "Child Protective Services" were updated to "Department of Child Safety."

R9-5-308. Insurance Requirements

2. Objective

The objective of the rule is to establish requirements for a licensee to maintain and make available documentation of insurance coverage for the facility and motor vehicles used to transport enrolled children.

R9-5-309. Gas and Fire Inspections

2. Objective

The objectives of the rule are to establish requirements for when a licensee is to obtain a fire and gas inspection of a facility and for maintaining inspection reports, including information identifying a non-compliant matter and documentation demonstrating completion of a repair identified in an inspection report.

R9-5-310. Pesticides

2. Objective

The objectives of the rule are to provide notification to parents before a pesticide application occurs on facility premises and to provide an exemption to a licensee for provisions identified in A.R.S. § 36-898(C).

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matter identified in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is clear and understandable. However, the rule would be improved if in subsection (A)(3), the term "the material safety data sheet" were removed since the Environmental Protection Agency (EPA) does not require "data sheet" and do not verify accuracy of data provided. Additionally, before the EPA approves the registration of a pesticide to be manufactured or distributed in the United States, the EPA approves a pesticide label to ensure required safety information is listed.

ARTICLE 4. FACILITY STAFF

R9-5-401. Staff Qualifications

2. Objective

The objective of the rule is to establish the qualifications required for each category of staff members at a facility.

R9-5-402. Staff Records and Reports

2. Objective

The objective of the rule is to establish requirements for a licensee to maintain, and produce upon Department request, a file containing specified contents for each staff member at the facility.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matter identified in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is clear and understandable. However, the rule would be improved if in subsection (A)(4), the requirement for "mailing address" were removed since a mailing address is not required when attempting to contact an individual to be notified of an emergency.

R9-5-403. Training Requirements

2. Objective

The objective of the rule is to establish requirements for the completion and documentation of training for the staff members of a facility.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matters identified in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is clear and concise. However, the rule would be more clear, concise, and understandable, if in subsection (E)(4), the language "issued by the agency or instructor " were deleted and "issued to the staff member upon completing first aid and CPR training" were added.

R9-5-404. Staff-to-Children Ratios

2. Objective

The objective of the rule is to establish how many and what type of staff members a licensee is required to have supervising a specified number of enrolled children in specified locations or conditions.

7. Summary of the written criticisms of the rules received within the last five years

The Department received four written criticisms during the last five years. All the criticisms expressed concern regarding the staff-to-children ratio in R9-5-404 for infant and 1-year-old-children. In rule, the staff-to-children ratio for infants is 1 adult to 5 infants or two adults to 11 infants and for one-year-olds, 1 adult to 6 one-year-olds or 2 adults to 13 one-year-olds. To most child care licensees, the additional "1" infant or "1" one-year-old is known as the "bonus child."

Comments: The commenters strongly believe that allowing child care facilities a "bonus child" undermines the needs of our most vulnerable, infants and one-year-olds, and prevents staff from having small groups that allow for necessary, frequent-individual interaction with each infant and each one-year-old. The commenters support their opinion with research/data related to best practices and standards established by the Early Head Start Performance, National Association for the Education of Young Children, Program for Infant Toddler Care, and Arizona Infant Toddler Institution. The commenters "recommend that infant and toddler classrooms be regulated at current ratios without the addition of the bonus child."

Response: The Department acknowledges the commenters concerns and plans to assess whether there is a health and safety concern for infants and one-year-olds as a result of the rules staff-to-children ratio that allows for a "bonus child." Should the Department determine that a health and safety concern exists, the Department would request an exception to the rulemaking moratorium established by Executive Order 2017-02, and if approved, would amend 9 A.A.C. 5, Article 4 through a regular rulemaking.

ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

R9-5-501. General Child Care Program, Equipment, and Health and Safety Standards

2. Objective

The objective of the rule is to establish program, equipment, and health and safety requirements that apply to the entirety of a facility.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matters identified in paragraph 4.

4. Analysis of consistency with state and federal statutes and rules

In subsection (C)(9), the rule is inconsistent with A.R.S. 36-894.01, adopted by Laws 2017, Ch. 193, which allows a school-age child attending a child care facility to possess and use a topical sunscreen product without a note or prescription from a licensed health care professional. As stated in paragraph 14, in Information That Is Identical for All Rules, the Department plans to amend R9-5-501 through expedited rulemaking to address this matter. The rules are otherwise consistent with state statutes and rules.

5. Status of enforcement of the rules

Except for subsection (C)(9), the rules are enforced as written. If the Department finds that a facility is not complying with A.R.S. 36-894.01, the Department enforces (C)(9) consistent with A.R.S. 36-894.01, notifies the licensee, and provides technical assistance to ensure that the licensee comes into compliance within one year.

R9-5-502. Supplemental Standards for Infants

2. Objective

The objective of the rule is to establish the program, equipment, and health and safety requirements for a specified locations or conditions involving enrolled children who are infants.

R9-5-503. Standards for Diaper Changing

2. Objective

The objective of the rule is to establish safety and sanitary requirements for diaper changing at a child care facility.

R9-5-504. Supplemental Standards for 1-year-old and 2-year-old Children

2. Objective

The objective of the rule is to establish the program, equipment, and health and safety requirements for specified locations or conditions involving enrolled children who are one or two years of age.

R9-5-505. Supplemental Standards for 3-year-old, 4-year-old, and 5-year-old Children

2. Objective

The objective of the rule is to establish the program, equipment, and health and safety requirements for specified locations or conditions involving enrolled children who are three, four, or five years of age.

R9-5-506. Supplemental Standards for School-age Children

2. Objective

The objective of the rule is to establish the program, equipment, and health and safety requirements for specified locations or conditions involving enrolled children who are school-age children.

R9-5-507. Supplemental Standards for Children with Special Needs

2. Objective

The objective of the rule is to establish the program, equipment, and health and safety requirements for specified locations or conditions involving enrolled children with special needs.

R9-5-508. General Nutrition Standards

2. Objective

The objective of the rule is to establish requirements specifying the meal serving times, meal types, and additional provisions for meals at a facility.

Table 5.1. Meal Pattern Requirements for Children

2. Objective

The objective of the rule is to establish requirements specifying meal contents at a facility.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include the matter identified in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is clear and concise. However, the rule would be improved if the table were updated to make the meal pattern requirements for children and infants consistent with the Department of Agriculture Child and Adult Care Food Program Meal Patterns for children and infants.

R9-5-509. General Food Service and Food Handling Standards

2. Objective

The objective of the rule is to establish safety and sanitary requirements for meal service at a facility, including requirements for a food establishment permit, provisions for preparing and assisting enrolled children during meal times, including requirements for weekly menus, meal preparation, and food storage.

R9-5-510. Discipline and Guidance

2. Objective

The objective of the rule is to establish requirements for the safe and appropriate administration of corrective actions to an enrolled child.

R9-5-511. Sleeping and Napping

2. Objective

The objective of the rule is to establish safety, sanitary, and supervision requirements for enrolled children sleeping or napping at a facility, including provisions for maintenance related items.

R9-5-512. Cleaning and Sanitation

2. Objective

The objective of the rule is to establish environmental requirements for maintaining sanitary conditions for a facility and facility premises.

R9-5-513. Pets and Animals

2. Objective

The objective of the rule is to establish requirements that apply to pets or animals present at a facility.

R9-5-514. Accident and Emergency Procedures

2. Objective

The objectives of the rule are to establish requirements to prepare a facility to respond to accidents and emergencies. The requirements include maintaining a first-aid kit that meets the needs of enrolled children and staff members; a fire and emergency plan and evacuation plan; and appropriate communication system. Licensees are also required to report, document, and notify parents of an enrolled child's accident, injury, or emergency.

R9-5-515. Illness and Infestation

2. Objective

The objective of the rule is to establish requirements regarding the exclusion, documentation of the exclusion, and reporting of the exclusion of an individual from the facility because of an illness or infestation.

R9-5-516. Medications

2. Objective

The objective of the rule is to establish requirements regarding the storage, administration, and documentation of administration of medication at a facility.

R9-5-517. Transportation

2. Objective

The objective of the rule is to establish requirements for motor vehicles used to transport enrolled children.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matters identified in paragraph 4.

4. Analysis of consistency with listed state and federal rules and statutes

The rule would be more effective and consistent with state law if subsection (A)(8) were amended to comply with Laws 2012, Ch. 314. Laws 2012, Ch. 314, § 1 amended A.R.S. § 28-907, which requires the use of a child passenger restraint system additionally for a child “who is at least five years of age, who is under eight years of age and who is not more than four feet nine inches tall.” Additionally, citation to A.A.C. R17-9-110 in subsection (F) was recodified, at 20 A.A.R. 2083, to 13 A.A.C. 14. The citation, R17-9-110, should be changed to R13-13-110. The Department, as stated in paragraph 14, plans to amend R9-5-517 through expedited rulemaking.

5. Status of enforcement of the rules

Except for subsection (A)(8), the rules are enforced as written. If the Department finds that a facility is not complying with A.R.S. § 28-907, the Department enforces (A)(8) consistent with A.R.S. § 28-907, notifies the licensee, and provides technical assistance to ensure that the licensee comes into compliance within one year.

R9-5-518. Field Trips

2. Objective

The objective of the rule is to establish requirements for field trips involving the enrolled children of a facility.

ARTICLE 6. PHYSICAL PLANT OF A FACILITY

R9-5-601. General Physical Plant Standards

2. Objective

The objective of the rule is to establish requirements for facility rooms and bathroom fixtures to accommodate enrolled children's safety and need for proper toileting and personal hygiene.

3. Analysis of effectiveness of the rules

The rule is effective in meeting its objective. However, the rule would be more effective if amended to include matters identified in paragraph 6.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable. However, the rule would be improved if subsection (5) were moved since a request to add a diaper changing area is regulated by R9-5-208, Change Affecting a License, for an intended change to a facility's space utilization. Additional, moving subsections (5) will further clarify that an enrolled child with special needs who requires diapering does not require a facility to diaper the enrolled child using a permanent, dedicated diaper changing area.

R9-5-602. Facility Square Footage Requirements

2. Objective

The objective of the rule is to establish requirements for determining and allocating indoor and outdoor space utilization for a facility based on the child care service classifications provided and the number of enrolled children.

R9-5-603. Outdoor Activity Areas

2. Objective

The objective of the rule is to establish construction, maintenance, and safety requirements for a facility's outdoor activity area, including outdoor toys and play equipment.

R9-5-604. Swimming Pools

2. Objective

The objective of the rule is to establish the construction, maintenance, and safety requirements for a private swimming pool at a facility and for a public or semi-public pool used by a facility's enrolled children.

R9-5-605. Fire and Safety

2. Objective

The objectives of the rule are to establish requirements to maintain: (1) a facility premises that is free from hazards relevant to fire safety practices, and (2) fire detection devices operable at all times.

ATTACHMENT C

From: Billie Enz, Ph.D.
Faculty Emeritus, Arizona State University
1426 E. Catamaran Dr., Gilbert, Az. 85234
(480) 734 7041 bjenz@asu.edu

June 15, 2015

To: Lourdes Ochoa
State Licensing Manager, Bureau of Child Care Licensing
Arizona Department of Health Services
150 North 18th Avenue, Suite 400 Phoenix, AZ 85007

Dear Ms. Ochoa,

I'm writing to you as a citizen of Arizona, emeritus professor of early childhood education, founding executive director for Educare Arizona, consultant for New Directions Institute and most importantly, an advocate concerned for the welfare, health and safety of children.

This letter is to request when the Arizona Department of Health Services Bureau of Child Care Licensing completes the upcoming five-year rule review, a recommendation for a legislative change is made to the Article 4. Facility Staff- R9-5-404 Staff-to-Children Ratio, that allows for an additional child in the infant and 1 year-old- children ratio groups. Providers in the field refer to this ratio regulation as **“the bonus child.”** The current standard allows a ratio of 1 adult to 5 infants or two adults to 11 infants and 1 adult to six 1 year olds or 2 adults to 13 one year olds. The purpose of this letter is to:

- **recommend that infant and toddler classrooms be regulated at current ratios without the addition of the bonus child.**

The additional child that is allowed causes many challenges to child care programs that want to implement nationally recommended high quality practices such as working in small groups and assigning children to a familiar caregiver, also called primary caregiving. These practices have been confirmed by research to support building warm and reciprocal relationships between very young children and their out of home caregivers. Such relationships are the foundation of early emotional and social development and considered best practices by Early Head Start Performance Standards, Caring For Our Children, NAEYC accreditation standards, the Program for Infant Toddler Care (WestEd), and the Arizona Infant Toddler Institute.

When programs staff a classroom with two or more adults in accordance with ratio requirements, and include the “bonus child,” it is almost impossible to implement small groups because teachers are required to stay together in a large group to be in compliance. This is particularly true in classrooms where the occupancy (room capacity) allows for two or more ratio groups.

This regulation prevents one teacher from taking a ratio group outside while another teacher and ratio group participates in self-directed play and other planned learning activities in the classroom. When the number of children sharing the space, toys, and materials is decreased in this manner, children have more opportunities to focus on planned learning activities and pleasant routine experiences. Further, the teacher is able to interact with children as they play and individualize experiences to match developmental and learning needs. This opportunity for teachers to observe a small group of children is also beneficial for the identification of possible developmental delays or special needs. The result is almost always a more harmonious environment and increased opportunities for individual child observations. This is not possible when trying to manage these very young infants and toddlers in one large group.

ATTACHMENT C

Children under three are the most vulnerable to the negative implications of the bonus child because they are totally dependent on their adult caregivers to support them in learning emotional regulation, social interaction skills, acquisition of receptive and expressive language, and vocabulary growth. In addition, developing emotional resilience requires a responsive adult and is tied to ability of adults to identify when such support is needed so it can be provided promptly.

The bonus child also limits the ability to modify or adjust interactions and supervision to children's individual differences, special needs, or unusual circumstances, including developmental issues such as cutting new teeth, having a new baby join the family, or tackling a challenging developmental tasks like learning to feed oneself or to toilet independently. In addition, in larger groups, children are more likely to hurt each other or be hurt by same age children who are still learning impulse control and have difficulty waiting for what they need.

There is also a regulatory burden to the standard as it is implemented. The standard is misleading and difficult to regulate, resulting in frequent misunderstanding and citations for non-compliance. Programs are unsure of how the standard related to the bonus child is determined and monitored. Again, this issue is supporting the recommendation that infant and toddler classrooms be regulated at current ratios **without the addition of the bonus child**.

Research clearly indicates that the quality of the child's experience in childcare settings is dependent on having a well-known and responsive adult to anticipate and meet needs. The sophisticated skills needed by adults to read non-verbal cues from young children that are not yet able to tell their caregivers what they need requires support. Small groups and primary caregiving is necessary in infant and toddler classrooms for these needs to be met by adults. By having the requirements of the State of Arizona acknowledge the unique developmental needs of these very young children, we will encourage the child care community to make the appropriate changes to the practices they implement.

Thank you for your time.

Sincerely,

A handwritten signature in cursive script that reads "Billie Long". The signature is written in black ink and is positioned at the bottom left of the page.

ATTACHMENT C

May 27, 2015

Lourdes Ochoa
State Licensing Manager, Bureau of Child Care Licensing
Arizona Department of Health Services
150 North 18th Avenue, Suite 400 Phoenix, AZ 85007

Dear Ms. Ochoa,

It is my understanding that you have received requests for a change in the early childhood statutes that include the provision of an 'extra child' in the ratio groups for the infant and one year old classrooms. I am writing to express my concern regarding the possibility for centers to utilize the 'bonus child' option. I am now a grandparent with a renewed interest in looking closely at things we all can do to improve the likelihood of fostering close relationships of trust and responsiveness between caregivers and infants and toddlers specifically.

In Article 4 Facility Staff- R9-5-404 Staff-to-Children Ratio, there is a provision allowing for an additional child in ratio groups of infants and 1 year-olds. This offers a ratio of 1 adult to 5 infants, or 2 adults to 11 infants. It also permits 1 adult to 6 one year olds or 2 adults to 13 one year olds. Considering the impact that this one additional child has to the practical ramifications of actually working with infants and toddlers, I believe that the bonus child provision should be eliminated.

When caregivers are shown the benefits of working closely with a small group of children, relationships are strengthened. As you well know, healthy early brain development is dependent upon having a consistent, predictable, loving caregiver in the life of the child. Group size matters in ensuring this. Relationships can thrive when a smaller context supports positive, frequent interactions with the same people.

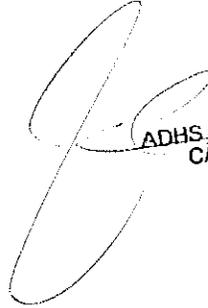
My experience with your office has always been really positive, so I hope that you will consider my recommendation in the spirit of helpfulness to bring about positive change for kids.

Thank you,

Jill Stamm, Ph.D.
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Phoenix, AZ 85016
602-952-2400
jstamm@asu.edu

ATTACHMENT C

Mary Stewart
Education Faculty
Education Studies Department
Mesa Community College
480-461-7935
mary.stewart@mesacc.edu


ADHS CONTROLLER'S OFFICE
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MAY 13 2015
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May 8, 2015

Lourdes Ochoa
State Licensing Manager, Bureau of Child Care Licensing
Arizona Department of Health Services
150 North 18th Avenue, Suite 400 Phoenix, AZ 85007

Ms. Ochoa,

As a mother and a grandparent I am asking you to consider the events that are affecting little ones at this time.

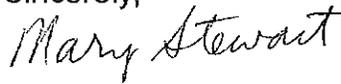
Please recommend a legislative change made to the existence of the "bonus child". I understand the Arizona Department of Health Services Bureau of Child Care Licensing completes the upcoming five-year rule review, a recommendation for Facility Staff- R9-5-404 Staff-to-Children Ratio that allows for an additional child in the infant and 1 year-old- children ratio groups. A ratio of 1 adult to 5 infants or two adults to 11 infants is a terrible idea!

Higher quality practices have been confirmed by research to support building warm and reciprocal relationships between very young children and their out of home caregivers. Small group experiences are almost impossible when programs staff a classroom with two or more adults in accordance with ratio requirements, and include the "bonus child".

Please encourage the child care community to make the appropriate changes to the practices they implement. Our state's children really need TLC!

Thank you for your time.

Sincerely,


Mary Stewart

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MAY 13 2015

BUREAU OF CHILD CARE LICENSURE

ATTACHMENT C

Barbara Milner
Early Childhood Care and Education Consultant
1628 East Southern Ave., Suite 9-314 Tempe, AZ 85282
(480) 231-7137 barbmilner@icloud.com

May 3, 2015

Lourdes Ochoa
State Licensing Manager, Bureau of Child Care Licensing
Arizona Department of Health Services
150 North 18th Avenue, Suite 400 Phoenix, AZ 85007

Dear Ms. Ochoa,

I'm writing to you as a citizen of Arizona and a concerned advocate for children.

This letter is to request when the Arizona Department of Health Services Bureau of Child Care Licensing completes the upcoming five-year rule review, a recommendation for a legislative change is made to the Article 4. Facility Staff- R9-5-404 Staff-to-Children Ratio, that allows for an additional child in the infant and 1 year-old- children ratio groups. Providers in the field refer to this ratio regulation as "**the bonus child.**" The current standard allows a ratio of 1 adult to 5 infants or two adults to 11 infants and 1 adult to six 1-year-olds or 2 adults to 13 one-year-olds.

The additional child that is allowed causes many challenges to child care programs that want to implement nationally recommended high quality practices such as working in small groups and assigning children to a familiar caregiver, also called primary caregiving. These practices have been confirmed by research to support building warm and reciprocal relationships between very young children and their out of home caregivers. Such relationships are the foundation of early emotional and social development and considered best practices by Early Head Start Performance Standards, Caring For Our Children, NAEYC accreditation standards, the Program for Infant Toddler Care (WestEd), and the Arizona Infant Toddler Institute.

When programs staff a classroom with two or more adults in accordance with ratio requirements, and include the "bonus child," it is almost impossible to implement small groups because teachers are required to stay together in a large group to be in compliance. This is particularly true in classrooms where the occupancy (room capacity) allows for two or more ratio groups.

This regulation prevents one teacher from taking a ratio group outside while another teacher and ratio group participates in self-directed play and other planned learning activities in the classroom. When the number of children sharing the space, toys, and materials is decreased in this manner, children have more opportunities to focus on planned learning activities and pleasant routine experiences. Further, the teacher is able to interact with children as they play and individualize experiences to match

ATTACHMENT C

developmental and learning needs. This opportunity for teachers to observe a small group of children is also beneficial for the identification of possible developmental delays or special needs. The result is almost always a more harmonious environment and increased opportunities for individual child observations. This is not possible when trying to manage these very young infants and toddlers in one large group.

Children under three are the most vulnerable to the negative implications of the bonus child because they are totally dependent on their adult caregivers to support them in learning emotional regulation, social interaction skills, acquisition of receptive and expressive language, and vocabulary growth. In addition, developing emotional resilience requires a responsive adult and is tied to ability of adults to identify when such support is needed so it can be provided promptly.

The bonus child also limits the ability to modify or adjust interactions and supervision to children's individual differences, special needs, or unusual circumstances, including developmental issues such as cutting new teeth, having a new baby join the family, or tackling a challenging developmental tasks like learning to feed oneself or to toilet independently. In addition, in larger groups, children are more likely to hurt each other or be hurt by same age children who are still learning impulse control and have difficulty waiting for what they need.

There is also a regulatory burden to the standard as it is implemented. The standard is misleading and difficult to regulate, resulting in frequent misunderstanding and citations for non-compliance. Programs are unsure of how the standard related to the bonus child is determined and monitored. The purpose of this letter is to recommend that infant and toddler classrooms be regulated at current ratios **without the addition of the bonus child**.

Research clearly indicates that the quality of the child's experience in childcare settings is dependent on having a well-known and responsive adult to anticipate and meet needs. The sophisticated skills needed by adults to read non-verbal cues from young children that are not yet able to tell their caregivers what they need requires support. Small groups and primary caregiving is necessary in infant and toddler classrooms for these needs to be met by adults. By having the requirements of the State of Arizona acknowledge the unique developmental needs of these very young children, we will encourage the child care community to make the appropriate changes to the practices they implement.

Thank you for your time.

Sincerely,

Barbara Milner

TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES
CHILD CARE FACILITIES

Chapter 5 consisting of Sections R9-5-101, R9-5-201 through R9-5-211, R9-5-301 through R9-5-308, R9-5-401 through R9-5-404, R9-5-501 through R9-5-222, R9-5-601 through R9-5-614 adopted effective December 12, 1986.

Former Chapter 5 consisting of Sections R9-5-110 through R9-5-113, R9-5-211 through R9-5-218, R9-5-311 through R9-5-313, R9-5-411 through R9-5-425 repealed effective December 12, 1986.

Heading of Chapter permanently changed from “Department of Health Services - Day Care Centers” to “Department of Health Services - Child Care Facilities” effective October 4, 1990 (Supp. 90-4).

Heading of Chapter changed by emergency action from “Department of Health Services - Day Care Centers” to “Department of Health Services - Child Care Facilities” effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3).

ARTICLE 1. GENERAL

Section

- R9-5-101. Definitions
R9-5-102. Individuals to Act for Applicant or Licensee Regarding Document, Fingerprinting, and Department-provided Training Requirements

ARTICLE 2. FACILITY LICENSURE

Article 2 consisting of Sections R9-5-201 through R9-5-211 repealed; new Sections R9-5-201 through R9-5-209 adopted; and Article heading amended effective October 17, 1997 (Supp. 97-4).

Section

- R9-5-201. Application for a License
R9-5-202. Time-frames
Table 2.1. Time-frames (in days)
R9-5-203. Fingerprinting and Central Registry Background Check Requirements
R9-5-204. Child Care Service Classifications
R9-5-205. Submission of Licensure Fees
R9-5-206. Licensure Fees
R9-5-207. Invalid License
R9-5-208. Changes Affecting a License
R9-5-209. Inspections; Investigations
R9-5-210. Denial, Revocation, or Suspension of License
R9-5-211. Repealed

ARTICLE 3. FACILITY ADMINISTRATION

Article 3 consisting of Sections R9-5-301 through R9-5-308 repealed; new Sections R9-5-301 through R9-5-309 adopted; and Article heading amended effective October 17, 1997 (Supp. 97-4).

Section

- R9-5-301. General Licensee Responsibilities
R9-5-302. Statement of Child Care Services
R9-5-303. Posting of Notices
R9-5-304. Enrollment of Children
R9-5-305. Child Immunization Requirements
R9-5-306. Admission and Release of Children; Attendance Records
R9-5-307. Suspected or Alleged Child Abuse or Neglect
R9-5-308. Insurance Requirements
R9-5-309. Gas and Fire Inspections
R9-5-310. Pesticides

ARTICLE 4. FACILITY STAFF

Article 4 consisting of Sections R9-5-401 through R9-5-404 repealed; new Sections R9-5-401 through R9-5-404 adopted; and Article heading amended effective October 17, 1997 (Supp. 97-4).

Section

- R9-5-401. Staff Qualifications
R9-5-402. Staff Records and Reports

- R9-5-403. Training Requirements
R9-5-404. Staff-to-Children Ratios

ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

Chapter 5 consisting of Sections R9-5-501 through R9-5-222 repealed; new Sections R9-5-501 through R9-5-518 and Table 1 adopted; and heading amended effective October 17, 1997 (Supp. 97-4).

Section

- R9-5-501. General Child Care Program, Equipment, and Health and Safety Standards
R9-5-502. Supplemental Standards for Infants
R9-5-503. Standards for Diaper Changing
R9-5-504. Supplemental Standards for 1-year-old and 2-year-old Children
R9-5-505. Supplemental Standards for 3-year-old, 4-year-old, and 5-year-old Children
R9-5-506. Supplemental Standards for School-age Children
R9-5-507. Supplemental Standards for Children with Special Needs
R9-5-508. General Nutrition Standards
Table 5.1. Meal Pattern Requirements for Children
R9-5-509. General Food Service and Food Handling Standards
R9-5-510. Discipline and Guidance
R9-5-511. Sleeping and Napping
R9-5-512. Cleaning and Sanitation
R9-5-513. Pets and Animals
R9-5-514. Accident and Emergency Procedures
R9-5-515. Illness and Infestation
R9-5-516. Medications
R9-5-517. Transportation
R9-5-518. Field Trips
R9-5-519. Repealed
R9-5-520. Repealed
R9-5-521. Repealed
R9-5-522. Repealed
Table 1. Repealed

ARTICLE 6. PHYSICAL PLANT OF A FACILITY

Article 6 consisting of Sections R9-5-601 through R9-5-614 repealed; new Sections R9-5-601 through R9-5-607 adopted; and Article heading amended effective October 17, 1997 (Supp. 97-4).

Section

- R9-5-601. General Physical Plant Standards
R9-5-602. Facility Square Footage Requirements
R9-5-603. Outdoor Activity Areas
R9-5-604. Swimming Pools
R9-5-605. Fire and Safety
R9-5-606. Renumbered
R9-5-607. Repealed

ATTACHMENT A

Arizona Administrative Code

Title 9, Ch. 5

Department of Health Services – Child Care Facilities

R9-5-608. Repealed
R9-5-609. Repealed
R9-5-610. Repealed
R9-5-611. Repealed
R9-5-612. Repealed
R9-5-613. Repealed
R9-5-614. Repealed

ARTICLE 7. REPEALED

Article 7, consisting of Sections R9-5-701 through R9-5-708, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

Section

R9-5-701. Repealed
R9-5-702. Repealed
Table 2. Repealed
R9-5-703. Repealed
R9-5-704. Repealed
R9-5-705. Repealed
R9-5-706. Repealed
R9-5-707. Repealed
R9-5-708. Repealed

ARTICLE 8. REPEALED

Article 8, consisting of Sections R9-5-801 through R9-5-809, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

Section

R9-5-801. Repealed
R9-5-802. Repealed
R9-5-803. Repealed
R9-5-804. Repealed
R9-5-805. Repealed
R9-5-806. Repealed
R9-5-807. Repealed
R9-5-808. Repealed
R9-5-809. Repealed

ARTICLE 9. REPEALED

Article 9, consisting of Sections R9-5-901 through R9-5-912, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

Section

R9-5-901. Repealed
R9-5-902. Repealed
R9-5-903. Repealed
R9-5-904. Repealed
R9-5-905. Repealed
R9-5-906. Repealed
R9-5-907. Repealed
R9-5-908. Repealed
R9-5-909. Repealed
R9-5-910. Repealed
R9-5-911. Repealed
R9-5-912. Repealed

ARTICLE 10. REPEALED

Article 10, consisting of Sections R9-5-1001 through R9-5-1006, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

Section

R9-5-1001. Repealed
R9-5-1002. Repealed
R9-5-1003. Repealed
R9-5-1004. Repealed

R9-5-1005. Repealed
R9-5-1006. Repealed

ARTICLE 1. GENERAL

R9-5-101. Definitions

In addition to the definitions in A.R.S. § 36-881, the following definitions apply in this Chapter unless otherwise specified:

1. "Abuse" has the same meaning as in A.R.S. § 8-201.
2. "Accident" means an unexpected occurrence that:
 - a. Causes injury to an enrolled child,
 - b. Requires attention from a staff member, and
 - c. May or may not be an emergency.
3. "Accommodation school" has the same meaning as in A.R.S. § 15-101.
4. "Accredited" means approved by the:
 - a. New England Association of Schools and Colleges,
 - b. Middle States Association of Colleges and Schools,
 - c. North Central Association of Colleges and Schools,
 - d. Northwest Commission on Colleges and Universities,
 - e. Southern Association of Colleges and Schools, or
 - f. Western Association of Schools and Colleges.
5. "Activity" means an action planned by a licensee and performed by an enrolled child while supervised by a staff member.
6. "Activity area" means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by an enrolled child for an activity.
7. "Adaptive device" means equipment used to augment an individual's use of the individual's arms, legs, sight, hearing, or other physical part or function.
8. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
9. "Adult" means an individual who is at least 18 years of age.
10. "Age-appropriate" means consistent with a child's age and age-related stage of physical growth and mental development.
11. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
12. "Applicant" means a person or governmental agency requesting one of the following:
 - a. A license, or
 - b. Approval of a change affecting a license under R9-5-208.
13. "Application" means the documents that an applicant is required to submit to the Department for licensure or approval of a request for a change affecting a license.
14. "Assistant teacher-caregiver" means a staff member who aids a teacher-caregiver in planning, developing, or conducting child care activities.
15. "Association" means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who has established a governing board and bylaws to operate a facility.
16. "Beverage" means a liquid for drinking, including water.
17. "Business organization" has the same meaning as "entity" in A.R.S. § 10-140.
18. "Calendar week" means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
19. "C.C.P." means Certified Childcare Professional, a credential awarded by the National Child Care Association.
20. "C.D.A." means Child Development Associate, a credential awarded by the Council for Professional Recognition.

21. “Change in ownership” means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility.
22. “Charter school” has the same meaning as in A.R.S. § 15-101.
23. “Child care experience” means an individual’s documented work with children in:
 - a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
 - b. A public school, a charter school, a private school, or an accommodation school;
 - c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12; or
 - d. One of the following professional fields:
 - i. Nursing,
 - ii. Social work,
 - iii. Psychology,
 - iv. Child development, or
 - v. A closely-related field.
24. “Child care services” means the range of activities and programs provided by a licensee to an enrolled child, including personal care, supervision, education, guidance, and transportation.
25. “Child Protective Services” means the Child Protective Services Program of the Arizona Department of Economic Security.
26. “Child with special needs” means:
 - a. A child with a health care provider’s diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
 - b. A child with a “developmental disability” as defined in A.R.S. § 36-551; or
 - c. A “child with a disability” as defined in A.R.S. § 15-761.
27. “Clean” means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.
28. “Closely-related field” means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.
29. “Communicable disease” has the same meaning as in A.A.C. R9-6-101.
30. “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
31. “Corporal punishment” means any physical action used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
32. “CPR” means cardiopulmonary resuscitation.
33. “Credit hour” means an academic unit earned at an accredited college or university:
 - a. By attending a one-hour class session each calendar week during a semester or equivalent shorter course term, or
 - b. Completing practical work for a course as determined by the accredited college or university.
34. “Days” means calendar days, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
35. “Designated agent” means an individual who meets the requirements in A.R.S. § 36-889(D).
36. “Developmentally-appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.
37. “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.
38. “Documentation” means information in written, photographic, electronic, or other permanent form.
39. “Electronic signature” has the same meaning as in A.R.S. § 41-132(E).
40. “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
41. “Endanger” means to expose an individual to a situation where physical injury or mental injury to the individual may occur.
42. “Enrolled” means placed by a parent and accepted by a licensee for child care services.
43. “Evening and nighttime care” means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.
44. “Facility” has the same meaning as “child care facility” in A.R.S. § 36-881.
45. “Facility director” means an individual who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.
46. “Facility premises” means property that is:
 - a. Designated on an application for a license by the applicant; and
 - b. Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter.
47. “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
48. “Field trip” means an activity planned by a staff member for an enrolled child:
 - a. At a location or area that is not licensed for child care services by the Department, or
 - b. At a child care facility in which the child is not enrolled.
49. “Final construction drawings” means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by local government for the construction, alteration, or addition of a facility.
50. “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
51. “Food preparation” means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.

ATTACHMENT A

Arizona Administrative Code

52. "Full-day care" means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.
53. "Governmental agency" has the same meaning as in A.R.S. § 44-7002.
54. "Guidance" means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
55. "Hazard" means a source of endangerment.
56. "Health care provider" means a physician, physician assistant, or registered nurse practitioner.
57. "High school equivalency diploma" means:
 - a. A document issued by the Arizona Department of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
 - b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
 - c. A document issued by another country to an individual who has completed that country's equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental agencies.
58. "Hours of operation" means the specific time during a day for which a licensee is licensed to provide child care services.
59. "Illness" means physical manifestation or signs of sickness, such as pain, vomiting, rash, fever, discharge, or diarrhea.
60. "Immediate" means without restriction, delay, or hesitation.
61. "Inaccessible" means:
 - a. Out of an enrolled child's reach, or
 - b. Locked.
62. "Infant" means:
 - a. A child 12 months of age or younger, or
 - b. A child 18 months of age or younger who is not yet walking.
63. "Infant care" means child care services provided to an infant.
64. "Infestation" means the presence of lice, pinworms, scabies, or other parasites.
65. "Inspection" means:
 - a. Onsite examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
 - b. Onsite review of facility documents, records, or reports by the Department; or
 - c. Onsite examination of a facility by a local governmental agency.
66. "Lesson plan" means a written description of the activities scheduled in each activity area for a day.
67. "License" means the written authorization issued by the Department to operate a facility in Arizona.
68. "Licensed applicator" has the same meaning as in A.R.S. § 32-2301.
69. "Licensed capacity" means the maximum number of enrolled children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.
70. "Licensee" means a person or governmental agency to whom the Department has issued a license to operate a facility in Arizona.
71. "Local" means under the jurisdiction of a city or county in Arizona.
72. "Mat" means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child's body.
73. "Material safety data sheet" means the information provided by a manufacturer describing chemical qualities, hazards, safety precautions, and emergency procedures to be followed in case of a spill, fire, or other emergency.
74. "Medication" means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or available without a prescription for the treatment or prevention of illness or infestation.
75. "Menu" means:
 - a. A written description of the food that a facility provides and serves as a meal or snack, or
 - b. The combination of food that a facility provides and serves as a meal or snack.
76. "Motor vehicle" has the same meaning as in A.R.S. § 28-101.
77. "N.A.C." means the National Administrator Credential, a credential issued by the National Child Care Association.
78. "Name" means, for an individual, the individual's first name and the individual's last name.
79. "Naptime" means any time during hours of operation, other than evening and nighttime hours, that is designated by a licensee for the rest or sleep of enrolled children.
80. "Neglect" has the same meaning as in A.R.S. § 8-201.
81. "One-year-old" means a child who is not an infant and at least 12 months of age but not yet two years of age.
82. "Outbreak" has the same meaning as in A.A.C. R9-6-101.
83. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
84. "Parent" means:
 - a. A natural or adoptive mother or father,
 - b. A legal guardian appointed by a court of competent jurisdiction, or
 - c. A "custodian" as defined in A.R.S. § 8-201.
85. "Part-day care" means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.
86. "Perishable food" means food that becomes unfit for human consumption if not stored to prevent spoilage.
87. "Pesticide" has the same meaning as in A.R.S. § 32-2301.
88. "Pesticide label" means the written, printed, or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container.
89. "Physical injury" means temporary or permanent damage or impairment to a child's body.
90. "Physical plant" means a building that houses a facility, or the licensed areas within a building that houses a facility, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
91. "Physician" means an individual licensed as a doctor of:
 - a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
 - b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
 - c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
 - d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or

- e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state.
- 92. “Physician assistant” means:
 - a. An individual who is licensed under A.R.S. Title 32, Chapter 25; or
 - b. An individual who is licensed as a physician assistant under the law of another state.
- 93. “Private pool” has the same meaning as “private residential swimming pool” in A.A.C. R18-5-201.
- 94. “Private school” has the same meaning as in A.R.S. § 15-101.
- 95. “Program” means a variety of activities organized and conducted by a staff member.
- 96. “Public pool” has the same meaning as “public swimming pool” in A.A.C. R18-5-201.
- 97. “Public school” has the same meaning as “school” in A.R.S. § 15-101.
- 98. “Registered nurse practitioner” means:
 - a. An individual who is licensed and certified as a “registered nurse practitioner” under A.R.S. § 32-1601, or
 - b. An individual who is licensed or certified as a registered nurse practitioner under the law of another state.
- 99. “Regular basis” means at recurring, fixed, or uniform intervals.
- 100. “Responsible party” means an individual or a group of individuals who:
 - a. Is assigned by a public school, charter school, or governmental agency; and
 - b. Has general oversight of the child care facility.
- 101. “Sanitize” means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
- 102. “School-age child” means a child who:
 - a. Meets one of the following:
 - i. Is five years old on or before January 1 of the current school year, or
 - ii. Is five years old on or before January 1 of the most recent school year; and
 - b. Meets one of the following:
 - i. Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;
 - ii. Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;
 - iii. Is home-schooled at a kindergarten or higher level during the current school year; or
 - iv. Was home-schooled at a kindergarten or higher level during the most recent school year.
- 103. “School-age child care” means child care services provided to a school-age child.
- 104. “School campus” means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.
- 105. “School governing board” has the same meaning as “governing board” in A.R.S. § 15-101.
- 106. “Screen time” means the use of electronic media to watch television or to watch a video, a DVD, or a movie at the facility or at another location or the use of electronic media or a computer for game-playing, entertainment, communication, or educational purposes.
- 107. “Semi-public pool” has the same meaning as “semipublic swimming pool” in A.A.C. R18-5-201.
- 108. “Service classification” means one of the following:
 - a. Full-day care;
 - b. Part-day care;
 - c. Evening and nighttime care;
 - d. Infant care;
 - e. One-year-old child care;
 - f. Two-year-old child care;
 - g. Three-year-old, four-year-old, and five-year-old child care;
 - h. School-age child care; or
 - i. Weekend care.
- 109. “Signatory” means an individual who is authorized by a school district governing board, school district superintendent, or governmental agency to sign a document on behalf of the school district governing board, school district superintendent, or governmental agency.
- 110. “Signed” means affixed with an individual’s signature or with a symbol representing an individual’s signature if the individual is unable to write the individual’s name.
- 111. “Sippy cup” means a lidded drinking container that is designed to be leak proof or leak-resistant and from which a child drinks through a spout or straw.
- 112. “Space utilization” means the designated use of an area within a facility for specific child care services or activities.
- 113. “Staff” or “staff member” means the same as “child care personnel” as defined in A.R.S. § 36-883.02.
- 114. “Student-aid” means an individual less than 16 years of age who is participating in an educational, curriculum-based course of study; vocational education; or occupational development program and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by staff in the provision of child care services.
- 115. “Substantive review time-frame” has the same meaning as in A.R.S. § 41-1072.
- 116. “Supervision” means:
 - a. For an enrolled child, knowledge of and accountability for the actions and whereabouts of the enrolled child, including the ability to see or hear the enrolled child at all times, to interact with the enrolled child, and to provide guidance to the enrolled child; or
 - b. For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual’s actions to prevent harm to enrolled children.
- 117. “Swimming pool” has the same meaning as in A.A.C. R18-5-201.
- 118. “Teacher-caregiver” means a staff member responsible for developing, planning, and conducting child care activities.
- 119. “Teacher-caregiver-aid” means a staff member who provides child care services under the supervision of a teacher-caregiver.
- 120. “Training” means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction.
- 121. “Volunteer” means a staff member who, without compensation, provides child care services that are the responsibility of a licensee.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended by adding a new paragraph (16) and renumbering accordingly effective July 7, 1988 (Supp. 88-3). Amended as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency amendments readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency amendments readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Emergency amendments readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency amendments readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency amendments permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Amended effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 3492, effective December 1, 2007 (Supp. 07-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-102. Individuals to Act for Applicant or Licensee Regarding Document, Fingerprinting, and Department-provided Training Requirements

When an applicant or licensee is required by this Chapter to provide information on or sign documents, possess a fingerprint clearance card, or complete Department-provided training, the following shall satisfy the requirement on behalf of the applicant or licensee:

1. If the applicant or licensee is an individual, the individual;
2. If the applicant or licensee is a business organization, a designated agent who meets the requirements in A.R.S. § 36-889(D);
3. If the applicant or licensee is a public school, an individual designated in writing as signatory for the public school by the school district governing board or school district superintendent;
4. If the applicant or licensee is a charter school, the person approved to operate the charter school by the school district governing board, the Arizona State Board of Education, or the Arizona State Board for Charter Schools; and
5. If the applicant or licensee is a governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing as signatory by that individual.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

ARTICLE 2. FACILITY LICENSURE

R9-5-201. Application for a License

- A.** An applicant for a license shall:
1. Be at least 21 years of age;
 2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;

3. If a corporation, association, or limited liability company, be a domestic entity or a foreign entity qualified to do business in Arizona;
4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;
5. Submit to the Department an application packet containing:
 - a. An application on a form provided by the Department that contains:
 - i. The applicant's name;
 - ii. The applicant's date of birth;
 - iii. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
 - iv. The requested service classifications;
 - v. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
 - vi. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
 - vii. A statement that the information provided in the application packet is accurate and complete; and
 - viii. The applicant's signature and date the applicant signed the application;
 - b. A copy of the applicant's:
 - i. U.S. passport,
 - ii. Birth certificate,
 - iii. Naturalization documents, or
 - iv. Documentation of legal resident alien status;
 - c. A copy of the applicant's valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1;
 - d. A copy of the form required in A.R.S. § 36-883.02(C);
 - e. A certificate issued by the Department showing that the applicant has completed at least four hours of Department-provided training that included the Department's role in licensing and regulating child care facilities under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
 - f. Except as provided in subsection (A)(5)(i), a site plan of the facility drawn to scale showing:
 - i. The drawing scale;
 - ii. The boundary dimensions of the property upon which the facility's physical plant is located;
 - iii. If more than one building is used for the facility, the location and perimeter dimensions of each building;
 - iv. The location of each driveway on the property;
 - v. The location and boundary dimensions of each parking lot on the property;
 - vi. The location and perimeter dimensions of each outdoor activity area;
 - vii. The location, type, and height of each fence and gate; and
 - viii. If applicable, the location of any swimming pool on the property;
 - g. Except as provided in subsection (A)(5)(i), a floor plan of each building to be used for child care services drawn to scale showing:
 - i. The drawing scale;
 - ii. The length and width dimensions for each indoor activity area;

- iii. The requested licensed capacity and applicable service classification for each indoor activity area;
- iv. The location of each diaper changing area;
- v. The location of each hand washing, utility, and three-compartment sink, toilet, urinal, and drinking fountain; and
- vi. The location and type of fire alarm system;
- h. Except as provided in subsection (A)(5)(i):
 - i. A copy of a certificate of occupancy issued for the facility by the local jurisdiction;
 - ii. Documentation from the local jurisdiction that the facility was approved for occupancy; or
 - iii. If the documents in subsections (A)(5)(h)(i) and (ii) are not available, the seal of an architect registered as prescribed in A.R.S. § 32-121 on the site plan required in subsection (A)(5)(f) and the floor plan required in subsection (A)(5)(g) verifying compliance with local building and fire codes, local zoning requirements, and this Chapter;
- i. For an applicant providing child care services to three-year-old, four-year-old, five-year-old, or school-age children in a facility located in a public school, a set of final construction drawings or a school map showing:
 - i. The location of each school building;
 - ii. The location and dimensions of each outdoor activity area to be used by enrolled children;
 - iii. The length and width dimensions for each indoor activity area;
 - iv. The requested licensed capacity and applicable service classification for each indoor activity area; and
 - v. The location of each hand-washing sink, toilet, urinal, and drinking fountain to be used by enrolled children;
- j. If the facility is located within one-fourth of a mile of agricultural land:
 - i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the facility, and
 - ii. A copy of an agreement complying with A.R.S. § 36-882 for each parcel of agricultural land;
- k. The applicable fee in R9-5-206;
- l. If the applicant is a business organization, a form provided by the Department that contains:
 - i. The name, street address, city, state, and zip code of the business organization;
 - ii. The type of business organization;
 - iii. The name, date of birth, title, street address, city, state, and zip code of each controlling person;
 - iv. A copy of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable;
 - v. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application; and
 - vi. A statement signed by the applicant stating:
 - (1) That each controlling person has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
 - (2) That each controlling person has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children;
- m. If the applicant is a public school, a form provided by the Department that contains:
 - i. The name of the school district;
 - ii. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
 - iii. A statement signed by the applicant stating:
 - (1) That each individual in subsection (A)(5)(m)(ii) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
 - (2) That each individual in subsection (A)(5)(m)(ii) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and
 - iv. A letter from the school district governing board or school district superintendent designating a signatory, if applicable;
- n. If the applicant is a charter school, a form provided by the Department that contains:
 - i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
 - ii. A statement signed by the applicant stating:
 - (1) That each individual in subsection (A)(5)(n)(i) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
 - (2) That each individual in subsection (A)(5)(n)(i) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and
 - iii. A letter from the school district governing board in which the charter school is located, the Arizona State Board of Education, or the Arizona State Board for Charter Schools, approving the applicant to operate the charter school; and
- o. If the applicant is a governmental agency, a form provided by the Department that contains:
 - i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
 - ii. A statement signed by the applicant stating:
 - (1) That each individual in subsection (A)(5)(o)(i) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

- (2) That each individual in subsection (A)(5)(o)(i) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and
 - iii. A letter from the individual in the senior leadership position with the agency designating a signatory.
- B.** The Department requires a separate license and a separate application for:
1. Each facility owned by the same person at a different location, and
 2. Each facility owned by a different person at the same location.
- C.** The Department does not require a separate application and license for a structure that is:
1. Located so that the structure and the facility:
 - a. Share the same street address, or
 - b. Can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another,
 2. Under the same ownership as the facility, and
 3. Intended to be used as a part of the facility.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by exempt rulemaking at 15 A.A.R. 2096, effective January 1, 2010 (Supp. 09-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-202. Time-frames

- A.** The overall time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B.** The administrative completeness review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date that the Department receives an application packet.
1. An application packet for a license is not complete until the date, provided to the Department with the application packet or by written notice, that the child care facility is ready for an onsite licensing inspection.
 2. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the items needed to complete the application packet.
 - b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is issued until the date that the Department receives all of the missing items from the applicant.
 - c. If an applicant for a license or an approval of a change affecting a license fails to submit to the Department all of the items listed in the notice of deficiencies within 180 days after the date that the Department sent the notice of deficiencies, the

- Department shall consider the application or request for approval withdrawn.
3. If the Department issues a license or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date of the notice of administrative completeness.
1. As part of the substantive review for a license application, the Department shall conduct an inspection that may require more than one visit to the facility.
 2. As part of the substantive review for a request for approval of a change affecting a license that requires a change in the use of physical space at the facility, the Department shall conduct an evaluation of the request to determine compliance with applicable rules and statutes that may include an onsite inspection.
 3. The Department shall send a license, a written notice of approval, or denial of a license or other request for approval to an applicant within the substantive review time-frame.
 4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
 - a. If the Department determines that an applicant or a facility is not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.
 - b. An applicant shall submit to the Department all of the information requested in the comprehensive written request for additional information and documentation of the corrections required in the statement of deficiencies, if applicable within 120 days after the date of the comprehensive written request for additional information.
 - c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department issues a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including documentation of corrections required in a statement of deficiencies, if applicable.
 - d. If an applicant fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including documentation of corrections required in a statement of deficiencies, if applicable, within the time prescribed in subsection (C)(4)(b), the Department shall deny the application.
 5. The Department shall issue a license or other approval if the Department determines that the applicant and facility are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, and the applicant submits documentation of corrections that is acceptable to the Department for any deficiencies.
 6. If the Department determines that a license or other approval is to be denied, the Department shall send to the applicant a written notice of denial complying with

A.R.S. § 36-888 and stating the reasons for denial and all other information required by A.R.S. §§ 36-888 and 41-1076.

Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3).

Table 1. Renumbered

Historical Note

New Table made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Table 1 renumbered to Table 2.1 by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

Table 2.1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Substantive Review Time-Frame
License under R9-5-201	A.R.S. § 36-882	120	30	90
Approval of Change Affecting License under R9-5-208	A.R.S. §§ 36-882 and 36-883	75	30	45

Historical Note

Table 2.1 renumbered from Table 1 and amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-203. Fingerprinting and Central Registry Background Check Requirements

- A.** A licensee shall ensure that a staff member completes, signs, dates, and submits to the licensee, before the staff member's starting date of employment or volunteer service:
 - 1. The form required in A.R.S. § 36-883.02(C); and
 - 2. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I).
- B.** Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member submits to the licensee a copy of:
 - 1. The staff member's valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; or
 - 2. The fingerprint clearance card application that the staff member submitted to the Department of Public Safety under A.R.S. § 41-1758.02 within seven working days after the staff member's starting date of employment or volunteer service.
- C.** A licensee shall ensure that each staff member submits to the licensee a copy of the staff member's valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed.
- D.** If a staff member possesses a fingerprint clearance card that was issued before the staff member became a staff member at the facility, a licensee shall:
 - 1. Contact the Department of Public Safety within seven working days after the individual becomes a staff member to determine whether the fingerprint clearance card is valid; and
 - 2. Document this determination, including the name of the staff member, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.
- E.** If required by A.R.S. § 8-804, before an individual's starting date of employment or volunteer service, a licensee shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.
- F.** A licensee shall not allow an individual to be a staff member if the individual:
 - 1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1 and has not received an interim approval under A.R.S. § 41-619.55;
 - 2. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under

- A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
- 3. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
- 4. Has been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility for care of children in this state or another state;
- 5. Has been denied or had revoked a certification to work in a child care facility or a child care group home in this state or another state;
- 6. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or
- 7. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3). Amended by exempt rulemaking at 19 A.A.R. 2612, effective August 1, 2013 (Supp. 13-3).

R9-5-204. Child Care Service Classifications

- A.** The Department licenses child care facilities using the following service classifications:
 - 1. Full-day care;
 - 2. Part-day care;
 - 3. Evening and nighttime care;
 - 4. Infant care;
 - 5. One-year-old child care;
 - 6. Two-year-old child care;
 - 7. Three-year-old, four-year-old, and five-year-old child care;
 - 8. School-age child care; and
 - 9. Weekend care.

- B. The Department shall designate on a facility's license each service classification that the facility is licensed to provide.
- C. A licensee shall not provide child care services in a service classification for which the licensee is not licensed.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former Section R9-5-204 repealed; new Section R9-5-204 renumbered from R9-5-205 and amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-205. Submission of Licensure Fees

A licensee shall submit to the Department, every three years and no more than 60 days before the anniversary date of the facility's license:

- 1. A form provided by the Department that contains:
 - a. The licensee's name,
 - b. The facility's name and license number, and
 - c. Whether the licensee intends to submit the applicable fee:
 - i. With the form, or
 - ii. According to the payment plan in subsection (2)(b), and
- 2. Either:
 - a. The applicable fee in R9-5-206, or
 - b. One-half of the applicable fee in R9-5-206 with the form and the remainder of the applicable fee due no later than 120 days after the anniversary date of the facility's license.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former Section R9-5-205 renumbered to R9-5-204; new Section R9-5-205 renumbered from R9-5-206 and amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by exempt rulemaking at 15 A.A.R. 2096, effective January 1, 2010 (Supp. 09-4). Section repealed; new Section made by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-206. Licensure Fees

- A. Except as provided in subsection (B), the fees for an applicant submitting an application or a licensee submitting licensure fees are:
 - 1. For a child care facility with a licensed capacity of five to 10 children, \$1,000;
 - 2. For a child care facility with a licensed capacity of 11 to 59 children, \$4,000; and
 - 3. For a child care facility with a licensed capacity of 60 or more children, \$7,800.
- B. If an applicant or licensee participates in a Department-approved program, the Department may discount the fee in subsection (A), based on available funding.
- C. The fee for a licensee requesting an increase in a facility's licensed capacity is the difference between the applicable fee in this Section for the new licensed capacity and the applicable fee in this Section for the current licensed capacity, prorated from the date the licensee submitted the request for the increase for the number of months remaining before the facility's license anniversary date specified in R9-5-205.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former Section R9-5-206 renumbered to R9-5-205; new Section R9-5-206 renumbered from R9-5-207 and amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Former R9-5-206 renumbered to R9-5-208; new R9-5-206 renumbered from R9-5-210 and amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 2350, effective December 1, 2010 (Supp. 10-4).

R9-5-207. Invalid License

If a licensee does not submit the licensure fee as required in R9-5-205(2), the facility license is no longer valid and the facility is operating without a license.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former Section R9-5-207 renumbered to R9-5-206; new Section R9-5-207 made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed; new Section made by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-208. Changes Affecting a License

- A. At least 30 days before the date of a change in a facility's name, a licensee shall send the Department written notice of the name change and the Department shall issue an amended license that incorporates the name change but retains the anniversary date of the current license.
- B. At least 30 days before the date of an intended change in a facility's service classification, space utilization, or licensed capacity, a licensee shall submit a written request for approval of the intended change to the Department that includes:
 - 1. The licensee's name;
 - 2. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
 - 3. The name, telephone number, and fax number of a point of contact for the request;
 - 4. The facility's license number;
 - 5. The type of change intended:
 - a. Service classification,
 - b. Space utilization, or
 - c. Licensed capacity;
 - 6. A narrative description of the intended change; and
 - 7. The following additional information, as applicable:
 - a. If the intended change affects an activity area, the following information about each affected activity area, as applicable:
 - i. Identification of the activity area,
 - ii. Current and intended square footage,
 - iii. Current and intended operating hours,
 - iv. Current and intended service classification,
 - v. Current and intended licensed capacity, and
 - vi. Whether the activity area has or will have a diaper changing area;
 - b. If the intended change is to increase licensed capacity, the square footage of the outdoor activity area; and
 - c. If the intended change includes an alteration or addition to the physical plant of a licensed facility, the following, as applicable:

- i. If the facility is not located in a public school or if providing child care services to infants, one-year-old children, or two-year-old children in a facility located in a public school, the information required in R9-5-201(A)(5)(f) and (g) showing the intended change; or
 - ii. If the facility is located in a public school and provides child care only for three-year-old, four-year-old, or five-year-old, or school-age children, a set of final construction drawings or a school map, including the information required in R9-5-201(5)(i) showing the intended change.
 - C. If the intended change in subsection (B) includes an increase in the licensed capacity, a licensee shall submit the fee for an increase in licensed capacity in R9-5-206(C) with the written request for approval.
 - D. The Department shall review a request submitted under subsection (B) according to R9-5-202. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and any applicable fee is submitted, the Department shall send the licensee written approval of the requested change or an amended license that incorporates the change but retains the anniversary date of the current license.
 - E. A licensee shall not implement any change described under subsection (B) until the Department issues an approval or amended license.
 - F. At least 30 days before the date of a change in ownership of a facility, a licensee shall send the Department written notice of the change. A new owner shall obtain a new license as prescribed in R9-5-201 before the new owner begins operating the facility.
 - G. A licensee changing a facility's location shall apply for a new license as prescribed in R9-5-201.
 - H. Within 30 days after a change in a controlling person, a licensee shall send the Department written notice of the change that includes:
 - 1. The name of the licensee;
 - 2. A description of the change made;
 - 3. The name, title, street address, city, state, and zip code of each controlling person;
 - 4. A statement that each controlling person has not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
 - 5. A statement that each controlling person has not had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;
 - 6. A statement that the information provided in the written notice is accurate and complete; and
 - 7. The signature of the licensee.
 - I. If the change in subsection (H) is a change in a controlling person who is a designated agent, a licensee shall include a copy of one of the following for the designated agent:
 - 1. A U.S. passport,
 - 2. A birth certificate,
 - 3. Naturalization documents, or
 - 4. Documentation of legal resident alien status.
 - J. Within 30 days after changing a responsible party, a licensee shall send the Department written notice of the change that includes:
 - 1. The name of the licensee;
 - 2. A description of the change made;
 - 3. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals; and
 - 4. A statement signed by the licensee stating:
 - a. That each individual in subsection (J)(3) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
 - b. That each individual in subsection (J)(3) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children.
- Historical Note**
- Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Former R9-5-208 renumbered to R9-5-209; new R9-5-208 renumbered from R9-5-206 and amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 2350, effective December 1, 2010 (Supp. 10-4).
- R9-5-209. Inspections; Investigations**
- A. A licensee shall allow the Department immediate access to all areas of the facility affecting the health, safety, or welfare of an enrolled child or to which an enrolled child has access during hours of operation.
 - B. A licensee shall permit the Department to interview each staff member or enrolled child as part of an investigation.
- Historical Note**
- Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Former R9-5-209 renumbered to R9-5-210; new R9-5-209 renumbered from R9-5-208 and amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).
- R9-5-210. Denial, Revocation, or Suspension of License**
- A. The Department may deny, revoke, or suspend a license to operate a facility if an applicant or licensee:
 - 1. Provides false or misleading information to the Department;
 - 2. Has been denied a certificate or license to operate a child care group home or child care facility in any state, unless the denial was based on the applicant's failure to complete the certification or licensing process according to a required time-frame;
 - 3. Has had a certificate or license to operate a child care group home or child care facility revoked or suspended in any state;
 - 4. Has been denied a fingerprint clearance card or has had a fingerprint clearance card revoked under A.R.S. Title 41, Chapter 12, Article 3.1;
 - 5. Fails to substantially comply with any provision in A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter; or
 - 6. Substantially complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, but refuses to carry out a plan acceptable to the Department to eliminate any deficiencies.

B. In determining whether to deny, suspend, or revoke a license, the Department shall consider the threat to the health and safety of children in a facility based on such factors as:

1. Repeated violations of statutes or rules,
2. A pattern of non-compliance,
3. The type of violation,
4. The severity of each violation, and
5. The number of violations.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6).
Amended subsection (A) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).
New Section made by exempt rulemaking at 15 A.A.R. 2096, effective January 1, 2010 (Supp. 09-4). Former R9-5-210 renumbered to R9-5-206; new R9-5-210 renumbered from R9-5-209 and amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-211. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6).
Repealed effective October 17, 1997 (Supp. 97-4).

ARTICLE 3. FACILITY ADMINISTRATION

R9-5-301. General Licensee Responsibilities

A. A licensee shall:

1. Designate a facility director who acts on behalf of the licensee and is responsible for the daily onsite operation of a facility;
2. Submit the name of the designated facility director in writing to the Department before a license is issued;
3. Except as provided in subsection (A)(4), within 10 days before changing a facility director, submit written notice of the change including the new designated facility director's name and starting date;
4. If the licensee is not aware of a change in the facility director 10 days before the effective date of the change, submit written notice of the change to the Department including the new designated facility director's name and starting date within 72 hours after becoming aware of the change.

B. A licensee shall ensure that a facility director:

1. Designates, in writing, an individual who meets the requirements of R9-5-401(2) to act on behalf of the facility director when the facility director is not present in the facility;
2. Supervises or assigns a teacher-caregiver to supervise each staff member who does not meet the qualifications of R9-5-401(3);
3. Prepares a dated attendance record for each day and ensures that each staff member documents on the attendance record the time of each arrival and departure of the staff member; and
4. Maintains on the facility premises, the dated attendance record required in subsection (B)(3) for 12 months after the date on the attendance record.

C. A licensee shall develop and implement written facility policies and procedures required for the daily onsite operation of the facility as prescribed in A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter.

D. A licensee shall ensure that the following individuals are allowed immediate access to facility premises during hours of operation:

1. A parent of an enrolled child or an individual designated in writing by the parent of an enrolled child; or

2. A representative of:

- a. The Department,
- b. The local health department,
- c. Child Protective Services, or
- d. The local fire department or State Fire Marshal.

E. A licensee shall, with the exception of individuals listed in subsection (D)(2), ensure that a staff member supervises any individual that is not a staff member who is on facility premises where enrolled children are present.

F. A licensee shall ensure that a staff member submits, on or before the starting date of employment or volunteer services, one of the following as evidence of freedom from infectious active tuberculosis:

1. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention, administered within 12 months before the starting date of employment or volunteer service, that includes the date and the type of tuberculosis screening test; or
2. If the staff member has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the staff member is free from infectious active tuberculosis that is signed and dated by a health care provider within six months before the starting date of employment or volunteer service.

G. A licensee shall ensure that a staff member who has current training in first aid and CPR, as required by R9-5-403(E), is present:

1. At all times during hours of operation on facility premises,
2. On field trips, and
3. While transporting enrolled children in the facility's motor vehicle or a vehicle designated by the licensee to transport enrolled children.

H. A licensee shall prohibit the use or possession of the following items when an enrolled child is on facility premises, during hours of operation, or in any motor vehicle used for transporting an enrolled child:

1. Any beverage containing alcohol;
2. A controlled substance as listed in A.R.S. Title 36, Chapter 27, Article 2, except where used as a prescription medication in the manner prescribed;
3. A dangerous drug as defined in A.R.S. § 13-3401, except where used as a prescription medication in the manner prescribed;
4. A prescription medication as defined in A.R.S. § 32-1901, except where used in the manner prescribed; or
5. A firearm as defined in A.R.S. § 13-105.

I. At least once a month, and at different times of the day, a licensee shall ensure that an unannounced fire and emergency evacuation drill is conducted and each staff member and enrolled child at the facility participates in the fire and emergency evacuation drill.

1. If child care services for a child with special needs are provided at a facility, the licensee shall provide for the enrolled child's participation in each fire and emergency evacuation drill according to the enrolled child's individualized plan as specified in R9-5-507(A)(1).
2. A licensee shall document each fire and emergency evacuation drill and maintain the documentation on facility premises for 12 months after the date of the fire and emergency evacuation drill.

J. Every September, a licensee shall provide to parents of enrolled children information related to recommendations for influenza vaccinations for children.

- K. A licensee shall not allow a staff member who lacks proof of immunity against a disease listed in A.A.C. R9-6-702(A) to be present in the facility between the start and end of an outbreak of the disease at the facility.
- L. A licensee shall ensure that the Department is notified orally or in writing within 24 hours after an enrolled child's death at the child care facility during hours of operation.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6).
Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 3492, effective December 1, 2007 (Supp. 07-4).
Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-302. Statement of Child Care Services

- A. A licensee shall prepare a written statement of child care services provided by the licensee that includes the following:
 - 1. A description of the facility's child care services classifications in R9-5-204;
 - 2. Hours of operation;
 - 3. The facility's street address, city, state, zip code, mailing address, and telephone number;
 - 4. Child enrollment and disenrollment procedures;
 - 5. Charges, fees, and payment requirements for child care services;
 - 6. Child admission and release requirements;
 - 7. Age-appropriate discipline guidelines and methods;
 - 8. Transportation procedures;
 - 9. Field trip requirements and procedures;
 - 10. Responsibilities and participation of parents in facility activities;
 - 11. A general description of activities and programs;
 - 12. A description of the liability insurance required by R9-5-308 that is carried by the licensee and a statement that documentation of the liability insurance coverage is available for review on the facility premises;
 - 13. Medication administration procedures;
 - 14. Accident and emergency procedures;
 - 15. A notice stating inspection reports are available onsite;
 - 16. A provision stating that the facility is regulated by the Arizona Department of Health Services including the Department's local street address, city, state, zip code, and local telephone number;
 - 17. The procedures for notifying a parent at least 48 hours before a pesticide is applied on a facility's premises; and
 - 18. A statement that a parent has access to the areas on facility premises where the parent's enrolled child is receiving child care services.
- B. A licensee shall provide a copy of the written statement of child care services:
 - 1. To the Department:
 - a. Before the facility receives a license, and
 - b. Every 12 months after the date of the license as required by A.R.S. § 36-883.01; and
 - 2. To a parent when the parent requests a copy of the written statement of child care services.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6).
Amended subsection (A) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-303. Posting of Notices

- A. A licensee shall post in a place that can be conspicuously viewed by individuals entering or leaving the facility or activity area the:
 - 1. Facility's license;
 - 2. Name of the facility director;
 - 3. Name of the individual designated to act on behalf of the facility director when the facility director is not present in the facility, as prescribed by R9-5-301(B)(1);
 - 4. Schedule of child care services fees and policy for refunding fees as prescribed by A.R.S. § 36-882(O);
 - 5. Breakfast, lunch, dinner, and snack menus for each calendar week at the beginning of the calendar week;
 - 6. Notice of the presence of any communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, from the date of discovery through the incubation period of the communicable disease or infestation;
 - 7. Notice of the Department's intent to deny, revoke, or suspend as prescribed by A.R.S. § 36-888 at the expiration of time in the notice for the licensee to respond;
 - 8. Notice of an intermediate sanction imposed as prescribed by A.R.S. § 36-891.01 within 10 days after the licensee received notice of the intermediate sanction;
 - 9. Notice of a legal injunction imposed as prescribed by A.R.S. § 36-886.01 when the licensee receives the legal injunction; and
 - 10. Notice of the availability of facility inspection reports for public viewing at the facility premises.
- B. A licensee shall ensure that the licensed capacity of each indoor activity area is posted in that activity area.
- C. Except as prescribed in A.R.S. § 36-898(C), a licensee shall post a notification of pesticide application in each activity area and in each entrance of a facility, at least 48 hours before a pesticide is applied on the facility's premises, containing:
 - 1. The date and time of the pesticide application, and
 - 2. A statement that written pesticide information is available from the licensee upon request.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 3492, effective December 1, 2007 (Supp. 07-4).
Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-304. Enrollment of Children

- A. A licensee shall require that a child be enrolled by the child's parent or an individual authorized in writing by the parent.
- B. Except as required in A.R.S. § 36-3009, before an enrolled child receives child care services, a licensee shall require the enrolled child's parent to complete a Department-provided Emergency, Information, and Immunization Record card that is signed by the enrolled child's parent containing:
 - 1. The child's name, home address, city, state, zip code, home telephone number, sex, and date of birth;
 - 2. The date of the child's enrollment;
 - 3. The name, home address, city, state, zip code, and contact telephone number of each parent of the child;
 - 4. The name and contact telephone number of at least two individuals authorized by the child's parent to collect the child from the facility in case of emergency, or if the child's parent cannot be contacted;
 - 5. The name and contact telephone number of the child's health care provider;
 - 6. The written authorization for emergency medical care of the enrolled child;

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7. The name of the individual to be contacted in case of injury or sudden illness of the child;
 8. The written instructions of a child's parent or health care provider for nutritional and dietary needs of the child including, if applicable, the request in R9-5-509(C)(9); and
 9. A written record completed by the child's parent or health care provider noting the child's susceptibility to illness, physical conditions of which a staff member should be aware, and any individual requirements for health maintenance.
- C.** A licensee shall maintain a current Emergency, Information, and Immunization Record card for each enrolled child on facility premises in a place that provides a staff member ready access to the card in event of an emergency at, or evacuation of, the facility.
- D.** When an enrolled child is disenrolled from a facility, the licensee shall:
1. Enter the date of disenrollment on the child's Emergency, Information, and Immunization Record card; and
 2. Maintain the records in subsection (D)(1) for 12 months after the date of disenrollment on facility premises in a place separate from the current Emergency, Information, and Immunization Record cards. If a licensee is a school governing board, a charter school, or a person operating multiple child care facilities, the licensee may maintain disenrollment records in a single central administrative office located in the same city, town, or school attendance area as the facility.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6).
Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-305. Child Immunization Requirements

- A.** A licensee shall not permit an enrolled child to attend a facility until the facility receives:
1. An immunization record for the enrolled child with the information required in 9 A.A.C. 6, Article 7, documenting that the enrolled child has received all current, age-appropriate immunizations required under 9 A.A.C. 6, Article 7:
 - a. Provided by a health care provider, or
 - b. Generated from the Arizona State Immunization Information System, which is the Department's child immunization reporting system established in A.R.S. § 36-135; or
 2. An exemption affidavit for the enrolled child provided by the enrolled child's parent that contains:
 - a. A statement, signed by the enrolled child's health care provider, that the immunizations required by 9 A.A.C. 6, Article 7 would endanger the enrolled child's health or medical condition; or
 - b. A statement, signed by the enrolled child's parent, that the enrolled child is being raised in a religion whose teachings are in opposition to immunization.
- B.** A licensee shall attach an enrolled child's written immunization record or exemption affidavit, required in subsection (A), to the enrolled child's Emergency, Information, and Immunization Record card, required in R9-5-304(B).
- C.** A licensee shall ensure that a staff member updates an enrolled child's written immunization record required in subsection (A)(1)(a) each time the enrolled child's parent provides the licensee with a written statement from the enrolled child's

health care provider that the enrolled child has received an age-appropriate immunization required by 9 A.A.C. 6, Article 7.

- D.** If an enrolled child's immunization record indicates that the enrolled child has not received an age-appropriate immunization required by 9 A.A.C. 6, Article 7, a licensee shall ensure that a staff member:
1. Notifies the enrolled child's parent in writing that the enrolled child may attend the facility for not more than 15 days after the date of the notification unless the enrolled child's parent complies with the immunization requirements in 9 A.A.C. 6, Article 7; and
 2. Documents on the enrolled child's Emergency, Information, and Immunization Record card the date on which the enrolled child's parent is notified of an immunization required by the Department.
- E.** A licensee shall not allow an enrolled child who lacks proof of immunity against a disease listed in A.A.C. R9-6-702(A) to attend the child care facility between the start and end of an outbreak of the disease at the facility.
- F.** If a parent of an enrolled child, excluded from a child care facility because of the lack of documented immunity to a disease during an outbreak of the disease at the child care facility, submits any of the documents in A.A.C. R9-6-704 as proof of the enrolled child's immunity to the disease, a licensee shall allow the enrolled child to attend the child care facility during the outbreak of the disease.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6).
Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-306. Admission and Release of Children; Attendance Records

- A.** A licensee shall maintain a dated attendance form containing an enrolled child's name with the time of each admission and release of the enrolled child.
1. Except as provided in subsection (A)(2), a licensee shall ensure that the attendance form is signed with at least a first initial of an individual's first name and the individual's last name by each enrolled child's parent or individual designated by the enrolled child's parent, each time the enrolled child is admitted or released.
 2. An electronic fingerprint verification or an electronic signature may be used in place of a signature of the enrolled child's parent or designated individual to admit or release the enrolled child.
 3. If an electronic signature is used to admit or release the enrolled child, the licensee shall adopt policies and procedures to ensure that the individual whose signature the electronic or digital method of identification represents is accountable for the use of the electronic or digital method;
 4. A licensee shall develop, document, and implement policies and procedures to ensure that the identity of an individual is known to the staff member or is verified with picture identification before releasing an enrolled child to the individual.
 5. A licensee shall not release the enrolled child to an individual other than the enrolled child's parent or other individual designated in writing by the enrolled child's parent except when the enrolled child's parent is unable to collect the enrolled child and authorizes the licensee by tele-

phone to release the enrolled child to an individual not so designated.

a. The licensee shall verify the telephone authorization using a means of verification that has been agreed upon between the licensee and the enrolled child's parent at the time of enrollment.

b. The licensee shall document the means of verification in subsection (A)(5)(a) on the enrolled child's Emergency, Information, and Immunization Record card.

6. A licensee shall not permit the self-admission or self-release of an enrolled child unless the enrolled child is of school age and the licensee has obtained and verified written permission from the enrolled child's parent.

7. A licensee shall maintain the attendance form on facility premises for 12 months after the date of attendance.

B. A licensee shall:

1. Develop, document, and implement policies and procedures to ensure that a staff member maintains daily documentation of the presence of an enrolled child in an activity area that includes a method to account for any temporary absences of the enrolled child from the activity area; and

2. Maintain the documentation of the presence of enrolled children in an activity area required in subsection (B)(1) on facility premises for 12 months after the date of the documentation.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (B) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-307. Suspected or Alleged Child Abuse or Neglect

A licensee shall ensure that the licensee or a staff member documents and reports all suspected or alleged cases of child abuse or neglect.

1. The licensee or staff member shall report the suspected or alleged child abuse or neglect to Child Protective Services or to a local law enforcement agency as prescribed in A.R.S. § 13-3620. The licensee or staff member shall also send documentation to Child Protective Services and any local law enforcement agency previously notified within three days of the initial report, and maintain documentation of a child abuse or neglect report on facility premises for 12 months after the date of a report.

2. The licensee or staff member shall report the suspected or alleged child abuse by a staff member to the Department and to a local law enforcement agency as prescribed in A.R.S. § 13-3620. A licensee or staff member shall also send documentation to the Department and to any law enforcement agency previously notified within three days of the initial report, and maintain documentation of a child abuse report on facility premises for 12 months after the date of a report.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-308. Insurance Requirements

A. A licensee shall secure and maintain the following minimum insurance coverage:

1. General facility liability insurance of at least \$300,000; and

2. Motor vehicle insurance coverage, required by A.R.S. Title 28, Chapter 9, Article 4, for each motor vehicle provided by a licensee to transport enrolled children.

B. A licensee shall maintain documentation of the insurance coverage required in subsection (A) on facility premises.

C. A licensee shall provide a copy of documentation of insurance to the Department before issuance of a license and at any time that the licensee's insurance coverage expires, is canceled, or changes.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-309. Gas and Fire Inspections

A. An applicant shall obtain the following inspections of a facility and make any repairs or corrections stated on an inspection report before a license is issued by the Department:

1. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a gas inspection by a licensed plumber or individual authorized by the local jurisdiction that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on facility premises; and

2. A fire inspection by a local fire department.

B. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a licensee shall ensure that a licensed plumber or individual authorized by the local jurisdiction conducts a gas inspection that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on facility premises at least once every 12 months after the issue date of the license.

C. A licensee shall maintain on facility premises:

1. A current fire inspection report including documentation of any repairs or corrections required by the fire inspection report; and

2. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a current gas inspection report including documentation of any repairs or corrections required by the gas inspection report.

Historical Note

Adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-310. Pesticides

A. A licensee shall make written pesticide information available to a parent, upon a parent's request, at least 48 hours before a pesticide application occurs on facility premises, containing:

1. The brand, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide;

2. The date and time of the pesticide application;

3. The pesticide label and the material safety data sheet; and

4. The name and telephone number of the pesticide business licensee and the name of the licensed applicator.

B. A licensee is exempt from the provisions in subsection (A), as prescribed by A.R.S. § 36-898(C).

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3492, effective December 1, 2007 (Supp. 07-4).

Amended by exempt rulemaking at 16 A.A.R. 1564,
effective September 30, 2010 (Supp. 10-3).

ARTICLE 4. FACILITY STAFF

R9-5-401. Staff Qualifications

A licensee shall ensure that staff members meet the following qualifications for employment or volunteer service at a facility:

1. A facility director is 21 years of age or older and provides the licensee with documentation of one of the following:
 - a. At least 24 months of child care experience, a high school or high school equivalency diploma, and
 - i. Six credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university; or
 - ii. At least 60 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field, and an additional 12 hours of instruction, provided in conferences, seminars, lectures, or workshops in the area of program administration, planning, development, or management;
 - b. At least 18 months of child care experience; and
 - i. An N.A.C., C.D.A., or C.C.P. credential; or
 - ii. At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
 - c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or
 - d. At least three months of child care experience and a bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field;
2. A facility director's designee is 21 years of age or older and provides the licensee with documentation of one of the following:
 - a. At least 12 months of child care experience, a high school or high school equivalency diploma; and
 - i. Three credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university; or
 - ii. At least 30 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field;
 - b. At least 12 months of child care experience; and
 - i. An N.A.C., C.D.A., or C.C.P. credential; or
 - ii. At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
 - c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or
 - d. At least three months of child care experience and a bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field;
3. A teacher-caregiver is 18 years of age or older and provides the licensee with documentation of one of the following:

- a. Six months of child care experience; and
 - i. A high school diploma or high school equivalency diploma; or
 - ii. At least 12 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
 - b. Associate or bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field; or
 - c. N.A.C., C.D.A., or C.C.P. credential;
4. An assistant teacher-caregiver is 16 years of age or older and provides the licensee with documentation of one of the following:
 - a. Current and continuous enrollment in high school or a high school equivalency class;
 - b. High school or high school equivalency diploma;
 - c. Enrollment in vocational rehabilitation, as defined in A.R.S. § 23-501;
 - d. Employment as a teacher-caregiver aide for 12 months; or
 - e. Service as a volunteer in a child care facility for 12 months;
 5. A teacher-caregiver aide is 16 years of age or older;
 6. A student-aide provides the licensee with documentation of participation in:
 - a. An educational, curriculum-based course in child development, parenting, or guidance counseling; or
 - b. A vocational education or occupational development program; and
 7. A volunteer is 15 years of age or older.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). R9-5-401(1)(a) has been corrected to reflect staff qualifications on file and as published in the 97-4 Code Supplement (04-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-402. Staff Records and Reports

- A.** A licensee shall maintain a file for each staff member containing:
1. The staff member's name, date of birth, home address, and telephone number;
 2. The staff member's starting date of employment or volunteer service;
 3. The staff member's ending date of employment or volunteer service, if applicable;
 4. The name, telephone number, and mailing address of an individual to be notified in case of an emergency;
 5. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
 6. The form required in A.R.S. § 36-883.02(C);
 7. Documents required by R9-5-203(A)(2) or (B);
 8. Documents required by R9-5-301;
 9. Documents required by R9-5-401, if applicable;
 10. If applicable:
 - a. The form required in A.R.S. § 8-804(I),
 - b. Documentation of the submission required in A.R.S. § 8-804 and the information received as a result of the submission, and
 - c. Documentation of training provided by a licensee as required by R9-5-403;

11. A copy of any current license or certification required by A.R.S. Title 36, Chapter 7.1, Article 1, or this Chapter; and
 12. Documentation of the requirements in A.R.S. § 36-883.02(D).
- B.** A licensee shall ensure that, for a staff member who is currently working at the facility, the staff member's information required by:
1. Subsections (A)(1) through (11) is maintained in a single location on facility premises, and
 2. Subsection (A)(12) is maintained and provided to the Department within two hours of the Department's request.
- C.** A licensee shall ensure that, for an individual who is not currently working at the facility, the information required in subsections (A)(1) through (12) is:
1. Maintained for 12 months after the date the individual last worked at the facility, and
 2. Provided to the Department within two hours of the Department's request.
- Historical Note**
- Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3). Amended by exempt rulemaking at 19 A.A.R. 2612, effective August 1, 2013 (Supp. 13-3).
- R9-5-403. Training Requirements**
- A.** Within 10 days of the starting date of employment or volunteer service, a licensee shall provide, and each staff member who provides child care services shall complete, training for new staff members that includes all of the following:
1. Facility philosophy and goals;
 2. Names and ages of and developmental expectations for enrolled children for whom the staff member will provide child care services;
 3. Health needs, nutritional requirements, any known allergies, and information about adaptive devices of enrolled children for whom the staff member will provide child care services;
 4. Lesson plans;
 5. Child guidance and methods of discipline;
 6. Hand washing techniques;
 7. Diapering techniques and toileting, if assigned to diaper changing duties;
 8. Food preparation, service, sanitation, and storage, if assigned to food preparation;
 9. If a staff member is assigned to feeding infants, the preparation, handling, and storage of infant formula and breast milk;
 10. Recognition of signs of illness and infestation;
 11. Child abuse or neglect detection, prevention, and reporting;
 12. Accident and emergency procedures;
 13. Staff responsibilities as required by A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
 14. Sun safety policies and procedures;
 15. Safety in outdoor activity areas;
 16. Transportation procedures, if applicable; and
 17. Field trip procedures, if applicable.
- B.** A licensee shall ensure that:
1. Each staff member who provides child care services completes 18 or more actual hours of training every 12 months after the effective date of this Chapter or the staff member's starting date of employment or volunteer service in at least two topics listed in this subsection:
 - a. Child growth and development, including:
 - i. Infant growth and development, which may include sudden infant death syndrome prevention;
 - ii. Developmental psychology;
 - iii. Language development;
 - iv. Observation and child assessment;
 - v. Developmentally-appropriate activities;
 - vi. Child guidance and methods of discipline which may include training on the appropriate techniques to prevent a child from harm or to prevent the child from harming others; and
 - vii. Developmentally-appropriate activity areas;
 - b. Health and safety issues, including:
 - i. Accident and emergency procedures, including CPR and first aid for infants and children;
 - ii. Recognition of signs of illness and infestation;
 - iii. Nutrition and developmentally-appropriate eating habits;
 - iv. Child abuse detection, reporting, and prevention;
 - v. Safety of indoor and outdoor activity areas; and
 - vi. Sun safety policies and procedures;
 - c. Program administration, planning, development, or management; and
 - d. Availability of community services and resources, including those available to children with special needs; and
 2. As part of the required 18 hours of training in subsection (B)(1):
 - a. A staff member who has less than 12 months of child care experience before the staff member's starting date, completes at least 12 hours in one or more of the topics in subsection (B)(1)(a) in the staff member's first 12 months at the facility;
 - b. A staff member who has 12 months or more of child care experience, completes at least six hours in one or more of the topics in subsection (B)(1)(a) every 12 months after the staff member's starting date;
 - c. A staff member who provides child care services to an infant completes at least six hours in subsection (B)(1)(a)(i) every 12 months after the staff member's starting date; and
 - d. A facility director completes at least six hours in subsection (B)(1)(c) every 12 months after the facility director's starting date.
- C.** A licensee shall ensure that documentation of a staff member's completion of training required by subsection (A) is signed by the facility director and dated.
- D.** A licensee shall ensure that a staff member submits to the licensee documentation of training received as required by subsection (B) to the licensee as the training is completed.
- E.** A licensee shall ensure that a staff member required by R9-5-301(G) meets all of the following:
1. The staff member obtains first aid training specific to infants and children;
 2. The staff member obtains CPR training specific to infants and children, which includes a demonstration of the staff member's ability to perform CPR;
 3. The staff member maintains current training in first aid and CPR; and
 4. The staff member provides the licensee with a copy of the front and back of the current card issued by the agency or

instructor as proof of completion of the requirements of this subsection.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (A) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-404. Staff-to-Children Ratios

A. A licensee shall ensure that at least the following staff-to-children ratios are maintained at all times when providing child care services to enrolled children:

<i>Age Group</i>	<i>Staff: Children</i>
Infants	1:5 or 2:11
1-year-old children	1:6 or 2:13
2-year-old children	1:8
3-year-old children	1:13
4-year-old children	1:15
5-year-old children not school-age	1:20
School-age children	1:20

B. A licensee shall:

1. Determine and maintain the required staff-to-children ratio for each group of enrolled children based on the age of the youngest child in the group;
2. Allow a volunteer qualified as a director, teacher-caregiver, or a assistant-teacher caregiver to be counted as staff in staff-to-children ratios; and
3. Not allow a student-aide or an individual qualified as a teacher-caregiver-aide to be counted as staff in staff-to-children ratios.

C. A licensee shall ensure that:

1. When there are six or more enrolled children present in a facility, the following individuals are present in the facility:
 - a. A facility director or a director’s designee who meets the requirements in R9-5-401 for a director’s designee, and
 - b. One additional staff member;
2. When five or fewer enrolled children are present in a facility, the facility director or director’s designee who meets the requirements in R9-5-401 is present in the facility, and an additional staff member is available by telephone or other equally expeditious means and able to reach the facility within 15 minutes after notification; and
3. When six or more enrolled children are present in a facility, an infant is not placed for supervision with a child who is not an infant.

D. A licensee shall ensure that a staff member assigned to provide child care services to enrolled children does not perform duties that may affect the staff member’s ability to provide child care services to the enrolled children.

E. In addition to maintaining the required staff-to-children ratios, a licensee shall ensure that:

1. Staff members are present on facility premises to perform facility administration, food preparation, food service, and maintenance responsibilities; and
2. Facility maintenance does not depend on the work of enrolled children.

F. If a licensee conducts swimming activities at a swimming pool, the licensee shall ensure that there is a lifeguard on the

premises who has current lifeguard certification that includes a demonstration of the lifeguard’s ability to perform CPR. If the lifeguard is a staff member, the staff member cannot be counted in the staff-to-children ratios required by subsection (A).

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 1086, effective May 5, 2007 (Supp. 07-1). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

R9-5-501. General Child Care Program, Equipment, and Health and Safety Standards

A. A licensee shall ensure that:

1. In addition to complying with the requirements in this Chapter, the health, safety, or welfare of an enrolled child is not placed at risk of harm;
2. Except for an enrolled school-age child, drinking water is provided sufficient for the needs of and accessible to each enrolled child in both indoor and outdoor activity areas;
3. For an enrolled school-age child, if drinking water is not accessible in an indoor or outdoor activity area, drinking water sufficient to meet the individual needs of each enrolled school-aged child is available;
4. An enrolled child is placed in an age-appropriate or developmentally-appropriate group;
5. Indoor activity areas used by enrolled children are decorated with age-appropriate articles such as mirrors, bulletin boards, pictures, and posters;
6. Age-appropriate toys, materials, and equipment are provided to enable each enrolled child to participate in an activity;
7. Storage space is provided in the facility for indoor and outdoor toys, materials, and equipment in areas accessible to enrolled children;
8. Clean clothing is available to an enrolled child when the enrolled child needs a change of clothing;
9. If a staff member places an enrolled child in a feeding chair when feeding the enrolled child:
 - a. The feeding chair is constructed to prevent toppling;
 - b. The tray or feeding surface of the feeding chair is smooth and free of cracks; and
 - c. The staff member:
 - i. Cleans the feeding chair before and after each enrolled child’s use;
 - ii. Sanitizes the tray or feeding surface before and after each enrolled child’s use; and
 - iii. If the feeding chair was manufactured with a safety strap, fastens the feeding chair’s safety strap while the enrolled child is in the feeding chair;
10. At least one indoor activity area in the facility is equipped with at least one cot or mat, a sheet, and a blanket, where an enrolled child can rest quietly away from other enrolled children;
11. Outdoor activities are scheduled to allow not less than 75 square feet for each enrolled child occupying the facility’s outdoor activity area or indoor activity area substituted for outdoor activity area at any time;
12. The facility premises, including the buildings, are maintained free from hazards;

13. Toys and play equipment, required in this Article, are maintained:
 - a. Free from hazards, and
 - b. In a condition that allows the toy or play equipment to be used for the original purpose of the toy or play equipment;
 14. Temperatures are maintained between 68° F and 82° F in each room used by enrolled children;
 15. Except when an enrolled child is napping or sleeping, each room used by an enrolled child is maintained at a minimum of 30 foot candles of illumination;
 16. When an enrolled child is napping or sleeping in a room, the room is maintained at a minimum of 5 foot candles of illumination;
 17. Each enrolled child's toothbrush, comb, washcloth, cloth towel, and clothing is maintained in a clean condition and stored in an identified space separate from those of other enrolled children;
 18. Each enrolled child's pacifier is labeled with an identifier that is specific to the enrolled child and maintained in a clean condition;
 19. Except as provided in subsection (A)(20), the following are stored separate from food storage areas and are inaccessible to an enrolled child:
 - a. All materials and chemicals labeled as a toxic or flammable substance;
 - b. All substances that have a child warning label and may be a hazard to a child; and
 - c. Lawn mowers, ladders, toilet brushes, plungers, and other facility equipment that may be a hazard to a child;
 20. Hand sanitizers:
 - a. When being stored, are stored separate from food storage areas and are inaccessible to enrolled children; and
 - b. When being provided for use, are accessible to enrolled children; and
 21. Except when used as part of an activity, the following are stored in an area inaccessible to an enrolled child:
 - a. Garden tools, such as a rake, trowel, and shovel; and
 - b. Cleaning equipment and supplies, such as a mop and mop bucket.
- B.** A toy or piece of play equipment, which is free from hazards and in a condition that does not allow the toy or play equipment to be used for the toy or play equipment's original purpose, may be in an activity area but is not counted as one of the toys or play equipment required in this Article.
- C.** A licensee shall ensure that a staff member:
1. Supervises each enrolled child at all times;
 2. Does not smoke or use tobacco:
 - a. On facility premises, except in designated areas separated from the children; or
 - b. On a field trip or when transporting an enrolled child;
 3. Except for an enrolled child who can change the enrolled child's own clothing, changes an enrolled child's clothing when wet or soiled;
 4. Except as provided in subsection (D), prepares and posts in each indoor activity area, a current schedule of children's age-appropriate activities, including the times the following are provided:
 - a. Meals and snacks;
 - b. Naps;
 - c. Indoor activities;
 - d. Outdoor or large muscle development activities;
 - e. Quiet and active activities;
 - f. Teacher-directed activities;
 - g. Self-directed activities;
 - h. Activities for individuals, groups of five or fewer children, and groups of six or more children; and
 - i. Activities that develop small muscles;
- D.** A licensee is not required to have a schedule required in subsection (C)(4) or a lesson plan required in subsection (C)(5) for an indoor activity area that is approved and used:
1. By enrolled children only for:
 - a. Snacks or meals, or
 5. Except as provided in subsection (D), prepares and posts a dated lesson plan in each indoor activity area for each calendar week, which is maintained on facility premises for 12 months after the lesson plan date and provides opportunities for each child to:
 - a. Gain a positive self-concept;
 - b. Develop and practice social skills;
 - c. Think, reason, question, and experiment;
 - d. Acquire language skills;
 - e. Develop physical coordination skills;
 - f. Participate in structured large muscle physical activity;
 - g. Develop habits that meet health, safety, and nutritional needs;
 - h. Express creativity;
 - i. Learn to respect cultural diversity of children and staff;
 - j. Learn self-help skills; and
 - k. Develop a sense of responsibility and independence;
 6. If an activity in the lesson plan required in subsection (C)(5) includes screen time, include in the lesson plan the duration of the screen time in minutes;
 7. Except as provided in subsection (C)(8), implements the schedule in subsection (C)(4) and lesson plan in subsection (C)(5);
 8. If the schedule in subsection (C)(4) or lesson plan in subsection (C)(5) is not implemented, writes on the schedule or the lesson plan the activity that is implemented;
 9. Does the following when a parent permits or asks a staff member to apply personal products on an enrolled child, such as petroleum jelly, diaper rash ointments, sun screen or sun block preparations, toothpaste, and baby diapering preparations:
 - a. Obtains the enrolled child's personal products from the enrolled child's parent or, if the licensee provides the personal products for use by the enrolled child, obtains written approval for use of the products from the enrolled child's parent;
 - b. Labels the personal products with the enrolled child's name; and
 - c. Keeps the personal products inaccessible to enrolled children;
 10. In an indoor activity area that does not have a diaper changing area:
 - a. Stores an enrolled child's wet or soiled clothing in a sealed plastic bag labeled with the enrolled child's name; and
 - b. Sends an enrolled child's wet or soiled clothing home with the enrolled child when the facility releases the enrolled child to the enrolled child's parent; and
 11. Monitors an enrolled child for overheating or overexposure to the sun. If the enrolled child exhibits signs of overheating or overexposure to the sun, a staff member who has the first aid training required by R9-5-403(E) shall evaluate and treat the enrolled child.

- b. A specific activity,
- 2. To provide child care services to infants, or
- 3. As a substitute for an outdoor activity area.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-502. Supplemental Standards for Infants

A. A licensee providing child care services for infants shall:

- 1. Provide a wall-enclosed room for infants that provides exits required by R9-5-601(1);
- 2. Provide age-appropriate active and quiet activities for each infant;
- 3. Provide age-appropriate indoor and outdoor activities for each infant;
- 4. Permit an infant to maintain the infant's pattern of sleeping and waking;
- 5. Develop, document, and implement policies and procedures that provide an opportunity for a non-crawling infant to spend time each day on the infant's stomach while the infant is awake;
- 6. Provide an outdoor activity area or an indoor activity area for large muscle development substituted for an outdoor activity area that is used by infants when enrolled children older than infants are not present;
- 7. Provide space, materials, and equipment in an infant room that includes the following:
 - a. An area with nonabrasive flooring for sitting, crawling, and playing;
 - b. Toys, materials, and equipment, that are too large for a child to swallow and free from sharp edges and points, in a quantity sufficient to meet the needs of the infants in attendance that include:
 - i. Toys to enhance physical development such as toys for stacking, pulling, and grasping;
 - ii. Soft toys;
 - iii. Books;
 - iv. Toys to enhance visual development such as crib mobiles and activity mats with an object or objects suspended above the infant's head; and
 - v. Unbreakable mirrors; and
 - c. At least one adult-size chair for use by a:
 - i. Staff member when holding or feeding an infant, or
 - ii. Nursing mother when breastfeeding her infant;
- 8. Provide a crib for each infant that:
 - a. Has bars or openings spaced no more than 2 3/8 inches apart and a crib mattress measured to fit not more than 1/2 inch from the crib side;
 - b. Has a commercially waterproofed mattress; and
 - c. Is furnished with clean, sanitized, crib-size bedding, including a fitted sheet and top sheet or a blanket;
- 9. Prohibit the use of stacked cribs;
- 10. Ensure that an occupied crib with a crib side that does not have a non-porous barrier is placed at least 2 feet from another occupied crib side that does not have a non-porous barrier; and
- 11. Label each food container received from the parent with the infant's name.

B. A licensee providing child care services for infants shall not:

- 1. Allow an infant room to be used as a passageway to another area of the facility;

- 2. Permit an infant who is awake to remain for more than 30 consecutive minutes in a crib, swing, feeding chair, infant seat, or any equipment that confines movement;
- 3. Permit an infant to use a walker; or
- 4. Allow screen time in an infant room.

C. A licensee shall ensure that:

- 1. A staff member providing child care services in an infant room:
 - a. Plays and talks with each infant;
 - b. Holds and rocks each infant;
 - c. Responds immediately to each infant's distress signals;
 - d. Keeps dated, daily, documentation of each infant including:
 - i. A description of any activities the infant participated in,
 - ii. The infant's food consumption, and
 - iii. Diaper changes;
 - e. Maintains the documentation in subsection (C)(1)(d) on facility premises for 12 months after the date on the documentation;
 - f. Provides a copy of the documentation in subsection (C)(1)(d) to the infant's parent upon request;
 - g. Does not allow bumper pads, pillows, comforters, sheepskins, stuffed toys, or other soft products in a crib when an infant is in the crib;
 - h. Cleans and sanitizes each crib and mattress used by an infant when soiled;
 - i. Changes each crib sheet and blanket before use by another infant, when soiled, or at least once every 24 hours;
 - j. Cleans and sanitizes all sheets and blankets before use by another infant;
 - k. Places an infant to sleep on the infant's back, unless the infant's parent submits written instructions from the infant's health care provider that states otherwise;
 - l. Obtains written, current, and dated dietary instructions from a parent or health care provider regarding the method of feeding and types of foods to be prepared or fed to an infant at the facility;
 - m. Posts the current written dietary instructions in the infant room and the kitchen and maintains the instructions on facility premises for 12 months after the date of the instructions; and
 - n. Follows the current written dietary instructions of a parent when feeding the infant;
- 2. A staff member providing child care services in an infant room does not:
 - a. Place an infant directly on a waterproof mattress cover; or
 - b. Place an infant to sleep using a positioning device that restricts movement, unless the infant's health care provider has instructed otherwise in writing;
- 3. When preparing, using, or caring for an infant's feeding bottles, a staff member:
 - a. Labels each bottle received from the parent with the infant's name;
 - b. Ensures that a bottle is not:
 - i. Heated in a microwave oven;
 - ii. Propped for an infant feeding; or
 - iii. Permitted in an infant's crib unless the written instructions required by subsection (C)(1)(l) state otherwise;
 - c. Empties and rinses bottles previously used by an infant; and

- d. Cleans and sanitizes a bottle, bottle cover, and nipple before reuse; and
- 4. When feeding an infant, a staff member:
 - a. Provides an infant with food for growth and development that includes:
 - i. Formula provided by the infant’s parent or the licensee or breast milk provided by the infant’s parent, following written instructions required by subsection (C)(1)(l); and
 - ii. Cereal as requested by the infant’s parent or health care provider;
 - b. If the staff member prepares an infant’s formula, prepares the infant’s formula in a sanitary manner;
 - c. Stores formula and breast milk in a sanitary manner at the facility;
 - d. Does not mix cereal with formula and feed it to an infant from a bottle or infant feeder unless the written instructions required by subsection (C)(1)(l) state otherwise;
 - e. Except for finger food, feeds solid food to an infant by spoon from an individual container;
 - f. Uses a separate container and spoon for each infant;
 - g. Holds and feeds an infant under 6 months of age and an infant older than 6 months of age who cannot hold a bottle for feeding; and
 - h. If an infant is no longer being held for feeding, seats the infant in a feeding chair or at a table with a chair that allows the infant to reach the food while sitting.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-503. Standards for Diaper Changing

- A. A licensee shall ensure that each diaper changing area required in R9-5-601(4) contains:
 - 1. A nonabsorbent, sanitizable diaper changing surface that is:
 - a. Seamless and smooth, and
 - b. Kept clear of items not required for diaper changing;
 - 2. A hand-washing sink next to the diaper changing surface for staff use when changing diapers and for washing an enrolled child during or after diapering, that provides:
 - a. Running water between 86° F and 110° F,
 - b. Soap from a dispenser, and
 - c. Single-use paper hand towels from a dispenser;
 - 3. At least one waterproof, sanitizable container with a waterproof liner and a tight fitting lid for soiled diapers; and
 - 4. At least one waterproof, sanitizable container with a waterproof liner and a tight fitting lid for soiled clothing.
- B. A licensee shall ensure that a staff member does not:
 - 1. Permit a bottle, formula, food, eating utensil, or food preparation in a diaper changing area;
 - 2. Draw water for human consumption from a diaper changing area sink; or
 - 3. Except as provided in subsection (C), if responsible for food preparation, change diapers until food preparation duties have been completed for the day.
- C. A staff member who provides child care services to an infant:
 - 1. May throughout the time the staff member provides child care services to the infant:
 - a. Change the infant’s diaper, and
 - b. Prepare the infant’s formula or cereal; and

- 2. Is prohibited from other food preparation after changing the infant’s diaper.
- D. A licensee shall ensure that a written diaper changing procedure is posted and implemented in each diaper changing area.
- E. A licensee shall ensure that the written diaper changing procedure in subsection (D) states that an enrolled child’s diaper is changed as soon as it is soiled, and that a staff member, when diapering:
 - 1. Uses a separate wash cloth and towel only once for each enrolled child;
 - 2. Washes and dries the enrolled child using the enrolled child’s individual personal products labeled with the enrolled child’s name;
 - 3. Uses single-use non-porous gloves;
 - 4. Washes the staff member’s own hands with soap and running water between 86° F and 110° F before and after each diaper change;
 - 5. Washes each enrolled child’s hands with soap and running water between 86° F and 110° F after each diaper change;
 - 6. Cleans, sanitizes, and dries the diaper changing surface following each diaper change; and
 - 7. Uses single-use paper towels from a dispenser to dry the diaper changing surface or the hands of the enrolled child or staff member.
- F. A licensee shall ensure that in an activity area with a diaper changing area:
 - 1. The containers required in subsections (A)(3) and (4) are inaccessible, and
 - 2. A staff member:
 - a. Documents each diaper change:
 - i. For an infant, in the infant’s dated, daily, documentation required in R9-5-502(C)(1)(d); or
 - ii. For an enrolled child who is not an infant, in a dated diaper changing log.
 - b. Maintains the diaper changing log on facility premises for 12 months after the date of the diaper changing log;
 - c. Empties clothing soiled with feces into a flush toilet without rinsing;
 - d. Places an enrolled child’s clothing soiled by feces or urine in a plastic bag labeled with the enrolled child’s name, stores the clothing in a container used for this purpose, and sends the clothing home with the enrolled child’s parent; and
 - e. Removes disposable diapers and disposable training pants from a diaper changing area as needed or at least twice every 24 hours to a waste receptacle outside the facility building.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-504. Supplemental Standards for 1-year-old and 2-year-old Children

- A licensee providing child care services for 1-year-old and 2-year-old children shall:
- 1. Ensure that a staff member does not permit a 1-year-old or 2-year-old enrolled child who is awake to spend more than 30 minutes of consecutive time in a crib, feeding chair, or other place of confinement;
 - 2. Consult with each enrolled child’s parent to develop a plan for individual toilet training of the enrolled child and

- ensure that a staff member does not force toilet training on any enrolled child;
3. Ensure that each activity area has a supply of age-appropriate toys, materials, and equipment that are too large for a child to swallow and free from sharp edges and points, in a quantity sufficient to meet the needs of the enrolled children in attendance including:
 - a. Art supplies,
 - b. Books,
 - c. Rubber or soft plastic balls,
 - d. Puzzles and toys to enhance manipulative skills,
 - e. Blocks,
 - f. Washable soft toys and dolls,
 - g. Musical instruments, and
 - h. Indoor and outdoor equipment to enhance large muscle development;
 4. Prohibit screen time in an activity area where child care services are provided to a 1-year-old child; and
 5. Ensure that:
 - a. If finger food is served, the food is of a size and texture that does not present a choking hazard;
 - b. A staff member serves food to an enrolled child in a feeding chair or at a table with a chair that allows the enrolled child to reach the food while sitting;
 - c. If a child is fed with a bottle, a staff member complies with the requirements in R9-5-502(C)(3); and
 - d. If a parent brings a sippy cup for the parent's enrolled child, the sippy cup is labeled with the enrolled child's name.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-505. Supplemental Standards for 3-year-old, 4-year-old, and 5-year-old Children

A licensee providing child care services for 3-year-old, 4-year-old, and 5-year-old children shall provide a supply of age-appropriate toys, materials, and equipment accessible to enrolled children in each activity area in a quantity sufficient to meet the needs of the enrolled children in attendance including:

1. Art supplies,
2. Blocks,
3. Books and posters,
4. Toys and dress-up clothes,
5. Indoor and outdoor equipment to enhance large muscle development,
6. Puzzles and toys to enhance manipulative and categorization skills,
7. Science materials, and
8. Musical instruments.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (F) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-506. Supplemental Standards for School-age Children

A licensee providing child care services for school-age children shall:

1. Ensure that a staff member supervises an enrolled school-age child to and from a bathroom and allows the enrolled child privacy while in the bathroom;

2. Ensure that if an enrolled child remains in the bathroom for more than three minutes, the supervising staff member checks on the enrolled child to ensure the child's safety;
3. Provide age-appropriate toys, materials, and equipment accessible to enrolled children in each activity area in a quantity sufficient to meet the needs of the enrolled children in attendance including:
 - a. Arts and crafts,
 - b. Games,
 - c. Puzzles and toys to enhance manipulative skills,
 - d. Books,
 - e. Science materials,
 - f. Sports equipment, and
 - g. Outdoor play equipment; and
4. Provide enrolled school-age children with a quiet study area.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-507. Supplemental Standards for Children with Special Needs

- A. A licensee providing child care services for a child with special needs shall:
 1. Except as provided in subsection (A)(2), before a child with special needs receives child care services, obtain from the enrolled child's parent a copy of an existing individualized plan for the enrolled child that can be reviewed, adopted, and implemented by the licensee when providing child care services to the enrolled child that includes the following as needed for the enrolled child:
 - a. Medication schedule;
 - b. Nutrition and feeding instructions;
 - c. Qualifications required of a staff member who feeds the enrolled child;
 - d. Medical equipment or adaptive devices;
 - e. Medical emergency instructions;
 - f. Toileting and personal hygiene instructions;
 - g. Specific child care services to be provided to the enrolled child at the facility;
 - h. Information from health care providers, including the frequency and length of any prescribed medical treatment or therapy;
 - i. Training required of a staff member to care for the enrolled child's special needs; and
 - j. Participation in fire and emergency evacuation drills;
 2. If an enrolled child with special needs does not have an existing individualized plan, obtain from the enrolled child's parent written instructions for providing services to the enrolled child until a written individualized plan required in subsection (A)(1) is developed by a team consisting of staff members, the enrolled child's parent, and health care providers that is completed within 30 days after the enrolled child's initial date of receiving child care services;
 3. Maintain an enrolled child's current individualized plan on facility premises and if the current individualized plan was developed according to subsection (A)(2), provide a copy to the enrolled child's parent; and
 4. Ensure the individualized plan is updated at least every 12 months after the date of the initial plan or as changes occur.

- B.** If an enrolled child with special needs who is 18 months of age or older and does not walk is placed in an infant group, a licensee may move the enrolled child after the enrolled child's parent and licensee determine that the proposed move is developmentally-appropriate.
- C.** A licensee shall ensure that:
 - 1. When tube feeding an enrolled child, a staff member only uses:
 - a. Commercially prepackaged formula in a ready-to-use state,
 - b. Formula prepared by the enrolled child's parent and brought to the facility in an unbreakable container, or
 - c. Breast milk brought to the facility in an unbreakable container; and
 - 2. Only a staff member instructed by an enrolled child's parent or individual designated by the enrolled child's parent:
 - a. Feeds the enrolled child using the enrolled child's tube-feeding apparatus, and
 - b. Cleans the enrolled child's tube-feeding apparatus.
- D.** A licensee shall provide an enrolled child with special needs with:
 - 1. Developmentally-appropriate toys, materials, and equipment; and
 - 2. Assistance from staff members to enable the enrolled child to participate in the activities of the facility.
- E.** In addition to complying with the transportation requirements in R9-5-517, a licensee transporting an enrolled child with special needs in a wheelchair in a facility's motor vehicle shall ensure that:
 - 1. The enrolled child's wheelchair is manufactured to be secured in a motor vehicle;
 - 2. The enrolled child's wheelchair is secured in the motor vehicle using a minimum of four anchorages attached to the motor vehicle floor, and four securement devices, such as straps or webbing that have buckles and fasteners, that attach the wheelchair to the anchorages;
 - 3. The enrolled child is secured in the wheelchair by means of a wheelchair restraint that is a combination of pelvic and upper body belts intended to secure a passenger in a wheelchair; and
 - 4. The enrolled child's wheelchair is placed in a position in the motor vehicle that does not prevent access to the enrolled child in the wheelchair or passage to the front and rear in the motor vehicle.
- F.** A licensee providing child care services for an enrolled child who uses a wheelchair or is not able to walk shall locate the enrolled child on the ground floor of the facility.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-508. General Nutrition Standards

- A.** A licensee shall:
 - 1. Make breakfast available to an enrolled child who is present at a facility before 8:00 a.m.,
 - 2. Serve lunch to an enrolled child who is present at a facility between 11:00 a.m. through 1:00 p.m., and
 - 3. Serve dinner to an enrolled child who is present from 5:00 p.m. through 7:00 p.m. and who will remain at the facility after 7:00 p.m.
- B.** A licensee shall serve the following meals or snacks to an enrolled child present at a facility for the following periods of time:
 - 1. If an enrolled child is present two to four hours, one or more snacks;
 - 2. If an enrolled child is present during any of the meal times stated in subsection (A), a meal that meets the meal pattern requirements in subsection (C);
 - 3. If an enrolled child is present four to eight hours, one or more snacks and a meal;
 - 4. If an enrolled child is present nine or more hours, two snacks and one or more meals; and
 - 5. Before bedtime, one snack.
- C.** If a licensee provides food, a licensee shall prepare and serve food according to the meal pattern requirements found in Table 5.1, "Meal Pattern Requirements for Children."
- D.** If an enrolled child's parent provides food for the parent's enrolled child, the licensee shall provide milk or juice to the enrolled child if not provided by the parent.
- E.** If a licensee plans and serves meals, the licensee shall ensure that the meals:
 - 1. Meet the age-appropriate nutritional requirements of an enrolled child; and
 - 2. For each calendar week, provide a variety of foods within each food group from the meal pattern requirements.
- F.** If a licensee provides food, the licensee shall maintain on the facility premises at least a one day supply of food needed to provide the meals and snacks required by subsections (B) and (C) to each enrolled child attending the facility.
- G.** In addition to the required daily servings of food stated in subsection (C), a licensee:
 - 1. Shall make second servings of food available to each enrolled child at meals and at snack time,
 - 2. May substitute a food that is equivalent to a specific food component if second servings of the specific food component are not available, and
 - 3. Shall ensure that a food substitution in subsection (G)(2) is written on the posted weekly menu by the end of the meal or snack service.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

Table 5.1 Meal Pattern Requirements for Children

TABLE OF MEAL PATTERN REQUIREMENTS FOR CHILDREN			
Food Components	Ages 1 through 2 years	Ages 3 through 5 years	Ages 6 and Older
Breakfast:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetable, fruit, or full-strength juice	1/4 cup	1/2 cup	1/2 cup
3. Bread and bread alternates (whole grain or enriched);			

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Bread or cornbread, rolls, muffins, or biscuits or cold dry cereal (volume or weight, whichever is less) or cooked cereal, pasta, noodle products, or cereal grains	1/2 slice 1/2 serving 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/3 cup 1/4 cup	1 slice 1 serving 3/4 cup 1/2 cup
Lunch or Supper:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetable and/or fruit (2 or more kinds)	1/4 cup total	1/2 cup total	3/4 cup total
3. Bread and bread alternates (whole grain or enriched): Bread or cornbread, rolls, muffins, or biscuits or cold dry cereal (volume or weight, whichever is less) or cooked cereal, pasta, noodle products, or cereal grains	1/2 slice 1/2 serving 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/3 cup 1/4 cup	1 slice 1 serving 3/4 cup 1/2 cup
4. Meat or meat alternates: Lean meat, fish, or poultry (edible portion as served) or cheese or egg or cooked dry beans or peas* or peanut butter, soy nut butter, or other nut or seed butters or peanuts, soy nuts, tree nuts, or seeds or an equivalent quantity of any combination of the above meat/meat alternates or yogurt	1 oz. 1 oz. 1/2 egg 1/4 cup 2 tbsp** 1/2 oz.** 4 oz.	1 1/2 oz. 1 1/2 oz. 3/4 egg 3/8 cup 3 tbsp** 3/4 oz.** 6 oz.	2 oz. 2 oz. 1 egg 1/2 cup 4 tbsp** 1 oz.** 8 oz.
Snack: (select 2 of these 4 components)***			
1. Milk, fluid	1/2 cup	1/2 cup	1 cup
2. Vegetable, fruit, or full-strength juice	1/2 cup	1/2 cup	3/4 cup
3. Bread and bread alternates (whole grain or enriched): Bread or cornbread, rolls, muffins, or biscuits or cold dry cereal (volume or weight, whichever is less) or cooked cereal, pasta, noodle products, or cereal grains	1/2 slice 1/2 serving 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/3 cup 1/4 cup	1 slice 1 serving 3/4 cup 1/2 cup
4. Meat or meat alternates: Lean meat, fish, or poultry (edible portion as served) or cheese or egg or cooked dry beans or peas* or peanut butter, soy nut butter, or other nut or seed butters or peanuts, soy nuts, tree nuts, or seeds or an equivalent quantity of any combination of the above meat/meat alternates or yogurt	1/2 oz. 1/2 oz. 1/2 egg 1/8 cup 1 tbsp 1/2 oz. 2 oz.	1/2 oz. 1/2 oz. 1/2 egg 1/8 cup 1 tbsp 1/2 oz. 2 oz.	1 oz. 1 oz. 1/2 egg 1/4 cup 2 tbsp 1 oz. 4 oz.
<p>* In the same meal service, dried beans or dried peas may be used as a meat alternate or as a vegetable; however, such use does not satisfy the requirement for both components.</p> <p>** At lunch and supper, no more than 50% of the requirement shall be met with nuts, seeds, or nut butters. Nuts, seeds, or nut butters shall be combined with another meat or meat alternative to fulfill the requirement. Two tablespoons of nut butter or one ounce of nuts or seeds equals one ounce of meat.</p> <p>*** Juice may not be served when milk is served as the only other component.</p>			

Historical Note

Table 5.1 made by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-509. General Food Service and Food Handling Standards

A. A licensee that prepares food for enrolled children on facility premises shall, if required by 9 A.A.C. 8, Article 1, and the local ordinances of the local health department where the facility is located, obtain a food establishment permit issued under 9 A.A.C. 8, Article 1, and:

1. Provide the Department with a copy of the facility's food establishment permit before the Department issues a license to the facility,
2. Maintain the facility's current food establishment permit on the facility's premises, and
3. Provide a copy of the facility's current food establishment permit to the Department upon request.

- B. If a licensee contracts with a food establishment to prepare and deliver food to the facility, the licensee shall obtain and provide the Department with a copy of the food establishment's permit, issued under 9 A.A.C. 8, Article 1, at the following times:
 - 1. Before the Department issues a license to the facility,
 - 2. Upon contracting with the food establishment, and
 - 3. Every 12 months after the date the contract is entered into while the contract is in effect.
- C. A licensee shall ensure that:
 - 1. Enrolled children, except infants and children with special needs who cannot wash their own hands, wash their hands with soap and running water before and after handling or eating food;
 - 2. A staff member:
 - a. Washes the hands of an infant or a child with special needs who cannot wash the child's own hands before and after the infant or child with special needs handles or eats food using:
 - i. A washcloth,
 - ii. A single-use paper towel, or
 - iii. Soap and running water; and
 - b. If using a washcloth, uses each washcloth on only one child and only one time before it is laundered or discarded;
 - 3. An enrolled child is not permitted to eat food directly off the floor, carpet, or ground or with utensils placed directly on the floor, carpet, or ground;
 - 4. A staff member encourages, but never forces, enrolled children to eat food;
 - 5. A staff member assists each enrolled child who needs assistance with eating
 - 6. A staff member teaches self-feeding skills and habits of good nutrition to each enrolled child as necessary;
 - 7. Lunch and dinner are family-style meals as demonstrated by at least one of the following:
 - a. Food is served from a serving container on the table where enrolled children are seated;
 - b. Enrolled children serve themselves, independently or with the help of a staff member, from a serving container on the table where enrolled children are seated;
 - c. Enrolled children pass a serving container from individual to individual;
 - d. In a facility where lunch or dinner is provided by the facility, a staff member sits at the table and eats the lunch or dinner with enrolled children; or
 - e. In a facility where each enrolled child brings the enrolled child's own lunch or dinner, a staff member sits at the table with the enrolled children and eats the staff member's own lunch or dinner;
 - 8. Fresh milk is served from the original, commercially filled container, to a container used for meal service or a cup, and unused portions are not returned to the original container;
 - 9. Milk served to an enrolled child older than two years of age is fat-free or 1% lowfat milk unless the enrolled child's parent requests otherwise;
 - 10. Reconstituted dry milk is not served to meet the fluid milk requirement;
 - 11. Juice served to children for a meal or snack is full-strength 100% vegetable or 100% fruit juice from an original, commercially filled container or reconstituted from a concentrate according to manufacturer instructions;
 - 12. Fruit juice served to an enrolled child is limited to the following amounts:
 - a. For an enrolled child younger than six years of age, four ounces per day; or
 - b. For an enrolled child six years of age or older, six ounces per day;
 - 13. A beverage sweetened with any kind of sugar product is not provided by the facility;
 - 14. Each staff member is informed of a modified diet prescribed for an enrolled child by the child's parent or health care provider, and the modified diet is posted in the kitchen and in the child's activity area;
 - 15. The food served to an enrolled child is consistent with a modified diet prescribed for the child by the child's parent or health care provider;
 - 16. An enrolled child is not permitted in the kitchen during food preparation or food service except as part of an activity;
 - 17. An enrolled child does not use the kitchen or a food storage area as a passageway;
 - 18. A staff member:
 - a. Prepares a weekly menu at least one week in advance,
 - b. Includes on the menu the specific foods to be served on each day,
 - c. Dates each menu,
 - d. Posts each menu at least one day before the first meal on the menu will be served, and
 - e. Writes food substitutions on a posted menu no later than the morning of the day of meal service;
 - 19. Non-single-use utensils and equipment used in preparing, eating, or drinking food are:
 - a. After each use:
 - i. Washed in an automatic dishwasher and air dried or heat dried; or
 - ii. Washed in hot soapy water, rinsed in clean water, sanitized, and air dried or heat dried; and
 - b. Stored in a clean area protected from contamination;
 - 20. Single-use utensils and equipment are disposed of after being used;
 - 21. Perishable foods are covered and stored in a refrigerator at a temperature of 41° F or below;
 - 22. A refrigerator at the child care facility maintains a temperature of 41° F or below, as shown by a thermometer kept in the refrigerator at all times;
 - 23. A freezer at the child care facility maintains a temperature of 0° F or below, as shown by a thermometer kept in the freezer at all times; and
 - 24. Foods are prepared as close as possible to serving time and, if prepared in advance, are either:
 - a. Cold held at a temperature of 45° F or below or hot held at a temperature of 130° F or above until served, or
 - b. Cold held at a temperature of 45° F or below and then reheated to a temperature of at least 165° F before being served.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-510. Discipline and Guidance

- A. A licensee shall ensure that a staff member:

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1. Defines and maintains consistent and reasonable guidelines and limitations for an enrolled child's behavior;
 2. Teaches, models, and encourages orderly conduct, personal control, and age-appropriate behavior;
 3. Explains to an enrolled child why a particular behavior is not allowed, suggests an alternative, and assists the enrolled child to become engaged in an alternative activity; and
 4. After determining that an enrolled child's behavior may result in harm to self or others, holds the enrolled child until the enrolled child regains control or composure.
- B.** A licensee shall ensure that a staff member does not use or permit:
1. A method of discipline that could cause harm to the health, safety, or welfare of an enrolled child;
 2. Corporal punishment;
 3. Abusive language;
 4. Discipline associated with:
 - a. Eating, napping, sleeping, or toileting;
 - b. Medication; or
 - c. Mechanical restraint; or
 5. Discipline administered to any enrolled child by another enrolled child.
- C.** A licensee may allow a staff member to separate an enrolled child from other enrolled children for unacceptable age-appropriate behavior.
1. The separation period shall be for no longer than three minutes after the enrolled child has regained control or composure.
 2. A staff member shall not allow an enrolled child to be separated for longer than 10 minutes without the staff member interacting with the enrolled child.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-511. Sleeping and Napping

- A.** A licensee shall provide each enrolled child who naps or sleeps at the facility with a separate cot or mat or a crib that meets the requirements of R9-5-502(A)(8) and ensure that:
1. A cot, mat, or crib used by the enrolled child accommodates the enrolled child's height and weight;
 2. A staff member covers each cot, crib mattress, or mat with a clean sheet that is laundered when soiled, or at least once every seven days and before use by a different enrolled child;
 3. A clean blanket or sheet is available for each enrolled child;
 4. A rug, carpet, blanket, or towel is not used as a mat; and
 5. Each cot, mat, or crib is maintained in a clean and repaired condition.
- B.** A licensee shall not use bunk beds or waterbed mattresses.
- C.** A licensee shall provide an unobstructed passageway at least 18 inches wide between each row of cots or mats to allow a staff member access to each enrolled child.
- D.** A licensee shall ensure that if an enrolled child is present at the facility during evening and nighttime hours, the licensee:
1. Permits the enrolled child to use a mat only when used on top of a cot;
 2. Before bathing the enrolled child at the facility, obtains written consent and bathing instructions from the enrolled child's parent and follows the instructions when bathing the enrolled child;
 3. Requires that a staff member cleans and sanitizes a bathtub or shower stall after bathing each enrolled child;
 4. Requires that a staff member remains awake while supervising the sleeping enrolled child; and
 5. Prohibits the operation of a television set in a room where the enrolled child is sleeping.
- E.** A licensee shall ensure that if an enrolled child is present at the facility during naptime, the licensee:
1. Does not permit the enrolled child to lie in direct contact with the floor while napping,
 2. Prohibits the operation of a television set in a room where the enrolled child is napping,
 3. Ensures naptime accommodations are available for the enrolled school-age child if requested by the enrolled child or the enrolled child's parent,
 4. Requires that a staff member remain awake while supervising the enrolled sleeping child, and
 5. Prohibits the enrolled child from napping in an attic or a loft during naptime.
- F.** A licensee shall ensure that storage space is provided in the facility for cots, mats, sheets, and blankets, that is:
1. Accessible to an area used for naptime or sleeping; and
 2. Separate from food service and preparation areas, toilet rooms, and laundry rooms.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-512. Cleaning and Sanitation

- A.** A licensee shall maintain facility premises free of insects and vermin.
- B.** A licensee shall maintain facility premises and furnishings:
1. In a clean condition, and
 2. Free from odor.
- C.** A licensee shall ensure that floor coverings are:
1. Clean, and
 2. Free from:
 - a. Dampness,
 - b. Odors, and
 - c. Hazards.
- D.** A licensee shall ensure that toilet bowls, lavatory fixtures, and floors in toilet rooms and kitchens are cleaned and sanitized as often as necessary to maintain them in a clean and sanitized condition or at least once every 24 hours.
- E.** If laundry belonging to a facility is done on facility premises, a licensee shall:
1. Not use a kitchen or food storage area for sorting, handling, washing, or drying laundry;
 2. Locate the laundry equipment in an area that is separate from licensed activity areas and inaccessible to enrolled children;
 3. Not permit an enrolled child to be in a laundry room or use a laundry area as a passageway for enrolled children; and
 4. Ensure that laundry soiled by vomitus, urine, feces, blood, or other body fluid is stored, cleaned, and sanitized separately from other laundry.
- F.** A licensee shall ensure that:
1. Each toilet room in a facility contains, within easy reach of enrolled children:
 - a. Mounted toilet tissue; and
 - b. Except as provided in subsection (G):
 - i. A sink with running water;
 - ii. Soap contained in a dispenser; and

- iii. Disposable, single-use paper towels in a mounted dispenser, or a mechanical air hand dryer;
 - 2. Staff members wash their hands with soap and running water after toileting;
 - 3. An enrolled child's hands are washed with soap and running water after toileting;
 - 4. Except for a cup or receptacle used only for water, food waste is stored in a covered container and the container is clean and lined with a plastic bag;
 - 5. Food waste and other refuse is removed from the facility building at least once every 24 hours or more often as necessary to maintain a clean condition and avoid odors;
 - 6. A staff member or an enrolled child does not draw water for human consumption from a toilet room hand-washing sink;
 - 7. Toys, materials, and equipment are maintained in a clean condition;
 - 8. Plumbing fixtures are maintained in a clean and working condition; and
 - 9. Chipped or cracked sinks and toilets are replaced or repaired.
- G.** A licensee may have a sink with running water, soap contained in a dispenser, and single-use paper towels in a mounted dispenser or a mechanical air hand dryer located directly outside a toilet room if an enrolled child exiting the toilet room can access the sink, soap, and paper towels or air hand dryer without having to cross space that is used for any activity.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (P) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-513. Pets and Animals

- A.** A licensee shall maintain written documentation of current immunization against rabies for each ferret, dog, or cat owned by a licensee or staff member that is present on facility premises.
- B.** A licensee shall ensure that a staff member:
 - 1. Keeps all pet and animal habitats clean;
 - 2. Prohibits reptiles, such as turtles, iguanas, snakes, and lizards, in the facility;
 - 3. Prohibits birds in food preparation and eating areas;
 - 4. Keeps pets and animals clean;
 - 5. Prohibits pets and animals from endangering an enrolled child, staff member, or other individual on facility premises; and
 - 6. Keeps birds and animals such as horses, sheep, cattle, and poultry in an enclosure that is not accessible to an enrolled child except as part of an activity.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-514. Accident and Emergency Procedures

- A.** A licensee shall ensure that there is a first aid kit on facility premises that contains first aid supplies in a quantity sufficient to meet the needs of the enrolled children including the following:
 - 1. Sterile bandages including:
 - a. Adhesive bandages of assorted sizes,

- b. Sterile gauze pads, and
 - c. Sterile gauze rolls;
 - 2. Antiseptic solution or sealed antiseptic wipes;
 - 3. A pair of scissors;
 - 4. Adhesive tape;
 - 5. Single-use, non-porous gloves; and
 - 6. Reclosable plastic bags of at least one-gallon size.
- B.** A licensee shall ensure that the first aid kit required in subsection (A) is accessible to staff members but inaccessible to enrolled children.
- C.** A licensee shall:
 - 1. Prepare and date a written fire and emergency plan that contains:
 - a. The location of the first aid kit;
 - b. The names of staff members who have the first aid training required by R9-5-403(E);
 - c. The names of staff members who have the CPR training required by R9-5-403(E);
 - d. The directions for:
 - i. Initiating verbal notification of an enrolled child's parent by telephone or other equally expeditious means within 30 minutes of a fire or emergency, and
 - ii. Providing written notification to the enrolled child's parent within 24 hours, and
 - e. The facility's street address and the emergency telephone numbers for the local fire department, police department, ambulance service, and poison control center;
 - 2. Maintain the plan required in subsection (C)(1) in a location on facility premises that has an operable telephone service or two-way voice communication system that connects the facility with an individual who has direct access to an in-and-out operable telephone service;
 - 3. Post the plan required in subsection (C)(1) in any indoor activity area that does not have an operable telephone service or two-way voice communication system that connects the indoor activity area with an individual who has direct access to an in-and-out operable telephone services; and
 - 4. Update the plan in subsection (C)(1) every 12 months after the date of initial preparation of the plan or when any information changes.
- D.** A licensee shall post, near an activity area or a room's designated exit, a building evacuation plan that details the designated exits from the activity area or room and the facility.
- E.** A licensee shall maintain and use a communication system that contains:
 - 1. A direct-access, in-and-out, operating telephone service at the facility; or
 - 2. A two-way voice communication system that connects the facility with an individual who has direct access to an in-and-out, operating telephone service.
- F.** If while attending a facility an enrolled child has an accident, injury, or emergency that, based on an evaluation by a staff member, requires medical treatment by a health care provider, a licensee shall ensure that a staff member:
 - 1. Notifies the enrolled child's parent immediately after the accident, injury, or emergency;
 - 2. Documents:
 - a. A description of the accident, injury, or emergency, including the date, time, and location of the accident, injury, or emergency;
 - b. The method used to notify the enrolled child's parent; and

- c. The time the enrolled child's parent was notified; and
 3. Maintains documentation required in subsection (F)(2) on facility premises for 12 months after the date of the child's disenrollment.
- G.** If an enrolled child's parent informs a staff member at the facility that the enrolled child's parent obtained medical treatment from a health care provider for an accident, injury, or emergency the enrolled child had while attending the facility, a licensee shall ensure that a staff member:
1. Documents any information about the enrolled child's accident, injury, or emergency received from the enrolled child's parent; and
 2. Maintains documentation required in subsection (G)(1) on facility premises for 12 months after the date of the child's disenrollment.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-515. Illness and Infestation

- A.** A licensee shall not permit an enrolled child to remain at the facility if a staff member determines that the enrolled child shows signs of illness or infestation.
- B.** If an enrolled child exhibits signs of illness or infestation at a facility, a licensee shall ensure that a staff member:
1. Immediately separates the enrolled child from other enrolled children,
 2. Immediately notifies the enrolled child's parent by telephone or other expeditious means to arrange for the enrolled child's removal from the facility, and
 3. Maintains documentation of the notification on facility premises for 12 months after the date of the notification.
- C.** A licensee shall ensure that a staff member who has signs of illness or infestation is excluded from a facility.
- D.** A facility director shall not permit a staff member to return to a facility until free from signs of illness or infestation or until the staff member provides documentation by a health care provider that the individual may return to the facility.
- E.** If a staff member or enrolled child contracts a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, a licensee shall ensure that, within 24 hours of notice of the communicable disease or infestation, written notice is provided to each staff member, parent, and the local health department.
- F.** A licensee shall ensure that:
1. A dated, written notice of the communicable disease or infestation is prepared and posted in the facility's entrance as required by R9-5-303;
 2. Documentation of the notification is maintained on facility premises for 12 months from the date of the notification; and
 3. Documentation of the absences of staff members and enrolled children due to a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, is prepared and maintained on facility premises for 12 months from the first date of absence.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-516. Medications

- A.** A licensee shall ensure that a written statement is prepared and maintained on facility premises that specifies:
1. Whether prescription or nonprescription medications are administered to enrolled children; and
 2. If prescription or nonprescription medications are administered, the requirements in subsection (B) for administering the prescription or nonprescription medications.
- B.** If prescription or nonprescription medications are administered, a licensee shall ensure that:
1. A facility director, or a staff member designated in writing by the facility director, is responsible for the administration of all medications in the facility, including storing, supervising an enrolled child's ingestion of a medication, and documenting all medications administered to an enrolled child;
 2. A facility director ensures that only one staff member in the facility at any given time is responsible for the administration of medications;
 3. A facility director, or a staff member designated in writing by the facility director, does not administer a medication to an enrolled child unless the facility receives written authorization signed by the enrolled child's parent or health care provider that includes the:
 - a. Name of the enrolled child;
 - b. Type of the medication;
 - c. Prescription number, if any;
 - d. Instructions for administration specifying the:
 - i. Dosage and route of administration;
 - ii. If indicated, starting and ending dates of the dosage period; and
 - iii. Times and frequency of administration;
 - e. Reason for the medication; and
 - f. Date of authorization; and
 4. A staff member:
 - a. Administers a prescription medication provided by a parent only from a container dispensed by a pharmacy;
 - b. Administers a nonprescription medication provided by a parent for an enrolled child only from a container prepackaged and labeled for use by the manufacturer and labeled with the enrolled child's name;
 - c. Does not administer any medication that has been transferred from one container to another; and
 - d. Does not administer a nonprescription medication to an enrolled child inconsistent with the instructions on the nonprescription medication's label, unless the facility receives written authorization from the enrolled child's health care provider.
- C.** A licensee shall allow an enrolled child to receive an injection only after obtaining a written authorization from a health care provider.
- D.** A licensee shall maintain the health care provider's written authorization required in subsection (C) on facility premises for 12 months after the date of the written authorization.
- E.** An individual authorized by state law to give injections may give an injection to an enrolled child. In an emergency, an individual may give an injection to an enrolled child according to A.R.S. §§ 32-1421(A)(1) and 32-1631(2).
- F.** A licensee shall maintain documentation of all medications administered to an enrolled child.
1. Documentation shall contain:
 - a. The name of the enrolled child;
 - b. The name and amount of medication administered and the prescription number, if any;

- c. The date and time the medication was administered; and
- d. The signature of the staff member who administered the medication to the enrolled child; and
- 2. A licensee shall maintain the documentation on facility premises for 12 months after the date the medication is administered.
- G.** A licensee shall return all unused prescription and nonprescription medications to a parent when the medication prescription date has expired or the medication is no longer being administered to the enrolled child or dispose of the medication if unable to locate the enrolled child's parent after the child's disenrollment.
- H.** Except as provided in subsection (J), a licensee shall ensure that prescription and nonprescription medications are stored as follows:
 - 1. An enrolled child's medication is kept in a locked, leak-proof storage cabinet or container that is used only for storing enrolled children's medications and is located out of reach of children;
 - 2. Medication for a staff member is kept in a locked, leak-proof storage cabinet or container that is separate from the storage container for enrolled children's medications and is located out of reach of children; and
 - 3. Medications requiring refrigeration are kept in a locked, leak-proof container in a refrigerator.
- I.** A licensee shall ensure that a facility does not stock a supply of medications for administration to enrolled children, including:
 - 1. Any prescription medication; or
 - 2. A nonprescription medication such as aspirin, acetaminophen, ibuprofen, or cough syrup.
- J.** A staff member's or enrolled child's prescription medication necessary to treat life-threatening symptoms:
 - 1. May be kept in the activity area where the staff member or enrolled child is present; and
 - 2. Except when the prescription medication is administered to treat life-threatening symptoms, is inaccessible to an enrolled child.
- 6. Submit a written report to the Department within seven days after a motor vehicle accident that occurs while transporting an enrolled child;
- 7. Not permit an enrolled child to be transported in a truck bed, camper, or trailer attached to a motor vehicle;
- 8. Use a child passenger restraint system, as required by A.R.S. § 28-907, for each enrolled child who is younger than five years old;
- 9. Except as provided in subsection (E), use an adjustable lap belt or an integrated lap and shoulder belt for each enrolled child who is five years old or older;
- 10. Ensure that the motor vehicle has:
 - a. A working mechanical heating system capable of maintaining a temperature throughout the motor vehicle of at least 60° F when outside air temperatures are below 60° F;
 - b. Except as provided in subsection (E), a working air-conditioning system capable of maintaining a temperature throughout the motor vehicle at or below 86° F when outside air temperatures are above 86° F;
 - c. Except as provided in subsection (F), a first aid kit that meets the requirements of R9-5-514(A);
 - d. Two large, clean towels or blankets; and
 - e. Sufficient drinking water available to meet the needs of each enrolled child in the motor vehicle and sufficient cups or other drinking receptacles so that each enrolled child can drink from a different cup or receptacle;
- 11. Ensure that the motor vehicle is:
 - a. Maintained in a clean condition,
 - b. In a mechanically safe condition, and
 - c. Free from hazards; and
- 12. Maintain the service and repair records of the motor vehicle as follows:
 - a. A person operating a single child care facility shall maintain the service and repair records for at least 12 months after the date of an inspection or repair in a single location on facility premises;
 - b. A public or private school that uses a school bus, as defined in A.R.S. § 28-101, shall maintain the service and repair records for the school bus as provided in A.A.C. R17-9-108(F); and
 - c. A school governing board, charter school, or person operating multiple child care facilities shall maintain the service and repair records for any motor vehicle other than a school bus for at least 12 months after the date of an inspection or repair in a single administrative office located in the same city, town, or school attendance area as the facility.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 3476, effective August 17, 2000 (Supp. 00-3). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-517. Transportation

- A.** A licensee who transports an enrolled child in a motor vehicle that the licensee owns, or acquires for use by contract, shall:
 - 1. Obtain dated, written permission from the enrolled child's parent before the licensee transports the enrolled child;
 - 2. Maintain written permission required in subsection (A)(1) on facility premises for 12 months after the date on the written permission;
 - 3. Ensure that the motor vehicle is registered by the Arizona Department of Transportation as required by A.R.S. Title 28, Chapter 7;
 - 4. Maintain documentation of current motor vehicle insurance coverage inside the motor vehicle;
 - 5. Contact the Department no later than 24 hours after a motor vehicle accident that occurs while transporting an enrolled child;
- B.** A licensee shall ensure that an individual who drives a motor vehicle used to transport an enrolled child:
 - 1. Is 18 years of age or older;
 - 2. Holds a valid driver's license issued by the Arizona Department of Motor Vehicles as prescribed by A.R.S. Title 28, Chapter 8;
 - 3. Carries a list stating the name of each enrolled child being transported and a copy of each enrolled child's Emergency, Information, and Immunization Record card including the attached immunization record or exemption affidavit, in the motor vehicle;
 - 4. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
 - 5. Does not permit an enrolled child to be seated in front of a motor vehicle's air bag;

- 6. Requires that each enrolled child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
 - 7. Except as provided in subsection (E), requires that each enrolled child be secured in a seat belt before the motor vehicle is set in motion and while the motor vehicle is in motion;
 - 8. Does not permit an enrolled child to open or close a door or window in the motor vehicle;
 - 9. Sets the emergency parking brake and removes the ignition keys from the motor vehicle before exiting the motor vehicle;
 - 10. Ensures that each enrolled child is loaded into or unloaded from the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose; and
 - 11. Does not use audio headphones or a telephone while the motor vehicle is in motion.
- C.** When transporting an enrolled school-age child in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled school-age child in a motor vehicle, if the motor vehicle driver meets the qualifications of a teacher-caregiver.
- D.** When transporting an enrolled child who is not school-age in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled child who is not school-age in a motor vehicle, only if four or fewer enrolled children are being transported and the motor vehicle driver meets the qualifications of a teacher-caregiver.
- E.** A licensee who is transporting an enrolled child in a commercial vehicle, as defined in A.R.S. § 28-1301, is exempt from the provisions in subsections (A)(9), (A)(10)(b), and (B)(7).
- F.** A licensee who is transporting an enrolled child in a school bus, as defined in A.R.S. § 28-101, is exempt from the provision in subsection (A)(10)(c) and shall comply with A.A.C. R17-9-110.
- 3. Maintain the written permission in subsection (A)(1) and written field trip plan in subsection (A)(2) on facility premises for 12 months after the date of the field trip.
- B.** A licensee shall ensure that a staff member taking enrolled children on a field trip carries the following on the field trip:
- 1. A copy of the Emergency, Information, and Immunization Record card including the attached immunization record or exemption affidavit, of each enrolled child participating in the field trip;
 - 2. A copy of the written field trip plan required in subsection (A)(2);
 - 3. A list stating the name of each participating enrolled child; and
 - 4. Sufficient water to meet the needs of each enrolled child participating in the field trip.
- C.** A staff member shall verify the presence of each enrolled child and place a checkmark next to the enrolled child's name on the list required in subsection (B)(3) for each enrolled child who is present at the following times:
- 1. At the beginning of the field trip or when boarding the motor vehicle,
 - 2. Upon arrival and each hour while at the field trip destination,
 - 3. When preparing to leave the field trip destination or when boarding the motor vehicle to return to the facility, and
 - 4. When reentering the facility at the conclusion of the field trip.
- D.** A licensee shall ensure that each enrolled child participating in a field trip is wearing in plain view a written identification stating the facility's name, address, and telephone number.
- E.** A licensee shall also ensure that each enrolled child is wearing out of view a written identification stating the enrolled child's name.
- F.** If a licensee uses a motor vehicle volunteered by a parent or other individual for a field trip, a licensee shall determine before the field trip begins that the motor vehicle is in compliance with R9-5-517(A)(3) and (4) and that the motor vehicle driver is in compliance with R9-5-517(B)(1) and (2).
- G.** When six or more enrolled children are participating in a field trip, a licensee shall ensure that a teacher-caregiver and at least one additional staff member are present on the field trip.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 1086, effective May 5, 2007 (Supp. 07-1). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-518. Field Trips

- A.** A licensee providing a field trip for an enrolled child shall:
- 1. Obtain written permission from a parent before the enrolled child participates in a field trip including:
 - a. The date and description of the field trip;
 - b. The times of departure from and return to the facility; and
 - c. The name, street address, and telephone number, if any, of the field trip destination;
 - 2. Prepare a written field trip plan including:
 - a. The name of each participating enrolled child, staff member, and other individuals on the field trip;
 - b. The times of departure from and return to the facility;
 - c. If applicable, license plate number of any motor vehicle used on the field trip; and
 - d. The name, street address, and telephone number, if any, of the field trip destination; and

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-519. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (F) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

R9-5-520. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Repealed effective October 17, 1997 (Supp. 97-4).

R9-5-521. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended by adding subsection (C) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

R9-5-522. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended paragraph (1), subparagraph (e) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

Table 1. Repealed

Historical Note

Table 1 adopted effective October 17, 1997 (Supp. 97-4). Table 1 repealed by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

ARTICLE 6. PHYSICAL PLANT OF A FACILITY

R9-5-601. General Physical Plant Standards

A licensee shall comply with the following physical plant requirements:

1. When a facility is licensed to care for more than five infants in an infant room as described in R9-5-502(A)(1), each infant room has two or more designated exits from the room;
2. Not including infants and children who use diapers, toilets and hand-washing sinks are available to enrolled children in a facility as follows:
 - a. At least one flush toilet and one hand-washing sink for 10 or fewer children,
 - b. At least two flush toilets and two hand-washing sinks for 11 to 25 children, and
 - c. At least one flush toilet and one hand-washing sink for each additional 20 children;
3. A hand-washing sink required in R9-5-503(A)(2) or subsection (2) provides running water with a drain connected to a sanitary sewer as defined in A.R.S. § 45-101;
4. Except as provided in subsections (5) and (6), when providing child care services for infants or children who require diapering, a diaper changing area that meets the requirements in R9-5-503 is available in each infant room or indoor activity area used by an enrolled infant or child who wears diapers or disposable training pants;
5. If requesting a diaper changing area outside an infant room or indoor activity area to allow privacy for diapering an enrolled child with special needs, submit a written request for an approval; and
 - a. For a license application, submit physical plant documents required by R9-5-201(A)(5)(g) that designate the location of the proposed diaper changing area;
 - b. For a licensed facility, submit a drawing of the proposed diaper changing area to the Department before installing the diaper changing area. Within 30 days after the date of the receipt of the request, the Department shall send written notice to the licensee of approval or disapproval. If the proposed diaper changing area:
 - i. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and provides privacy for the enrolled child with special needs, the Department shall approve the proposed diaper changing area; or
 - ii. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter or provide privacy for the enrolled child with special needs, the Department shall provide the licensee with the requirements necessary for the Department to approve the requested change; and

- c. Not use a diaper changing area located outside of an activity area until the Department approves the use of the diaper changing area;
6. A diaper changing area is not required in an activity area that is:
 - a. Only used by enrolled children for snacks or meals,
 - b. Used for a specific activity by enrolled children who are two years of age or older, or
 - c. An indoor activity area that is being substituted for an outdoor activity area under R9-5-602(D); and
7. A glass mirror, window, or other glass surface that is located within 36 inches of the floor is made of safety glass that has been manufactured, fabricated, or treated to prevent the glass from shattering or flying when struck or broken, or is shielded by a barrier to prevent impact by or physical injury to an enrolled child.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Section repealed; new R9-5-601 renumbered from R9-5-602 and amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-602. Facility Square Footage Requirements

- A. A licensee shall ensure that the facility meets the following square footage requirements for indoor activity areas based on the child care services classifications:
 1. At least 35 square feet of indoor activity space for each infant and 1-year-old child;
 2. At least 25 square feet of indoor activity space for each child who is not an infant or 1-year-old child; and
 3. When 1-year-old children are grouped together with children older than 1-year-old children in the same activity area, at least 35 square feet of indoor activity space for each child.
- B. When computing indoor activity space for subsections (A)(1) through (3) to determine licensed capacity, the floor space occupied by the following shall be excluded:
 1. The interior walls;
 2. A kitchen, bathroom, closet, hallway, stair, entryway, office, a room designated for isolating an enrolled child from other children, storage rooms, and a room designated for the sole use of child care staff; and
 3. Room space occupied by teacher-caregiver desks, file cabinets, storage cabinets, and hand washing sinks for staff use.
- C. To provide activities that develop large muscles and an opportunity to participate in structured large muscle physical activities, a licensee shall:
 1. Provide at least 75 square feet of outdoor activity area per child for at least 50% of the facility's licensed capacity, or
 2. Comply with one of the following:
 - a. If no enrolled child attends the facility for more than four hours per day, provide at least 50 square feet of indoor activity area for each child, based on the facility's licensed capacity;
 - b. If no enrolled child attends the facility for more than six hours per day, provide at least 75 square feet of indoor activity area per child for at least 50% of the facility's licensed capacity in addition to the indoor activity area required in subsection (A); or
 - c. Provide at least 37.5 square feet of outdoor activity area and 37.5 square feet of indoor activity area per child for at least 50% of the facility's licensed capacity.

- ity in addition to the indoor activity area required in subsection (A).
- D.** A licensee substituting indoor activity area for outdoor activity area shall:
 - 1. Designate, on the site plan and the floor plan submitted with the license application or request for approval of an intended change, the indoor activity area that is being substituted for an outdoor activity area; and
 - 2. In the indoor activity area substituted for outdoor activity area, install and maintain a mat or pad designed to provide impact protection in the fall zone of indoor swings and climbing equipment.
 - E.** An indoor activity area that is substituted for an outdoor activity area is not assigned a licensed capacity.
 - F.** The Department shall review and approve or deny the request for exemption or substitution.
 - 1. For a request that is part of a license application, the Department shall review the proposed exemption or substitution and provide written notice according to the procedures in R9-5-202.
 - 2. For a licensed facility, within 30 days after the date of the receipt of the request, the Department shall review the proposed exemption or substitution and provide written notice of the review to the licensee. If the proposed exemption or substitution:
 - a. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, the Department shall approve the proposed exemption or substitution; or
 - b. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter, the Department shall provide the licensee with the requirements necessary to approve the requested exemption or substitution.
 - 3. A licensee shall provide at least 75 square feet of outdoor activity area per child for 50% of the facility's licensed capacity, until the Department approves the exemption or substitution.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former R9-5-602 renumbered to R9-5-601; new R9-5-602 renumbered from R9-5-603 and amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-603. Outdoor Activity Areas

- A.** Except as provided in subsection (B), a licensee shall not permit an enrolled child to cross a driveway or parking lot to access an outdoor activity area on the facility premises or a school campus unless the licensee obtains written approval from the Department.
- B.** If a licensee requests approval from the Department for enrolled children to cross a driveway or parking lot to access an outdoor activity area, the Department shall inspect the facility premises or school campus to determine whether the health, safety, or welfare of enrolled children would be endangered. The Department shall notify the licensee of approval or disapproval within 30 days of receipt of the request. If disapproved, the Department shall provide the licensee with the requirements necessary to approve the proposed crossing.
- C.** Except as provided in subsection (D), a licensee shall ensure that an outdoor activity area:
 - 1. Is enclosed by a fence:
 - a. A minimum of 4 feet high,
 - b. Secured to the ground, and
 - c. With either vertical or horizontal open spaces on the fence or gate that do not exceed 4.0 inches;

- 2. Is maintained free from hazards, such as exposed concrete footings and broken toys; and
- 3. Has gates that are kept closed while an enrolled child is in the outdoor activity area.
- D.** A licensee shall ensure that a playground used only for enrolled school age children at a facility operating at a public school meets the fencing requirements of the public school. If the Department determines by inspection that a facility fence at a public school does not ensure the health, safety, or welfare of enrolled children, the licensee shall meet the fencing requirements of subsection (C).
- E.** A licensee shall ensure that the following is provided and maintained within the fall zones of swings and climbing equipment in an outdoor activity area:
 - 1. A shock-absorbing unitary surfacing material manufactured for such use in outdoor activity areas; or
 - 2. A minimum depth of 6 inches of a nonhazardous, resilient material such as fine loose sand or wood chips.
- F.** A licensee shall ensure that hard surfacing material such as asphalt or concrete is not installed or used under swings or climbing equipment unless used as a base for a rubber surfacing.
- G.** A licensee shall ensure that a swing or climbing equipment is not located in the fall zone of another swing or climbing equipment.
- H.** A licensee shall provide a shaded area for each enrolled child occupying an outdoor activity area at any time of day.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former R9-5-603 renumbered to R9-5-602; new R9-5-603 renumbered from R9-5-604 and amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-604. Swimming Pools

- A.** If a licensee uses a public or semi-public swimming pool for an enrolled child, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by local government. If no ordinance has been adopted, the swimming pool shall meet the requirements in A.A.C. R9-8-801 through R9-8-813.
- B.** A licensee that uses a private pool for an enrolled child shall ensure that the swimming pool and its equipment meet the following requirements:
 - 1. If a licensee uses a private pool that is a minimum of 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by local government and, at a minimum, be equipped with the following:
 - a. A recirculation system consisting of piping, pumps, filters, and water conditioning and disinfecting equipment that conforms to the swimming pool manufacturer's specifications for installation and operation, and is adequate to clarify and disinfect the pool water continuously;
 - b. Two swimming pool inlets located on opposite sides of the swimming pool to produce uniform circulation of water and maintain uniform chlorine residual throughout the entire swimming pool without the existence of dead spots;
 - c. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed by bathers;
 - d. A swimming pool water vacuum system in operating condition;

- e. A removable strainer to prevent hair, lint, or other objects from reaching the pump and filter;
 - f. An automatic mechanical water disinfectant system in use and in operating condition. The disinfecting agents shall maintain the swimming pool water as follows:
 - i. A free chlorine level between 1.0 and 3.0 parts per million as tested by the diethyl-p-phenylene diamine method or 0.4 to 1.0 parts per million when tested by the orthotolidine method;
 - ii. A pH level between 7.0 and 8.0 as tested by the diethyl-p-phenylene diamine method or the orthotolidine method; or
 - iii. A bromine level between 2.0 and 4.0 parts per million as tested by the diethyl-p-phenylene diamine method;
 - g. A shepherd's crook; and
 - h. A ring buoy attached to a 1/2 inch diameter rope at least 25 feet in length;
2. If a licensee uses a private pool that is less than 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of subsection (B)(1) except that:
 - a. The swimming pool shall have a minimum of one swimming pool inlet;
 - b. The swimming pool is not required to have a bottom drain;
 - c. A pool water vacuum cleaning system is not required, and
 - d. A ring buoy with attached rope is not required;
 3. A portable pool that does not meet the requirements of subsection (B)(1) or (2) is prohibited;
 4. On each day an enrolled child uses the swimming pool, a licensee shall test the water in the swimming pool at least once every day to verify that the swimming pool water meets the swimming pool water chemical ranges in subsection (B)(1)(f);
 5. A licensee shall create a written swimming pool log and:
 - a. Document the results of tests required in subsection (B)(4) in the written swimming pool log;
 - b. Have the written swimming pool log at the swimming pool site while enrolled children are using the swimming pool; and
 - c. Maintain the written swimming pool log on facility premises for three months after the last date the swimming pool water was tested and documented; and
 6. If the swimming pool water does not meet the swimming pool water chemical ranges in subsection (B)(1)(f), the licensee shall:
 - a. Add liquid or dissolved dry chemicals to the swimming pool water,
 - b. Document any actions taken by the licensee to restore the swimming pool water chemical ranges in the written swimming pool log required in subsection (B)(5)(a), and
 - c. Not allow enrolled children to use the swimming pool until tests of the swimming pool water verify that the swimming pool water meets the swimming pool water chemical ranges in subsection (B)(1)(f).
- C.** A licensee shall ensure that a public, semi-public, or private pool used by an enrolled child is enclosed by a wall, fence, or barrier that complies with:
1. The requirements of a swimming pool barrier ordinance adopted by the local government where the swimming pool is located; or
 2. If the local government where the swimming pool is located has not adopted a swimming pool barrier ordinance, the requirements in A.R.S. § 36-1681.
- D.** A licensee that uses any semi-public or private swimming pool for enrolled children shall ensure that the swimming pool has been inspected by the Department or a city or county health department before it is used by enrolled children.
1. If a licensee operates or uses a swimming pool that is inspected by a city or county health department, the licensee shall provide the Department with a current written report of the swimming pool inspection.
 2. A licensee shall maintain the current swimming pool inspection reports of a swimming pool used by enrolled children on the facility premises.
- E.** A licensee shall ensure that written permission is:
1. Obtained from an enrolled child's parent before allowing the enrolled child to participate in a swimming activity, and
 2. Maintained on facility premises for 12 months after the date the enrolled child participated in the swimming activity.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6).
Amended effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former R9-5-604 renumbered to R9-5-603; new R9-5-604 renumbered from R9-5-605 and amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-605. Fire and Safety

- A.** A licensee shall install and maintain a portable, pressurized fire extinguisher that meets, at a minimum, a 2A-10-BC rating of the Underwriters Laboratories in a facility's kitchen and any other location required by Standard 10-1 of the International Fire Code, incorporated by reference in A.A.C. R9-1-412.
- B.** A licensee shall ensure that:
1. All designated exits, corridors, and passageways that provide escape from the building are unobstructed and unlocked during hours of operation;
 2. Combustible material, such as paper, boxes, or rags, is not permitted to accumulate inside or outside the facility premises;
 3. An unvented or open-flame space heater or portable heater is not used on the facility premises;
 4. A gas valve on an unused gas outlet is removed and capped where it emerges from the wall or floor;
 5. Electrical extension cords are not used;
 6. Except for a room used only for an enrolled school-age child, each unused electrical outlet is covered with a safety plug cover or insert;
 7. Slow cookers and hot plates are used only in a kitchen and are inaccessible to an enrolled child;
 8. Heating and cooling equipment is inaccessible to an enrolled child;
 9. Fans are mounted and inaccessible to an enrolled child;
 10. Toilet rooms are ventilated to the outside of the building, either by a screened window open to the outside air or by an exhaust fan and duct system that is operated when the toilet room is in use;
 11. A toilet room with a door that opens to the exterior of a building is equipped with a self-closing device that keeps the door closed except when an individual is entering or exiting;
 12. A toilet room door does not open into a kitchen;

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13. A smoke detector is installed in each indoor activity area and kitchen;
14. Each smoke detector required in subsection (B)(13) is:
 - a. Maintained in an operable condition;
 - b. Either battery operated or, if hard wired into the electrical system of the child care facility, has a back-up battery; and
 - c. Tested monthly;
15. If the local fire jurisdiction requires a sprinkler system, the sprinkler system is:
 - a. Installed,
 - b. Operable,
 - c. Tested quarterly, and
 - d. Serviced at least once every 12 months;
16. The fire extinguisher required in subsection (A):
 - a. Is serviced at least once every 12 months, and
 - b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher; and
17. The testing required in subsections (B)(14) and (15) and servicing required in subsection (B)(16) is documented and the documentation is:
 - a. Maintained by the licensee, and
 - b. Available for at least 12 months after the date of the testing or servicing.

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Former Section R9-5-605 repealed and a new Section R9-5-605 adopted effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Former R9-5-605 renumbered to R9-5-604; new R9-5-605 renumbered from R9-5-606 and amended by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-606. Renumbered

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (A) effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Section R9-5-606 renumbered to R9-5-605 by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-607. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Section repealed; new Section adopted effective October 17, 1997 (Supp. 97-4). Section repealed by exempt rulemaking at 16 A.A.R. 1564, effective September 30, 2010 (Supp. 10-3).

R9-5-608. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Repealed effective October 17, 1997 (Supp. 97-4).

R9-5-609. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Repealed effective October 17, 1997 (Supp. 97-4).

R9-5-610. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Correction to subsection (F) as certified effective December 12, 1986; Amended subsection (A) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

R9-5-611. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

R9-5-612. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Repealed effective October 17, 1997 (Supp. 97-4).

R9-5-613. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Repealed effective October 17, 1997 (Supp. 97-4).

R9-5-614. Repealed

Historical Note

Adopted effective December 12, 1986 (Supp. 86-6). Amended subsection (C) effective July 7, 1988 (Supp. 88-3). Repealed effective October 17, 1997 (Supp. 97-4).

ARTICLE 7. REPEALED

Article 7, consisting of Sections R9-5-701 through R9-5-708, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-701. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-702. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule

readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

Table 2. Repealed

Historical Note

New Table made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Table repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-703. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; editorial corrections to labels of subsections (A)(8)(a)(i) through (A)(8)(a)(xix) (Supp. 89-4). Emergency rule readopted with changes effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-704. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency permanently adopted effective October 4, 1990 (Supp. 90-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-705. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3,

1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-706. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-707. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-708. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

ARTICLE 8. REPEALED

Article 8, consisting of Sections R9-5-801 through R9-5-809, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-801. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency

Article 10, consisting of Sections R9-5-1001 through R9-5-1006, repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-1001. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Amended by final rulemaking at 8 A.A.R. 4060, effective November 10, 2002 (Supp. 02-3). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-1002. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-1003. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted and amended effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted with changes effective October 4, 1990 (Supp. 90-4). Amended by final

R9-5-1004. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-1005. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

R9-5-1006. Repealed

Historical Note

Adopted as an emergency effective July 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days; Emergency rule readopted effective September 28, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency rule readopted effective December 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency rule readopted effective April 3, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. Emergency rule readopted effective July 9, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency rule permanently adopted effective October 4, 1990 (Supp. 90-4). Section repealed by final rulemaking at 10 A.A.R. 1282, effective September 1, 2004 (Supp. 04-1).

ATTACHMENT B

9 A.AC. 5 CHILD CARE FACILITIES

36-132. Department of health services; functions; contracts

A. The department shall, in addition to other powers and duties vested in it by law:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school

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9 A.AC. 5 CHILD CARE FACILITIES

children, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection H, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

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9 A.AC. 5 CHILD CARE FACILITIES

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

- (a) Screening in early pregnancy for detecting high risk conditions.
- (b) Comprehensive prenatal health care.
- (c) Maternity, delivery and postpartum care.
- (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
- (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for the developmentally disabled. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement

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9 A.AC. 5 CHILD CARE FACILITIES

treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definition (updated 2017)

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.

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C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance.

Whenever in the director's opinion there is cause, the director may terminate all or a part of any

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delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product

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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

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substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted

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pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt

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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.

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36-881. Definitions

In this article, unless the context otherwise requires:

1. "Child" means any person through the age of fourteen years. Child also means a person who is under eighteen years of age if the child has a developmental disability as defined in section 36-551 or has at least one of the disabilities listed in section 15-761, paragraph 2 and requires special education as defined in section 15-761.
2. "Child care" means the care, supervision and guidance of a child or children, unaccompanied by a parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day, in a place other than the child's or the children's own home or homes.
3. "Child care facility" means any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor.
4. "Controlling person" means a person who:
 - (a) Through ownership, has the power to vote at least ten per cent of the outstanding voting securities.
 - (b) If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least ten per cent of the voting rights of the partnership.
 - (c) If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator, an agent or any person who owns or controls at least ten per cent of the voting securities.
 - (d) Holds a beneficial interest in ten per cent or more of the liabilities of the applicant or the licensee.
5. "Department" means the department of health services.
6. "Director" means the director of the department of health services.
7. "Person" means an individual, partnership, corporation, limited liability company, association, day nursery, nursery school, day camp, kindergarten, child care agency, school governing board, charter school or child care center that operates a child care facility.
8. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of an applicant for licensure or a licensed child care facility does not pose a direct risk to the life, health or safety of children.

36-882. License; posting; transfer prohibited; fees; provisional license; renewal; exemption from rule making

A. A child care facility shall not receive any child for care, supervision or training unless the facility is licensed by the department of health services.

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B. An application for a license shall be made on a written or electronic form prescribed by the department and shall include:

1. Information required by the department for the proper administration of this chapter and rules adopted pursuant to this chapter.
2. The name and business or residential address of each controlling person.
3. An affirmation by the applicant that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. An application for an initial license shall include:

1. The form that is required pursuant to section 36-883.02, subsection C and that is completed by the applicant.
2. A copy of a valid fingerprint clearance card issued to the applicant pursuant to section 41-1758.07.
3. If the applicant's facility is located within one-fourth mile of any agricultural land, the names and addresses of the owners and lessees of the agricultural land and a copy of the agreement required pursuant to subsection D of this section.

D. The department shall deny any license that affects agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may license the child care facility to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care facility, including conditions for future expansion of the facility and changes in the operational status of the facility that will result in a breach of the agreement. This subsection shall not apply to the issuance or renewal of a license for a child care facility located in the same location for which a child care facility license was previously issued.

E. On receipt of an application for an initial license, the department shall inspect the applicant's physical space, activities and standards of care. If the department determines that the applicant and the applicant's facility are in substantial compliance with this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the department to eliminate any deficiencies, the department shall issue an initial license to the applicant.

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F. Beginning January 1, 2010, subject to the availability of monies, the department may establish a discount program for licensing fees paid by child care facilities, including a public health discount.

G. The director, by rule, may establish and collect fees for child care facilities and a fee for late filing of applications. Beginning January 1, 2010, ninety per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

H. Pursuant to available funding, the department shall collect annual fees.

I. A license is valid from the date of issuance unless it is subsequently revoked or suspended or the licensee does not pay the licensure fee and shall specify the following:

1. The name of the applicant.
2. The exact address where the applicant will locate the facility.
3. The maximum number and age limitations of children that shall be cared for at any one time.
4. The classification of services that the facility is licensed to provide.

J. The department may issue a provisional license, not to exceed six months, to an applicant or a licensed child care facility if:

1. The facility changes director.
2. The department determines that an applicant for an initial license or a licensed child care facility is not in substantial compliance with this chapter and rules adopted pursuant to this chapter and the immediate interests of children, families and the general public are best served if the child care facility or the applicant is given an opportunity to correct deficiencies.

K. A provisional license shall state the reason for the provisional status.

L. On the expiration of a provisional license, the department shall issue a regular license if the department determines that the licensee and the child care facility are in substantial compliance with this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the department to eliminate any deficiencies.

M. The licensee shall notify the department in writing within ten days of any change in the child care facility's director.

N. The license is not transferable from person to person and is valid only for the quarters occupied at the time of issuance.

O. The license shall be conspicuously posted in the child care facility.

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P. The licensee shall conspicuously post a schedule of fees charged for services and the established policy for a refund of fees for services not rendered.

Q. The licensee shall keep current department inspection reports at the child care facility and shall make them available to parents on request. The licensee shall conspicuously post a notice that identifies the location where these inspection reports are available for review.

R. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a licensee who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.
2. Falsified information on any form required by section 36-883.02.

S. Licensees may pay licensure fees by installment payments based on procedures established by the department.

T. The department shall review its actual costs to administer this article at least once every two years. If the department determines that its administrative costs are lower than the fees it has collected pursuant to this section, it shall adjust fees.

U. If the department lowers fees, the department may refund or credit fees to licensees.

V. Fee reductions are exempt from the rule making requirements of title 41, chapter 6.

36-883. Standards of care; rules; classifications

A. The director of the department of health services shall prescribe reasonable rules regarding the health, safety and well-being of the children to be cared for in a child care facility. These rules shall include standards for the following:

1. Adequate physical facilities for the care of children such as building construction, fire protection, sanitation, sleeping facilities, isolation facilities, toilet facilities, heating, ventilation, indoor and outdoor activity areas and, if provided by the facility, transportation safely to and from the premises.
2. Adequate staffing per number and age groups of children by persons qualified by education or experience to meet their respective responsibilities in the care of children.
3. Activities, toys and equipment to enhance the development of each child.
4. Nutritious and well-balanced food.
5. Encouragement of parental participation.
6. Exclusion of any person from the facility whose presence may be detrimental to the welfare of children.

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B. The department shall adopt rules pursuant to title 41, chapter 6 and section 36-115.

C. Any rule that relates to educational activities, physical examination, medical treatment or immunization shall include appropriate exemptions for children whose parents object on the ground that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent or child is an adherent or member.

D. The department of health services shall conduct a comprehensive review of its rules at least once every two years. Before conducting this review, the department shall consult with agencies and organizations that are knowledgeable about the provision of child care facilities to children including:

1. The department of economic security.
2. The department of education.
3. The state fire marshal.
4. The league of Arizona cities and towns.
5. Citizen groups.

E. The department shall designate appropriate classifications and establish corresponding standards pertaining to the type of care offered. These classifications shall include:

1. Facilities offering infant care.
2. Facilities offering specific educational programs.
3. Facilities offering evening and nighttime care.

F. Rules for the operation of child care facilities shall be stated in a way that clearly states the purpose of each rule.

36-883.01. Statement of services

Each child care facility shall annually furnish to the department, and make available to parents on request, an explicit and up-to-date written statement of the services it offers.

36-883.02. Child care personnel; fingerprints; exemptions; definition

A. Except as provided in subsection B of this section, child care personnel, including volunteers, shall submit the form prescribed in subsection C of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days of employment or beginning volunteer work.

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B. Exempt from the fingerprinting requirements of subsection A of this section are parents, including foster parents and guardians, who are not employees of the child care facility and who participate in activities with their children under the supervision of and in the presence of child care personnel.

C. Applicants, licensees and child care personnel shall attest on forms that are provided by the department that:

1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in section 41-1758.07, subsection B in this state or similar offenses in another state or jurisdiction.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.

3. They have not been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility in this or any other state or that they have not been denied or had revoked a certification to work in a child care facility or child care group home.

D. Employers of child care personnel shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment in a child care facility.

E. The forms required by subsection C of this section are confidential.

F. A child care facility shall not allow a person to be employed or volunteer in the facility in any capacity if the person has been denied a fingerprint clearance card pursuant to section 41-1758.07 or has not received an interim approval from the board of fingerprinting pursuant to section 41-619.55, subsection I.

G. The employer shall notify the department of public safety if the employer receives credible evidence that any child care personnel either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.

2. Falsified information on the form required by subsection C of this section.

H. For the purposes of this section, "child care personnel" means any employee or volunteer working at a child care facility.

36-883.03. Employer-subsidized child care; immunity from liability

A. An employer that subsidizes child care on a nondiscriminatory basis to its employees through a child care facility licensed pursuant to this article or through a person or facility exempt from licensure pursuant to this article but screened pursuant to section 41-1964 or 46-321 is not liable for damages as

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a result of an act or omission by the child care facility, person or exempt facility unless the employer is guilty of gross negligence in recommending the child care facility, person or facility or unless the employer is acting as the owner or has an ownership interest in or is an operator of the child care facility or exempt facility.

B. For purposes of this section, an employer is deemed to be subsidizing an employee's child care costs if the employer pays, either directly or indirectly, at least twenty-five per cent of the cost of the child care service rendered to the employee by the child care facility, person or exempt facility described in subsection A of this section.

36-883.04. Standards of care; rules; enforcement

The director shall prescribe reasonable rules and standards regarding the health, safety and well-being of children cared for in any public school child care program. These rules shall be comparable to the rules and standards prescribed pursuant to section 36-883. The director shall also prescribe rules regarding the enforcement of the standards of care including penalties for noncompliance with these standards. These enforcement and penalty provisions shall be comparable to those existing for private child care facilities.

36-884. Exemptions

This article does not apply to the care given to children by or in:

1. The homes of parents or blood relatives.
2. A religious institution conducting a nursery in conjunction with its religious services or conducting parent-supervised occasional drop-in care.
3. A unit of the public school system, including specialized professional services provided by school districts for the sole purpose of meeting mandated requirements to address the physical and mental impairments prescribed in section 15-771. If a public school provides child care other than during the school's regular hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school that provides child care is subject to standards of care prescribed pursuant to section 36-883.04.
4. A regularly organized private school engaged in an educational program that may be attended in substitution for public school pursuant to section 15-802. If the school provides child care beyond regular public school hours or for children who are not regularly enrolled in kindergarten programs or

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grades one through twelve, that portion of the school providing such care shall be considered a child care facility and is subject to this article.

5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion and tutoring provided by public schools solely to improve school performance.

6. Any facility that provides only recreational or instructional activities to school age children who may enter into and depart from the facility at their own volition. The facility may require the children to document their entrance into and departure from the facility. This documentation does not affect the exemption under this paragraph. The facility shall post a notice stating it is not a licensed child care facility under section 36-882.

7. Any of the Arizona state schools for the deaf and the blind.

8. A facility that provides only educational instruction for children who are at least three and not older than six years of age if all the following are true:

(a) The facility instructs only in the core subjects of math, reading and science.

(b) The facility does not accept state-subsidized tuition for the children.

(c) A child is present at the facility for not more than two and one-quarter hours a day and not more than three days a week.

(d) The instruction is not provided in place of care ordinarily provided by a parent or guardian.

(e) The facility posts a notice that the facility is not licensed under this article.

(f) The facility requires fingerprint cards of all personnel pursuant to section 36-883.02.

9. A facility that operates a day camp that provides recreational programs to children if all of the following are true:

(a) The day camp is accredited by a nationally recognized accrediting organization for day camps as approved by the department.

(b) The day camp operates for less than twenty-four hours a day and less than ten weeks each calendar year.

(c) The day camp posts a notice at the facility and on its website that it is not licensed under the laws of this state as a child care facility.

(d) The day camp provides programs only to children who are at least five years of age.

(e) The day camp requires fingerprint cards of all personnel pursuant to section 36-883.02.

36-885. Inspection of child care facilities

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A. The department or designated local health departments or its agents may at any time visit during hours of operation and inspect a child care facility to determine if it complies with this article and rules adopted under this article.

B. The department shall visit each child care facility as often as necessary to assure continued compliance with this article and department rules. The department shall make at least one unannounced visit annually.

36-886. Operation without a license; classification

A. If it appears that any person is maintaining or operating a child care facility without a license, the department shall notify the facility's operator either by mail, by certified mail with return receipt requested or by delivery in person. The person affected by the notice shall, within ten days from its receipt, cease and desist operation or show proof of having a valid license. The person may, within ten days, request in writing a hearing before the director.

B. On application of the department, a magistrate shall issue a warrant to the department authorizing inspection of a child care facility if there is probable cause to believe that a person is operating the facility without a license.

C. If a person does not comply with this section the department shall notify the county attorney of the county in which the child care facility is being operated of the violation and request that criminal prosecution be commenced against the violator. The department may request the attorney general to apply for injunctive relief.

D. Any person who continues to maintain or operate a child care facility without a license ten days after receipt of notice from the department is guilty of a class 1 misdemeanor.

36-886.01. Injunctions

If the department believes that a child care facility is operating under conditions that present possibilities of serious harm to children, the department shall notify the county attorney or the attorney general who shall immediately seek a restraining order and injunction against the facility.

36-887. Procedure for inspection of records

A. Records maintained by the department for child care facilities are available to the public for review and copying.

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B. Personally identifiable information that relates to a child, parent or guardian is confidential. The department shall disclose this information only as follows:

1. Pursuant to a court order.
2. Pursuant to a written consent signed by the parent or guardian.
3. To a law enforcement officer who requires it for official purposes.
4. To an official of a governmental agency who requires it for official purposes.

C. The department shall enter into the child care facility's case file, contiguous to the form containing the reported violation, those documents that verify correction of reported violations.

36-888. Denial, revocation or suspension of license

A. The department may deny, suspend or revoke a license for a violation of this article or department rules. At least thirty days before the department denies, revokes or suspends a license it shall mail the applicant or licensee a notice of that person's right to a hearing. The department shall issue this notice by registered mail with return receipt requested. The notice shall state the hearing date and the facts constituting the reasons for the department's action and shall cite the specific statute or rule that the person is not conforming to.

B. If the person does not respond to the written notice the department, at the expiration of the time fixed in the notice, shall take the action prescribed in the notice. If the person, within the period fixed in the notice, conforms the application or the operation of the child care facility to the applicable statute or rule, the department may grant the license or withdraw the notice of suspension or revocation.

36-889. Licensees; applicants; residency; controlling persons; requirements

A. Each licensee, other than a corporation, a limited liability company, an association or a partnership, shall be a citizen of the United States who is a resident of this state, or a legal resident alien who is a resident of this state. A corporation, association or limited liability company shall be a domestic entity or a foreign entity that is qualified to do business in this state. A partnership shall have at least one partner who is a citizen of the United States and who is a resident of this state, or who is a legal resident alien and who is a resident of this state.

B. The department shall not issue or renew a license unless a list of each of the applicant's or licensee's controlling persons is on file with the department and no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or other state or has had a license to operate a child care facility or a certificate to

ATTACHMENT B

9 A.AC. 5 CHILD CARE FACILITIES

operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. The applicant or licensee shall notify the department within thirty days after the election of any new officer or director or of any change in the controlling persons and shall provide the department the name and business or residential address of each controlling person and an affirmation by the applicant that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

D. Each applicant or licensee shall designate an agent who is authorized to receive communications from the department, including legal service of process, and to file and sign documents for the applicant or licensee. The designated agent shall be all of the following:

1. A controlling person.
2. A citizen of the United States or a legal resident alien.
3. A resident of this state.

36-890. Decisions

All decisions rendered by the director, pursuant to the applicable law and regulations, shall be in writing and filed of record in the office of the department. Notice of such decisions shall be given to the affected person or licensee. If no appeal is taken by any such person or licensee within the time provided by law, the decision of the director shall be final and conclusive.

36-891. Civil penalty; inspection of centers; training program

A. The director may impose a civil penalty on a person who violates this article or rules adopted pursuant to this article in an amount of not more than one hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. If a person requests a hearing to appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.

B. In determining the civil penalty pursuant to subsection A, the department shall consider the following:

ATTACHMENT B

9 A.AC. 5 CHILD CARE FACILITIES

1. Repeated violations of statutes or rules.
2. Patterns of noncompliance.
3. Types of violations.
4. Severity of violations.
5. Potential for and occurrences of actual harm.
6. Threats to health and safety.
7. Number of children affected by the violations.
8. Number of violations.
9. Size of the facility.
10. Length of time during which violations have been occurring.

C. If a civil penalty imposed pursuant to subsection A is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.

D. Unless a license is revoked or suspended, the director shall place the license of a child care facility subject to a civil penalty pursuant to subsection A on provisional license status for a period of time not to exceed six months in addition to other penalties imposed pursuant to this article.

E. Civil penalties collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

F. The department shall develop an instrument that documents compliance and noncompliance of child care facilities according to the criteria prescribed in its rules governing child care facility licensure. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

G. The director shall establish a child care facility training program to provide training for child care facilities and users of child care services, technical assistance materials for child care facilities and information to enhance consumer awareness.

36-891.01. Intermediate sanctions; notification of compliance; hearing

A. If the director has reasonable cause to believe that a licensee is violating this article or rules adopted pursuant to this article and that the health or safety of the children is endangered, the director may impose, on written notice to the licensee, one or more of the following intermediate sanctions until the licensee is in substantial compliance with this article:

1. Immediate restrictions on new admissions to the child care facility.
2. Termination of specific services that the facility may offer.

ATTACHMENT B

9 A.AC. 5 CHILD CARE FACILITIES

3. Reduction of the facility's capacity.

B. A child care facility sanctioned pursuant to this section shall notify the department in writing when it is in substantial compliance. On receipt of notification the department shall conduct an inspection. If the department determines that the facility is in substantial compliance the director shall immediately rescind the sanctions. If the department determines that the facility is not in substantial compliance the sanctions remain in effect. The facility may then notify the department of substantial compliance not sooner than fourteen days after the date of that inspection. If the department determines on the return inspection that the facility is still not in substantial compliance the sanctions remain in effect.

Thereafter, a facility may notify the department of substantial compliance not sooner than thirty days after the date of the last inspection. A facility shall make all notifications of substantial compliance by certified mail. The department shall conduct all inspections required pursuant to this subsection within fourteen days after receipt of notification of substantial compliance. If the department does not conduct an inspection within this time period, the sanctions have no further effect.

C. A person who has been ordered by the director to restrict admission, reduce capacity or terminate specific services may request a hearing to review the director's action. The person shall make this request in writing within ten days after the person receives notice of the director's action. The office of administrative hearings shall conduct an administrative hearing within seven business days after the notice of appeal has been filed with the office of administrative hearings.

D. A hearing conducted pursuant to this section shall comply with the requirements of title 41, chapter 6, article 10.

36-892. Violation; classification

Any person violating the provisions of the applicable law, or regulations, is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this article.

36-893. Legal action or sale; effect on licensure

A. The department shall not act on an application for licensure of a currently licensed child care facility while any enforcement or court action related to child care facility licensure is pending against that facility's current licensee.

B. The director may continue to pursue any court, administrative or enforcement action against the licensee even though the facility is in the process of being sold or transferred to a new owner.

ATTACHMENT B

9 A.AC. 5 CHILD CARE FACILITIES

C. The department shall not approve a change in facility ownership unless it determines that there has been a transfer of all legal and equitable interests, control and authority in the facility so that persons other than the transferring licensee, that licensee's agent or other parties exercising authority or supervision over the facility's daily operations or staff are responsible for and have control over the facility.

36-894. Medical marijuana; child care facilities; prohibition

A person, including a cardholder as defined in section 36-2801, may not lawfully possess or use marijuana in any child care facility in this state.

36-894.01. Use of sunscreen in child care facilities

A school-age child who attends a child care facility in this state may possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.

G-6

DEPARTMENT OF HEALTH SERVICES (F-18-0301)

Title 9, Chapter 6, Article 1, General



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: March 6, 2018

AGENDA ITEM: G-6

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

FROM: Council Staff

DATE : February 20, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0301)
Title 9, Chapter 6, Article 1, General

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Department of Health Services (Department) covers three rules in A.A.C. Title 9, Chapter 6, Article 1, which contains general provisions associated with communicable diseases and infestations. In its 2013 five-year review report, the Department did not propose any action on the rules. Section 101, providing definitions, was amended effective January 1, 2018.

The rules relate to the information that is required to be released to the Department or a local health agency when the Department or local health agency is investigating a communicable disease. In addition, Section 103 implements A.R.S. § 36-664(E), which states that the Department or a local health agency "shall disclose communicable disease related information" to a Good Samaritan who submits a request to the Department or local health agency.

Proposed Action

The Department does not anticipate taking any action on the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is 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. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department receives over 174,000 communicable disease case reports annually from local health agencies, clinical laboratories, health care institutions, correctional facilities, schools and shelters, pharmacists, and health care providers required to report. Of these over 174,000 care reports, more than 96,000 are considered to be new cases of communicable diseases. In 2016, there were 721 cases of primary and secondary syphilis; 488 cases of early latent syphilis; 16 cases of congenital syphilis; 10,330 cases of gonorrhea; and 34,923 cases of chlamydia reported to the Department.

Key stakeholders are the Department; local health agencies; public safety employers, employees, and volunteers; health care providers and hospitals; and community-based organizations for obtaining and providing education about the rules.

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

The Department has determined that the rules generally imposed the least burden and costs to person regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department indicates that it has received no written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the rules are effective, are consistent with other rules and statutes, and are clear, concise, and understandable.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that the rules are enforced as written.

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

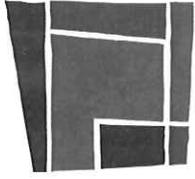
No. The Department indicates that no federal laws relate to the rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No. The rules do not require the issuance of a permit, license, or agency authorization.

9. Conclusion

No action is proposed on the rules. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

December 20, 2017

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

RE: Report for A.A.C. Title 9, Chapter 6, Article 1 of Communicable Diseases and Infestations

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 6, Article 1 is due to the Council no later than April 30, 2018. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 6, Article 1 and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific authority, and economic impact statements are included in the package. As described in the report, the Department does not plan to amend the rules in 9 A.A.C. 6, Article 1 unless a threat to public health or safety arises that would require amending the rules.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,



Robert Lane
Director's Designee

RL:rms
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES

COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 1. GENERAL

JANUARY 2018

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 1. GENERAL

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FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-136(H)(1) requires the Arizona Department of Health Services (Department) to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.” The Department has adopted rules to implement this statute in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6. A.A.C. R9-6-101 provides definitions of terms used in more than one Article in the Chapter, and A.A.C. R9-6-102 establishes the information that is required to be released to the Department or a local health agency when the Department or local health agency is investigating a communicable disease. A.A.C. R9-6-101 was extensively revised as part of a rulemaking of the Chapter effective April 1, 2008, with subsequent revisions effective March 7, 2009 and January 1, 2018. A.A.C. R9-6-102 was last amended effective December 2, 2008.

A.R.S. § 36-664(E) states that the Department or a local health agency “shall disclose communicable disease related information” to a Good Samaritan, as defined in A.R.S. § 36-661, who submits a request to the Department or local health department. A.R.S. § 36-664(E) also states that the Department “shall adopt rules that prescribe standards of significant exposure risk” and “establish procedures for processing requests” from Good Samaritans. The Department has adopted A.A.C. R9-6-103 to implement A.R.S. § 36-664, effective January 31, 2009.

After an analysis of the rules in 9 A.A.C. 6, Article 1, the Department has determined that the rules are consistent with state and federal statutes and rules; enforced; and clear, concise, and understandable; and that the Department has received no written criticism of the rules. The Department believes the rules are sufficient to protect public health and does not plan to amend the rules in 9 A.A.C. 6, Article 1 unless a threat to public health or safety arises that would require amending the rules.

INFORMATION FOR INDIVIDUAL RULE

1. Authorization of the rule by existing statute

The general statutory authority for the rules in 9 A.A.C. 6, Article 1 are A.R.S. §§ 36-132(A)(1), 36-136(A)(7) and 36-136(G).

The specific statutory authority for the rules in 9 A.A.C. 6, Article 1 is A.R.S. §§ 36-136(I)(1).

3. Analysis of effectiveness in achieving the objective

The rules in 9 A.A.C. 6, Article 1 are effective in achieving their respective objectives.

4. Analysis of consistency with state and federal statutes and rules

The rules in 9 A.A.C. 6, Article 1 are consistent with applicable statutes and rules.

5. Status of enforcement of the rule

The rules in 9 A.A.C. 6, Article 1 are enforced by the Department as written.

6. Analysis of clarity, conciseness, and understandability

The rules in 9 A.A.C. 6, Article 1 are clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

The Department has not received any written criticisms of the rules in 9 A.A.C. 6, Article 1 in the past five years.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rules in 9 A.A.C. 6, Article 1 in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

In the 2013 five-year-review report, the Department stated that the Department believed the rules were sufficient to protect public health and did not plan to amend the rules in 9 A.A.C. 6, Article 1 unless a threat to public health or safety arose that would require amending the rules. Since no such threat arose in the past five years, the Department complied with this plan.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

The Department has determined that the rules in 9 A.A.C. 6, Article 1 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

12. Analysis of stringency compared to federal laws

Federal laws do not apply to the rules in 9 A.A.C. 6, Article 1.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037**

The rules were adopted before July 29, 2010 and do not require the issuance of a permit, license, or agency authorization.

14. **Proposed course of action**

The Department believes the rules are sufficient to protect public health and does not plan to amend the rules in 9 A.A.C. 6, Article 1 unless a threat to public health or safety arises that would require amending the rules.

INFORMATION FOR INDIVIDUAL RULES

R9-6-101. Definitions

2. Purpose and objective

The purpose of the rule is to enable the reader to understand clearly the requirements of the Chapter and allow for consistent interpretation.

The objective of the rule is to define terms used in more than one Article in Chapter 6.

8. Economic, small business, and consumer impact comparison

The rule was revised by final rulemakings published in the *Arizona Administrative Register* (A.A.R.) at 14 A.A.R. 1502, effective April 1, 2008, and again at 15 A.A.R. 215, effective March 7, 2009 and at 23 A.A.R. 2605, effective January 1, 2018. An economic, small business, and consumer impact statement (EIS) was submitted to the Governor's Regulatory Review Council (GRRC) as part of all three final rulemakings.

In the first two EISs, annual costs/revenue changes were designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost or benefit was "significant" when meaningful or important, but not readily subject to quantification. In the 2008 rulemaking, 35 definitions were added, four were deleted, and five were amended. In the 2009 rulemaking, one definition was added and one was amended. The Department believed that these changes made the rule clearer and provided a significant benefit to the Department, local health agencies, health care institutions, and other stakeholders and no-to-minimal costs to stakeholders to become acquainted with the rule changes. The Department believes that the costs and benefits identified in the EISs are generally consistent with the actual costs and benefits of the rule.

The rulemaking effective January 1, 2018, extensively changed Articles 2 and 3 of 9 A.A.C. 6, and made corresponding and clarifying changes to R9-6-101, revising five definitions, adding two, and removing one. In the EIS for the 2018 rulemaking, annual cost/revenue changes were designated as minimal when more than \$0 and \$5,000 or less, moderate when between \$5,000 and \$30,000, and substantial when \$30,000 or greater in additional costs or revenues. A cost was listed as significant when meaningful or important, but not readily subject to quantification. The Department believed that these changes made the rule clearer and provided a significant benefit to the Department, local health agencies, health care institutions, and other stakeholders and no-to-minimal costs to stakeholders to become acquainted with the rule changes. Although the rule just went into effect, the Department believes that the costs and benefits identified in the EIS will be generally consistent with the actual costs and benefits of the rule.

R9-6-102. Release of Information

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-136(I)(11) as additional specific authority.

2. Purpose and objective

The purpose of the rule is to ensure that the Department and local health agencies have access to necessary information.

The objective of the rule is to specify the information that is required to be released to the Department or a local health agency when the Department or local health agency is investigating a communicable disease.

8. Economic, small business, and consumer impact comparison

The rule was revised by final rulemakings published in the *Arizona Administrative Register* (A.A.R.) at 14 A.A.R. 4522, effective December 2, 2008, to require a person in possession of communicable disease-related information requested for the purpose of detecting, preventing, or controlling communicable disease or the injury or disability that may arise due to a communicable disease to disclose this information to the Department or a local health agency. The Department estimates that the Department or a local health agency may conduct more than 10,000 investigations per year that could require the use of this rule. The Department and local health agencies have used the rule to obtain restaurant charge card data, shopper card purchase data, information from pet or feed stores, menus from child care facilities and correctional facilities, and information from veterinarians about animals linked to human illnesses, as well as information from medical records. In the past two years, the Department and local health agencies have used restaurant charge card data to investigate an outbreak of fecal *E. coli* and an outbreak of *S. Paratyphi B* linked to raw tuna. The Department and local health agencies have used shopper card data about 10 times in the past two years during the investigation of outbreaks. Some of these outbreaks included just one or two cases, while others included more. For some cases, the Department and local health agencies have had to request information from multiple stores during the investigation. Instances where shopper card data was used include investigations of outbreaks of *E. coli* from cheese and *S. Newport* from ground beef. In some cases the information obtained from these sources has confirmed information from other sources, provided additional detail available on food products to assist federal agencies in their regulatory responsibilities, and helped confirm outbreak sources that may not have been identified at all, or identified more slowly, without this information. Timely confirmation of outbreak sources allows for the removal of contaminated products from further public consumption, preventing additional illnesses. An EIS was submitted to GRRC as part of the rulemaking and designated annual

costs/revenue changes as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. The Department anticipated that this change could cause a minimal-to-moderate cost to a business required to provide the information or to an individual identified as having a communicable disease, solely on the basis of the information provided, who was excluded from working under 9 A.A.C. 6, Chapter 3. The Department believed that the rule change would provide a minimal-to-substantial benefit to health care institutions, health care providers, the owners or operators of businesses that might be the source of an exposure, individuals infected with a communicable disease, and the contacts of individuals infected with a communicable. The Department believes that the costs and benefits identified in the EISs are generally consistent with the actual costs and benefits of the rules.

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

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-664(E) as additional general and specific authority.

2. Objective

The objectives of the rule are to:

- a. Prescribe standards of significant exposure risk,
- b. Establish procedures for processing disclosure requests from Good Samaritans, and
- c. Establish procedures for disclosing requested communicable disease-related information to Good Samaritans.

8. Economic, small business, and consumer impact comparison

The rule was adopted by final rulemaking published in the *Arizona Administrative Register* (A.A.R.) at 14 A.A.R. 4641, effective January 31, 2009. In the five years before the rule was adopted, the Department had received only two disclosure requests from Good Samaritans. The Department has no record of having received any requests for disclosure of information to Good Samaritans in the past five years. An EIS was submitted to GRRC as part of the rulemaking and designated annual costs/revenues changes as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost or benefit was “significant” when meaningful or important, but not readily subject to quantification. The Department anticipated that the rule could cause a minimal-to-moderate cost to the Department; local health agencies; public safety employers, employees, and volunteers; health care providers and hospitals; and community-based organizations for obtaining and providing education about the rule. The Department believed that owners or operators of businesses employing a Good Samaritan or a contact of a Good Samaritan could incur minimal-to-substantial cost, due to employees being

excluded from working under 9 A.A.C. 6, Chapter 3 because of exposure to a communicable disease, and health care providers and hospitals to incur a minimal-to-moderate reduction in revenue from fewer Good Samaritans needing treatment for a communicable disease acquired from an assisted person. A Good Samaritan could incur a minimal cost from submitting a request, and an assisted person could incur a significant cost from having communicable disease-related information released to the Good Samaritan. The Department believed that the rule could provide a minimal-to-substantial benefit to owners or operators of businesses employing a Good Samaritan or a contact of a Good Samaritan, to a Good Samaritan, and to contacts of Good Samaritan due to early detection and treatment of a communicable disease. Good Samaritans and their contacts could also experience a significant benefit from knowing how to request disclosure, the increase in the possibility of early detection and treatment, and a reduction in the risk of exposing others. Although no requests have been made in the last five years, the Department believes that the costs and benefits identified in the EISs are generally consistent with what the actual costs and benefits of the rule would have been if a request had been received. Given the number of requests, the costs to the Department; local health agencies; public safety employers, employees, and volunteers; health care providers and hospitals; and community-based organizations for obtaining and providing education about the rule is probably minimal rather than moderate.

Department of Health Services - Communicable Diseases and Infestations
ARTICLE 1. GENERAL

R9-6-101. Definitions

In this Chapter, unless otherwise specified:

1. "Active tuberculosis" means the same as in A.R.S. § 36-711.
2. "Administrator" means the individual who is the senior leader at a child care establishment, health care institution, correctional facility, school, pharmacy, or shelter.
3. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
4. "Agent" means an organism that may cause a disease, either directly or indirectly.
5. "AIDS" means Acquired Immunodeficiency Syndrome.
6. "Airborne precautions" means, in addition to use of standard precautions:
 - a. Either:
 - i. Placing an individual in a private room with negative air-pressure ventilation, at least six air exchanges per hour, and air either:
 - (1) Exhausted directly to the outside of the building containing the room, or
 - (2) Recirculated through a HEPA filtration system before being returned to the interior of the building containing the room; or
 - ii. If the building in which an individual is located does not have an unoccupied room meeting the specifications in subsection (6)(a)(i):
 - (1) Placing the individual in a private room, with the door to the room kept closed when not being used for entering or leaving the room, until the individual is transferred to a health care institution that has a room meeting the specifications in subsection (6)(a)(i) or to the individual's residence, as medically appropriate; and
 - (2) Ensuring that the individual is wearing a mask covering the individual's nose and mouth; and
 - b. Ensuring the use by other individuals, when entering the room in which the individual is located, of a device that is:
 - i. Designed to protect the wearer against inhalation of an atmosphere that may be harmful to the health of the wearer, and
 - ii. At least as protective as a National Institute for Occupational Safety and Health-approved N-95 respirator.
7. "Approved test for tuberculosis" means a Mantoux skin test or other test for tuberculosis recommended by the Centers for Disease Control and Prevention or the Tuberculosis Control Officer appointed under A.R.S. § 36-714.
8. "Arizona State Laboratory" means the part of the Department authorized by A.R.S. Title 36, Chapter 2, Article 2, and A.R.S. § 36-132(A)(11) that performs serological, microbiological, entomological, and chemical analyses.
9. "Average window period" means the typical time between exposure to an agent and the ability to detect infection with the agent in human blood.
10. "Barrier" means a mask, gown, glove, face shield, face mask, or other membrane or filter to prevent the transmission of infectious agents and protect an individual from exposure to body fluids.
11. "Body fluid" means semen, vaginal secretion, tissue, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid, urine, blood, lymph, or saliva.
12. "Carrier" means an infected individual without symptoms who can spread the infection to a susceptible individual.
13. "Case" means an individual:
 - a. With a communicable disease whose condition is documented:
 - i. By laboratory results that support the presence of the agent that causes the disease;
 - ii. By a health care provider's diagnosis based on clinical observation; or
 - iii. By epidemiologic associations with the communicable disease, the agent that causes the disease, or toxic products of the agent;
 - b. Who has experienced diarrhea, nausea, or vomiting as part of an outbreak;
or
 - c. Who has experienced a vaccinia-related adverse event.
14. "Case definition" means the disease-specific criteria that must be met for an individual to be classified as a case.
15. "Chief medical officer" means the senior health care provider in a correctional facility or that individual's designee who is also a health care provider.
16. "Child" means an individual younger than 18 years of age.
17. "Child care establishment" means:
 - a. A "child care facility," as defined in A.R.S. § 36-881;
 - b. A "child care group home," as defined in A.R.S. § 36-897;
 - c. A child care home registered with the Arizona Department of Education under A.R.S. § 46-321; or
 - d. A child care home certified by the Arizona Department of Economic Security under A.R.S. Title 46, Chapter 7, Article 1.
18. "Clinical signs and symptoms" means evidence of disease or injury that can be observed by a health care provider or can be inferred by the health care provider from a patient's description of subjective complaints.
19. "Cohort room" means a room housing only individuals infected with the same agent and no other agent.
20. "Communicable disease" means an illness caused by an agent or its toxic products that arises through the transmission of that agent or its products to a susceptible host, either directly or indirectly.
21. "Communicable period" means the time during which an agent may be transmitted directly or indirectly:

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- a. From an infected individual to another individual;
 - b. From an infected animal, arthropod, or vehicle to an individual; or
 - c. From an infected individual to an animal.
22. "Confirmatory test" means a laboratory analysis approved by the U.S. Food and Drug Administration to be used after a screening test to diagnose or monitor the progression of HIV infection.
 23. "Contact" means an individual who has been exposed to an infectious agent in a manner that may have allowed transmission of the infectious agent to the individual during the communicable period.
 24. "Correctional facility" means any place used for the confinement or control of an individual:
 - a. Charged with or convicted of an offense,
 - b. Held for extradition, or
 - c. Pursuant to a court order for law enforcement purposes.
 25. "Court-ordered subject" means a subject who is required by a court of competent jurisdiction to provide one or more specimens of blood or other body fluids for testing.
 26. "Dentist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.
 27. "Department" means the Arizona Department of Health Services.
 28. "Designated service area" means the same as in R9-18-101.
 29. "Diagnosis" means an identification of a disease by an individual authorized by law to make the identification.
 30. "Disease" means a condition or disorder that causes the human body to deviate from its normal or healthy state.
 31. "Emerging or exotic disease" means:
 - a. A new disease resulting from change in an existing organism;
 - b. A known disease not usually found in the geographic area or population in which it is found;
 - c. A previously unrecognized disease appearing in an area undergoing ecologic transformation; or
 - d. A disease reemerging as a result of a situation such as antimicrobial resistance in a known infectious agent, a breakdown in public health measures, or deliberate release.
 32. "Entity" has the same meaning as "person" in A.R.S. § 1-215.
 33. "Epidemiologic investigation" means the application of scientific methods to ascertain a diagnosis; identify risk factors for a disease; determine the potential for spreading a disease; institute control measures; and complete forms and reports such as communicable disease, case investigation, and outbreak reports.
 34. "Fever" means a temperature of 100.4° F or higher.
 35. "Food establishment" has the same meaning as in the document incorporated by reference in A.A.C. R9-8-107.
 36. "Food handler" means:
 - a. A paid or volunteer full-time or part-time worker who prepares or serves food or who otherwise touches food in a food establishment; or
 - b. An individual who prepares food for or serves food to a group of two or more individuals in a setting other than a food establishment.
 37. "Foodborne" means that food serves as a mode of transmission of an infectious agent.
 38. "Guardian" means an individual who is invested with the authority and charged with the duty of caring for an individual by a court of competent jurisdiction.
 39. "HBsAg" means hepatitis B surface antigen.
 40. "Health care institution" has the same meaning as in A.R.S. § 36-401.
 41. "Health care provider" means the same as in A.R.S. § 36-661.
 42. "Health education" means supplying to an individual or a group of individuals:
 - a. Information about a communicable disease or options for treatment of a communicable disease, and
 - b. Guidance about methods to reduce the risk that the individual or group of individuals will become infected or infect other individuals.
 43. "HIV" means Human Immunodeficiency Virus.
 44. "HIV-related test" has the same meaning as in A.R.S. § 36-661.
 45. "Infected" or "infection" means when an individual has an agent for a disease in a part of the individual's body where the agent may cause a disease.
 46. "Infectious active tuberculosis" means pulmonary or laryngeal active tuberculosis in an individual, which can be transmitted from the infected individual to another individual.
 47. "Infectious agent" means an agent that can be transmitted to an individual.
 48. "Infant" means a child younger than 12 months of age.
 49. "Isolate" means:
 - a. To separate an infected individual or animal from others to limit the transmission of infectious agents, or
 - b. A pure strain of an agent obtained from a specimen.
 50. "Isolation" means separation, during the communicable period, of an infected individual or animal from others to limit the transmission of infectious agents.
 51. "Laboratory report" means a document that:
 - a. Is produced by a laboratory that conducts a test or tests on a subject's specimen; and
 - b. Shows the outcome of each test, including personal identifying information about the subject.

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52. "Local health agency" means a county health department, a public health services district, a tribal health unit, or a U.S. Public Health Service Indian Health Service Unit.
53. "Local health officer" means an individual who has daily control and supervision of a local health agency or the individual's designee.
54. "Medical evaluation" means an assessment of an individual's health by a physician, physician assistant, or registered nurse practitioner.
55. "Medical examiner" means an individual:
 - a. Appointed as a county medical examiner by a county board of supervisors under A.R.S. § 11-592, or
 - b. Employed by a county board of supervisors under A.R.S. § 11-592 to perform the duties of a county medical examiner.
56. "Multi-drug resistant tuberculosis" means active tuberculosis that is caused by bacteria that are not susceptible to the antibiotics isoniazid and rifampin.
57. "Officer in charge" means the individual in the senior leadership position in a correctional facility or that individual's designee.
58. "Outbreak" means an unexpected increase in incidence of a disease, infestation, or sign or symptom of illness.
59. "Parent" means a biological or adoptive mother or father.
60. "Person" has the same meaning as in A.R.S. § 1-215.
61. "Petition" means a formal written application to a court requesting judicial action on a matter.
62. "Pharmacy" has the same meaning as in A.R.S. § 32-1901.
63. "Physician" means an individual licensed as a doctor of:
 - a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
 - b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
 - c. Osteopathic medicine under A.R.S. Title 32, Chapter 17; or
 - d. Homeopathic medicine under A.R.S. Title 32, Chapter 29.
64. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
65. "Pupil" means a student attending a school.
66. "Quarantine" means the restriction of activities of an individual or animal that has been exposed to a case or carrier of a communicable disease during the communicable period, to prevent transmission of the disease if infection occurs.
67. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
68. "Respiratory disease" means a communicable disease with acute onset of fever and symptoms such as cough, sore throat, or shortness of breath.
69. "Risk factor" means an activity or circumstance that increases the chances that an individual will become infected with or develop a communicable disease.
70. "School" means:
 - a. An "accommodation school," as defined in A.R.S. § 15-101;
 - b. A "charter school," as defined in A.R.S. § 15-101;
 - c. A "private school," as defined in A.R.S. § 15-101;
 - d. A "school," as defined in A.R.S. § 15-101;
 - e. A college or university;
 - f. An institution that offers a "private vocational program," as defined in A.R.S. § 32-3001; or
 - g. An institution that grants a "degree," as defined in A.R.S. § 32-3001, for completion of an educational program of study.
71. "Screening test" means a laboratory analysis approved by the U.S. Food and Drug Administration as an initial test to indicate the possibility that an individual is infected with a communicable disease.
72. "Sexual contact" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, or other deliberate interaction with another individual's genital area for a non-medical or non-hygienic reason.
73. "Shelter" means:
 - a. A facility or home that provides "shelter care," as defined in A.R.S. § 8-201;
 - b. A "homeless shelter," as defined in A.R.S. § 16-121; or
 - c. A "shelter for victims of domestic violence," as defined in A.R.S. § 36-3001.
74. "Significant exposure" means the same as in A.R.S. § 32-3207.
75. "Standard precautions" means the use of barriers by an individual to prevent parenteral, mucous membrane, and nonintact skin exposure to body fluids and secretions other than sweat.
76. "Subject" means an individual whose blood or other body fluid has been tested or is to be tested.
77. "Submitting entity" means the same as in A.R.S. § 13-1415.
78. "Suspect case" means an individual whose medical history, signs, or symptoms indicate that the individual:
 - a. May have or is developing a communicable disease;
 - b. May have experienced diarrhea, nausea, or vomiting as part of an outbreak;
 - or
 - c. May have experienced a vaccinia-related adverse event.
79. "Syndrome" means a pattern of signs and symptoms characteristic of a disease.
80. "Test" means an analysis performed on blood or other body fluid to evaluate for the presence or absence of a disease.
81. "Test result" means information about the outcome of a laboratory analysis of a subject's specimen and does not include personal identifying information about the subject.
82. "Treatment" means a procedure or method to cure, improve, or palliate an illness or a disease.

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

Historical Note

Adopted effective January 28, 1987 (Supp. 87-1). Amended effective September 14, 1990 (Supp. 90-3). Amended effective October 19, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 15 A.A.R. 215, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

R9-6-102. Release of Information

A person shall release information, including protected health information as defined in 45 CFR 160.103, to the Department or a local health agency upon request if the information is:

1. Requested by the Department or the local health agency for the purpose of:
 - a. Detecting, preventing, or controlling a communicable disease; or
 - b. Preventing injury or disability that may result from a communicable disease; and
2. In the possession of the person.

Historical Note

Adopted effective May 2, 1991 (Supp. 91-2). Former Section R9-6-102 renumbered to R9-6-105, new Section R9-6-102 renumbered from R9-6-106 and amended effective October 19, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Former R9-6-102 renumbered to R9-6-201; new R9-6-102 made by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 4522, effective December 2, 2008 (Supp. 08-4).

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

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

1. "Affidavit" means a voluntary declaration or statement of facts that is made in writing and under oath or affirmation.
2. "Assisted person" means the individual with whom a Good Samaritan alleges interaction constituting a significant exposure risk.
3. "Available" means in the possession of or accessible by the Designated Officer who is reviewing a disclosure request.
4. "Communicable disease-related information" has the same meaning as in A.R.S. § 36-661.
5. "Designated Officer" means an individual appointed by the Director or a local health officer to:
 - a. Review a disclosure request from a Good Samaritan;
 - b. Determine whether disclosure of communicable disease-related information is required under A.R.S. § 36-664(E) and this Section; and
 - c. Respond to the Good Samaritan.
6. "Director" has the same meaning as in A.R.S. § 36-101.
7. "Disclosure request" means the information submitted by a Good Samaritan according to A.R.S. § 36-664(E) and subsection (C) or (D).
8. "Emergency care or assistance" means actions performed by an individual on or for another individual, which are necessary to prevent death or impairment of the health of the other individual.
9. "Emergency department" has the same meaning as in A.A.C. R9-11-101.
10. "Good Samaritan" has the same meaning as in A.R.S. § 36-661.
11. "In writing" means:
 - a. An original document,
 - b. A photocopy,
 - c. A facsimile, or
 - d. An e-mail.
12. "Medical consultation" means discussion between a Good Samaritan and:
 - a. A physician or a registered nurse practitioner working in an emergency department or urgent care unit;
 - b. An occupational health provider as defined in A.A.C. R9-6-801; or
 - c. Any other health care provider knowledgeable in determining circumstances when post-exposure prophylaxis is necessary.

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13. "Mucous membrane" means a thin, pliable layer of tissue that lines passageways and cavities in the human body that lead to the outside, such as the mouth, gastrointestinal tract, nose, vagina, and urethra.
 14. "Notarized" means signed and dated by a notary.
 15. "Notary" means any individual authorized to perform the acts specified under A.R.S. § 41-313.
 16. "Post-exposure prophylaxis" means treatment provided to an individual who may have been exposed to a communicable disease, which is intended to prevent infection of the individual.
 17. "Significant exposure risk" has the same meaning as in A.R.S. § 36-661.
 18. "Under oath or affirmation" means a sworn or affirmed statement made by a Good Samaritan to a notary under the penalty of perjury.
 19. "Urgent care unit" has the same meaning as in A.A.C. R9-11-201.
- B.** A significant exposure risk may occur when a Good Samaritan's interaction with an individual results in:
1. A transfer of blood or body fluids from the individual onto the mucous membranes or into breaks in the skin of the Good Samaritan; or
 2. A sharing of airspace between the Good Samaritan and the individual.
- C.** If a Good Samaritan makes a disclosure request to the Department or a local health agency 72 hours or less after an alleged significant exposure risk, the disclosure request shall include:
1. The Good Samaritan's name;
 2. The Good Samaritan's mailing address or e-mail address;
 3. The telephone number at which the Good Samaritan may be reached during a working day;
 4. A description of the accident, fire, or other life-threatening emergency, in which the Good Samaritan rendered emergency care or assistance;
 5. A description of the:
 - a. Emergency care or assistance rendered by the Good Samaritan at the accident, fire, or other life-threatening emergency; and
 - b. Circumstances that the Good Samaritan believes constitute a significant exposure risk;
 6. If known, the name of the assisted person;
 7. If known, the date of birth of the assisted person; and
 8. Any additional information that may identify the assisted person.
- D.** If a Good Samaritan makes a disclosure request to the Department or a local health agency more than 72 hours after an alleged significant exposure risk, the disclosure request shall include:
1. A statement in writing that the Good Samaritan is requesting communicable disease-related information for an assisted person as allowed under A.R.S. § 36-664(E);
 2. Documentation concerning the accident, fire, or other life-threatening emergency in which the Good Samaritan rendered emergency care or assistance; and
 3. A notarized affidavit that contains:
 - a. The information specified in subsections (C)(1) through (8);
 - b. A statement that the Good Samaritan understands that the Good Samaritan may seek medical consultation to determine whether post-exposure prophylaxis for a communicable disease is needed;
 - c. A statement that the Good Samaritan certifies that the declarations contained within the affidavit are truthful to the best of the Good Samaritan's knowledge; and
 - d. The Good Samaritan's signature.
- E.** Within two working days after the Department or a local health agency receives a disclosure request from a Good Samaritan, the Designated Officer shall:
1. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) indicates a significant exposure risk to the Good Samaritan and communicable disease-related information is available for the assisted person:
 - a. Attempt to contact the Good Samaritan by telephone and provide the Good Samaritan with the communicable disease-related information:
 - i. For the assisted person;
 - ii. Pertaining to the specific communicable disease or diseases that may be transmitted through the interaction between the Good Samaritan and the assisted person; and
 - iii. Without revealing the assisted person's name;
 - b. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that disclosure of communicable disease-related information for one communicable disease does not rule out the possibility that the Good Samaritan was exposed to other communicable diseases about which information is not available to the Designated Officer;
 - c. Attempt to contact the Good Samaritan by telephone and provide to the Good Samaritan information concerning the agent causing the communicable disease for which the Designated Officer is disclosing communicable disease-related information, including:
 - i. A description of the disease or syndrome caused by the agent, including its symptoms;
 - ii. A description of how the agent is transmitted to others;
 - iii. The average window period for the agent;
 - iv. An explanation that exposure to an individual with a communicable disease does not mean that infection has occurred or will occur;

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- v. Measures to reduce the likelihood of transmitting the agent to others and that it is necessary to continue the measures until a negative test result is obtained after the average window period has passed or until an infection, if detected, is eliminated;
- vi. That it is necessary to notify others that they may be or may have been exposed to the agent through interaction with the Good Samaritan; and
- vii. The availability of assistance from the Department, local health agencies, or other resources; and
- d. Send to the Good Samaritan in writing:
 - i. The information specified in subsection (E)(1)(a);
 - ii. The notification specified in subsection (E)(1)(b);
 - iii. The information specified in subsection (E)(1)(c); and
 - iv. A statement that the confidentiality of the disclosed communicable disease-related information is protected by A.R.S. §§ 36-664(G) and 36-666(A)(2);
- 2. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) indicates a significant exposure risk to the Good Samaritan, but the Designated Officer is unable to provide communicable disease-related information for the assisted person:
 - a. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that either:
 - i. Communicable disease-related information, pertaining to the specific communicable disease or diseases that may be transmitted through the interaction between the Good Samaritan and the assisted person, is not available to the Designated Officer; or
 - ii. The Designated Officer is unable to identify the assisted person from the information provided in the Good Samaritan's disclosure request, as specified in subsection (C) or (D);
 - b. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that:
 - i. The Good Samaritan's interaction with the assisted person may pose a significant exposure risk to the Good Samaritan; and
 - ii. The Good Samaritan may seek medical consultation on the need for post-exposure prophylaxis; and
 - c. Send to the Good Samaritan in writing the notifications specified in subsections (E)(2)(a) and (b); and
- 3. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) does not indicate a significant exposure risk to the Good Samaritan:
 - a. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that the Designated Officer will not disclose any available communicable disease-related information for the assisted person; and
 - b. Send to the Good Samaritan in writing:
 - i. The notification specified in subsection (E)(3)(a);
 - ii. A statement that the Designated Officer's decision not to disclose communicable disease-related information to the Good Samaritan is based on A.R.S. § 36-664(E) and this Section;
 - iii. The Designated Officer's reasons for not disclosing communicable disease-related information to the Good Samaritan; and
 - iv. A statement that the Good Samaritan has the right to obtain a hearing as specified in A.R.S. § 41-1092.03(B).

Historical Note

Renumbered from R9-6-107 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Section renumbered to R9-6-301 by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). New Section made by final rulemaking at 14 A.A.R. 4641, effective January 31, 2009 (Supp. 08-4).

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants.

The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definition

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum,

hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for

abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-664. Confidentiality; exceptions

A. A person who obtains communicable disease related information in the course of providing a health service or obtains that information from a health care provider pursuant to an authorization shall not disclose or be compelled to disclose that information except to the following:

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

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

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

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

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

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

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

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

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

10. An authorized employee or agent of a federal, state or local government agency that supervises or monitors the health care provider or health facility or administers

the program under which the health service is provided. An authorized employee or agent includes only an employee or agent who, in the ordinary course of business of the government agency, has access to records relating to the care or treatment of the protected person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. The department or a local health department shall disclose communicable disease related information to a Good Samaritan who submits a request to the department or the local health department. The request shall document the occurrence of the accident, fire or other life-threatening emergency and shall include information regarding the nature of the significant exposure risk. The department shall adopt rules that prescribe standards of significant exposure risk based on the best available medical evidence. The department shall adopt rules that establish procedures for processing requests from Good Samaritans pursuant to this subsection. The rules shall provide that the disclosure to the Good Samaritan shall not reveal the protected person's name and shall be accompanied by a written statement that warns the Good Samaritan that the confidentiality of the information is protected by state law.

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

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

H. This section does not prohibit the listing of communicable disease related information, including acquired immune deficiency syndrome, HIV-related illness or

HIV infection, in a certificate of death, autopsy report or other related document that is prepared pursuant to law to document the cause of death or that is prepared to release a body to a funeral director. This section does not modify a law or rule relating to access to death certificates, autopsy reports or other related documents.

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

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

K. This section and sections 36-663, 36-666, 36-667 and 36-668 do not apply to persons or entities subject to regulation under title 20.

G-7

DEPARTMENT OF HEALTH SERVICES (F-18-0307)

Title 9, Chapter 6, Article 10, HIV-Related Testing and Notification



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: March 6, 2018

AGENDA ITEM: G-7

TO: Members of the Governor's Regulatory Review Council

FROM: Council Staff

DATE : February 20, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0307)
Title 9, Chapter 6, Article 10, HIV-Related Testing and Notification

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Department of Health Services (Department) covers five rules in A.A.C. Title 9, Chapter 6, Article 10 associated with HIV-related testing and notification. In its 2013 five-year review report, the Department did not propose any action on the rules. Section 1002 was amended to correct a cross-reference, effective January 1, 2018.

The rules implement A.R.S. §§ 8-341 and 13-1415, which relate to court-ordered HIV-related testing, and A.R.S. § 36-663, which provides requirements, restrictions, and exceptions for HIV-related testing. The Department indicates that the purpose of the rules is to establish requirements for HIV-related testing and notification, including confidentiality requirements.

Proposed Action

The Department intends to complete an expedited rulemaking by December 2018 to address the following issues:

- Section 1001 – *Definitions*: Three defined terms are no longer used in the article, and should be removed.
- Section 1004 – *Court-ordered HIV-related Testing*: The phrase “A.R.S. §§ 8-341 or 13-1415” should be corrected to read “A.R.S. § 8-341 or 13-1415” in several subsections.
- Section 1005 – *Anonymous HIV Testing*: The rule does not include information that the Department needs to collect and that is on the specimen submission form. In addition, the

rule should more clearly set forth expectations for assisting a subject with a positive screening test.

- Section 1006 – *Notification*: Subsection (A) of the rule incorrectly references A.R.S. § 36-664(J), and subsection (B) incorrectly references A.R.S. § 36-136(L).

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is 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. Summary of the agency’s economic impact comparison and identification of stakeholders:

In its 2008 rulemaking, it was estimated that the Department and local health agencies would incur minimal costs for testing anonymous and court-ordered specimens and notifying victims and possibly court-ordered subjects under A.R.S. §§ 8-341 and 13-1415 and receive a minimal benefit from the notification. The Department indicates that it tested 13 court-ordered specimens in 2012, and approximately 14 anonymous tests were run statewide in 2012. In the past five years, the Department is aware of only three court-ordered specimens being received, and one instance of an anonymous test.

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

The Department has determined that the rules in generally impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objectives. However, making changes to address the minor issues described in the report could reduce the burden on stakeholders.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department indicates that it has received no written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Department indicates that the rules are generally effective, are generally consistent with other rules and statutes, and are generally clear, concise, and understandable. As noted above, the Department is proposing action to address minor issues with the effectiveness, consistency, and clarity of the rules.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that except for Section 1006, which contains incorrect statutory references, the rules are enforced as written.

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

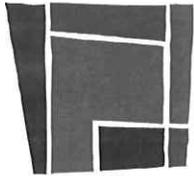
No. The Department indicates that no federal laws relate to the rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No. The rules do not require the issuance of a permit, license, or agency authorization.

9. **Conclusion**

The Department intends to complete an expedited rulemaking by December 2018 to address the issues identified in the report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

January 18, 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: Report for A.A.C. Title 9, Chapter 6, Article 10 of Communicable Diseases and Infestations

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 6, Article 10 is due to the Council no later than April 30, 2018. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 6, Article 10 and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific authority, and an economic impact statement are included in the package. As described in the report, the Department plans to amend the rules in 9 A.A.C. 6, Article 10 by expedited rulemaking to address the minor issues identified in the report and submit a Notice of Final Expedited Rulemaking to the Council by December 2018.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Lane', written over a white rectangular area.

Robert Lane
Director's Designee

RL:rms
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES

COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION

JANUARY 2018

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION

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FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.” A.R.S. § 36-663 specifies requirements, restrictions, and exceptions for HIV- related testing. A.R.S. § 36-664 specifies requirements related to the confidentiality of communicable disease information and circumstances when communicable disease information may be disclosed. A.R.S. §§ 8-341 and 13-1415 specify requirements for court-ordered HIV-related testing. The Department has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 10.

After an analysis of the rules in 9 A.A.C. 6, Article 10, the Department has determined that the rules are mostly consistent with state and federal statutes and rules; enforced; and mostly clear, concise, and understandable; and that the Department has received no written criticism of the rules. The Department believes the rules are sufficient to protect public health. However, to address the minor issues identified in the report, the Department plans to initiate an expedited rulemaking and submit a Notice of Final Expedited Rulemaking to the Governor’s Regulatory Review Council (Council) by December 2018.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. **Authorization of the rule by existing statute**

The general statutory authority for the rules in 9 A.A.C. 6, Article 10 are A.R.S. §§ 36-132(A)(1), 36-136(A)(7) and 36-136(G).

The specific statutory authority for the rules in 9 A.A.C. 6, Article 10 is A.R.S. §§ 36-136(I)(1).

2. **The purpose of the rule**

The purpose of the rules in 9 A.A.C. 6, Article 10 is to establish requirements for HIV-related testing and notification, including confidentiality requirements.

5. **Status of enforcement of the rule**

The rules in 9 A.A.C. 6, Article 10 are enforced by the Department as written, taking into consideration the statutory subsection inconsistencies described for R9-6-1006.

7. **Summary of the written criticisms of the rule received within the last five years**

The Department has not received any written criticisms of the rules in 9 A.A.C. 6, Article 10 in the past five years.

8. **Economic, small business, and consumer impact comparison**

The rules in 9 A.A.C. 6, Article 10 were revised by final rulemakings published in the *Arizona Administrative Register (A.A.R.)* at 14 A.A.R. 1502, effective April 1, 2008. An economic, small business, and consumer impact statement (EIS) was submitted to the Council as part of the final rulemaking. The EIS designated annual costs/revenue changes as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost or benefit was “significant” when meaningful or important, but not readily subject to quantification. In the 2008 rulemaking, definitions were added to R9-6-1001; R9-6-1002 was added; information about HIV notification was moved from 9 A.A.C. 6, Article 3 to this Article; requirements regarding HIV testing were updated, clarified, and amended, to include requirements for testing ordered under A.R.S. §§ 841 and 13-1415; and a new consent form was added.

The Department believed that the Department and local health agencies would incur minimal costs for testing anonymous and court-ordered specimens and notifying victims and possibly court-ordered subjects under A.R.S. §§ 8-341 and 13-1415 and receive a minimal benefit from the notification. The Department tested 13 court-ordered specimens in 2012, and approximately 14 anonymous tests were run statewide in 2012. In the past five years, the Department is aware of only three court-ordered specimens being received, two in 2014 and one in 2015, and one instance of an anonymous test. The Department anticipated that local health agencies could incur minimal costs,

associated with storage of records, and receive minimal-to substantial benefits from the removal of the requirement that local health agencies “not retain any personal identifying information about [an HIV] case, suspect case, or carrier” after 30 days after a report, which inhibited the ability of the local health agencies to conduct adequate epidemiologic investigations and to determine the source of new HIV infections. Local health agencies may act as a submitting entity under A.R.S. § 13-1415, which could result in a minimal cost for complying with the requirements in rule and a minimal benefit from the identification of an HIV-infected individual. Prosecuting attorneys were also believed to incur a minimal cost and receive a minimal benefit from the addition of requirements related to A.R.S. §§ 8-341 and 13-1415 and the clarity of the requirements.

Schools, school districts, and the Department of Education were thought to receive a minimal benefit from moving the notification requirements for HIV-positive individuals, the improved content, and the clarity of the rules. The Department is unaware of any schools having been notified in the past five years. The Department anticipated that physicians and other health care providers could incur minimal costs and receive minimal benefits from clarifying requirements for notification of court-ordered subjects and the Department. Court-ordered subjects, victims of sexual assault, and society in general were believed to receive a significant benefit from the clearer requirements for testing and notification under the new rules.

The Department believes that the costs and benefits identified in the EISs are generally consistent with the actual costs and benefits of the rule.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rules in 9 A.A.C. 6, Article 10 in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

In the 2013 five-year-review report, the Department stated that the Department believed the rules were sufficient to protect public health and did not plan to amend the rules in 9 A.A.C. 6, Article 10 unless a threat to public health or safety arose that would require amending the rules. Since no such threat arose in the past five years, the Department complied with this plan.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

The Department has determined that the rules in 9 A.A.C. 6, Article 10 generally impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs,

necessary to achieve the underlying regulatory objectives. However, making changes to address the minor issues described in the report could reduce the burden on stakeholders.

12. Analysis of stringency compared to federal laws

Federal laws do not apply to the rules in 9 A.A.C. 6, Article 10.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

Except for the correction of a cross-reference in R9-6-1002 that was effective January 1, 2018, the rules were adopted before July 29, 2010. The rules do not require the issuance of a permit, license, or agency authorization.

14. Proposed course of action

The Department believes the rules are sufficient to protect public health. However, the Department plans to address the minor issues described in this report in an expedited rulemaking and submit a Notice of Final Expedited Rulemaking to the Council by December 2018.

INFORMATION FOR INDIVIDUAL RULES

R9-6-1001. Definitions

2. Objective

The objective of the rule is to define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with applicable statutes and rules.

6. Analysis of clarity, conciseness, and understandability

The rule is clear and understandable. However, three of the six terms defined in the rule are no longer used in the Article and could be removed.

R9-6-1002. Local Health Agency Requirements

2. Objective

The objective of the rule is to specify where HIV-related requirements for local health agencies are located.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with applicable statutes and rules.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

R9-6-1004. Court-ordered HIV-related Testing

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 8-341 and 13-1415 as additional specific authority.

2. Objective

The objectives of the rule are to:

- a. Specify where requirements related to testing performed as a result of a court order issued under A.R.S. § 13-1210 or 32-3207 are located,
- b. Provide requirements for a prosecuting attorney who petitioned a court for HIV-related testing under A.R.S. § 8-341 or 13-1415,

- c. Provide requirements for a person who tests a specimen as a result of a court order issued under A.R.S. § 8-341 or 13-1415, and
 - d. Specify notification requirements for HIV-related testing performed as a result of a court order.
3. **Analysis of effectiveness in achieving the objective**
The rule is effective in achieving its objective.
 4. **Analysis of consistency with state and federal statutes and rules**
The rule is consistent with applicable statutes and rules.
 6. **Analysis of clarity, conciseness, and understandability**
The rule is clear, concise, and understandable. However, the phrase “A.R.S. §§ 8-341 or 13-1415” should be corrected to read “A.R.S. § 8-341 or 13-1415” in several subsections of the rule.

R9-6-1005. Anonymous HIV Testing

1. **Authorization of the rule by existing statute**
The rule has A.R.S. § 36-136(H)(12) as additional specific authority.
2. **Objective**
The objective of the rule is to specify requirements related to anonymous HIV-related testing.
3. **Analysis of effectiveness in achieving the objective**
The rule is mostly effective in achieving its objective, but could be revised to reflect current practice. For example, the requirements do not include information, such as the type of screening test used, that the Department needs to collect and that is on the specimen submission form. The rule should also clarify the expectation for assisting a subject with a positive screening test to connect with medical care and more definitive testing.
4. **Analysis of consistency with state and federal statutes and rules**
The rule is consistent with applicable statutes and rules.
6. **Analysis of clarity, conciseness, and understandability**
The rule is clear, concise, and understandable. However, subsection (B)(1) could be clearer, and subsection (B)(4) contains a grammatical error.

R9-6-1006. Notification

1. **Authorization of the rule by existing statute**
The rule has A.R.S. §§ 36-136(M) and 36-664(I) as additional specific authority.
2. **Objective**
The objective of the rule is to specify notification requirements related to:

- a. An individual reported to be at risk for HIV infection, and
 - b. A pupil of a school district who tested positive for HIV infection.
3. **Analysis of effectiveness in achieving the objective**
Despite the items described in paragraph 4, the rule is effective in achieving its objective.
4. **Analysis of consistency with state and federal statutes and rules**
Subsection (A) of the rule incorrectly references A.R.S. § 36-664(J), and subsection (B) incorrectly references A.R.S. § 36-136(L). The correct citations are A.R.S. §§ 36-664(I) and 36-136(M).
Otherwise the rule is consistent with statutes and rules.
5. **Status of enforcement of the rule**
The Department enforces the rule consistent with statute.
6. **Analysis of clarity, conciseness, and understandability**
The rule is clear, concise, and understandable.

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ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION

R9-6-1001. Definitions

In this Article, unless otherwise specified:

1. "Governing board" means a group of individuals, elected as specified in A.R.S. Title 15, Chapter 4, Article 2, to carry out the duties and functions specified in A.R.S. Title 15, Chapter 3, Article 3.
2. "Informed consent" means permission to conduct an HIV-related test obtained from a subject who has capacity to consent or an individual authorized by law to consent for a subject without capacity to consent after an explanation that complies with A.R.S. § 36-663(B).
3. "Physician" means an individual licensed as a doctor of:
 - a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
 - b. Osteopathic medicine under A.R.S. Title 32, Chapter 17; or
 - c. Homeopathic medicine under A.R.S. Title 32, Chapter 29.
4. "School district" means the same as in A.R.S. § 15-101.
5. "Superintendent of a school district" means an individual appointed by the governing board of a school district to oversee the operation of schools within the school district.
6. "Works" means materials, such as cotton balls or a spoon, required when preparing or using a drug that requires injection.

Historical Note

New Section recodified from R9-6-901 at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2). Amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

R9-6-1002. Local Health Agency Requirements

For each HIV-infected individual or suspect case, a local health agency shall comply with the requirements in R9-6-347.

Historical Note

New Section recodified from R9-6-902 at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2). Former R9-6-1002 renumbered to R9-6-1003; new R9-6-1002 made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

R9-6-1004. Court-ordered HIV-related Testing

- A. A health care provider who receives the results of a test, ordered by the health care provider to detect HIV infection and performed as a result of a court order issued under A.R.S. § 13-1210, shall comply with the requirements in 9 A.A.C. 6, Article 8.
- B. A health care provider who receives the results of a test, ordered by the health care provider to detect HIV infection and performed as a result of a court order issued under A.R.S. § 32-3207, shall comply with the requirements in 9 A.A.C. 6, Article 9.
- C. When a court orders a test under A.R.S. §§ 8-341 or 13-1415 to detect HIV infection, the prosecuting attorney who petitioned the court for the order shall provide to the Department:
 1. A copy of the court order, including an identifying number associated with the court order;
 2. The name and address of the victim; and
 3. The name and telephone number of the prosecuting attorney or the prosecuting attorney's designee.
- D. A person who tests a specimen of blood or another body fluid from a subject to detect HIV infection as authorized by a court order issued under A.R.S. §§ 8-341 or 13-1415 shall:
 1. Use a screening test; and
 2. If the test results from a screening test on the specimen indicate a positive result, retest the specimen using a confirmatory test.
- E. A person who performs a test described in subsection (D) shall report the test results for each subject to the submitting entity within five working days after obtaining the test results.
- F. A submitting entity that receives the results of a test to detect HIV infection that was performed for a subject as a result of a court order issued under A.R.S. §§ 8-341 or 13-1415 shall:
 1. Notify the Department within five working days after receiving the results of the test to detect HIV infection;
 2. Provide to the Department:
 - a. A written copy of the court order,
 - b. A written copy of the results of the test to detect HIV infection, and
 - c. The name and telephone number of the submitting entity or submitting entity's designee; and
 3. Either:
 - a. Comply with the requirements in:
 - i. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
 - ii. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained; or
 - b. Provide to the Department or the local health agency in whose designated service area the subject is living:
 - i. The name and address of the subject;
 - ii. A written copy of the results of the test to detect HIV infection, if not provided as specified in subsection (F)(2)(b); and
 - iii. Notice that the submitting entity did not provide notification as specified in subsection (F)(3)(a).

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- G.** If the Department or a local health agency is notified by a submitting entity as specified in subsection (F)(3)(b), the Department or local health agency shall comply with the requirements in:
1. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
 2. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained.
- H.** When the Department receives a written copy of the results of a test to detect HIV infection that was performed for a subject as a result of a court order issued under A.R.S. §§ 8-341 or 13-1415, the Department shall either:
1. Provide to the victim:
 - a. A description of the results of the test to detect HIV-infection;
 - b. The information specified in R9-6-802(D); and
 - c. A written copy of the test results; or
 2. Provide to the local health agency in whose designated service area the victim is living:
 - a. The name and address of the victim,
 - b. A written copy of the results of the test to detect HIV infection, and
 - c. Notice that the Department did not provide notification as specified in subsection (H)(1).
- I.** If a local health agency is notified by the Department as specified in subsection (H)(2), the local health agency shall:
1. Provide to the victim:
 - a. A description of the results of the test to detect HIV infection;
 - b. The information specified in R9-6-802(D); and
 - c. A written copy of the test results; or
 2. If the local health agency is unable to locate the victim, notify the Department that the local health agency did not inform the victim of the results of the test to detect HIV infection.

Historical Note

Section R9-6-1004 renumbered from R9-6-1003 and amended by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

R9-6-1005. Anonymous HIV Testing

- A.** A local health agency and the Department shall offer anonymous HIV testing to individuals.
- B.** If an individual requests anonymous HIV testing, the Department or a local health agency shall:
1. Provide to the individual requesting anonymous HIV testing health education about HIV, the meaning of HIV test results, and the risk factors for becoming infected with HIV or transmitting HIV to other individuals;
 2. Record in a format specified by the Department information about the individual's risk factors for becoming infected with or transmitting HIV and submit the information to the Department;
 3. Collect a specimen of blood from the individual;
 4. Record the following information on a form provided by the Department:
 - a. The individual's date of birth,
 - b. The individual's race and ethnicity,
 - c. The individual's gender,
 - d. The date and time the blood specimen was collected, and
 - e. The name, address, and telephone number of the person collecting the blood specimen; and
 5. Before the individual leaves the building occupied by the Department or local health agency:
 - a. Test the individual's specimen of blood using a screening test for HIV;
 - b. Provide the results of the screening test to the individual;
 - c. Record the test results on the form specified in subsection (B)(4); and
 - d. If the test results from the screening test on the specimen of blood indicate that the individual may be HIV-infected, submit the specimen of blood to the Arizona State Laboratory for confirmatory testing by:
 - i. Assigning to the blood specimen an identification number corresponding to the pre-printed number on the form specified in subsection (B)(4);
 - ii. Giving the individual requesting anonymous HIV testing the identification number assigned to the blood specimen and information about how to obtain the results of the confirmatory test; and
 - iii. Sending the blood specimen and the form specified in subsection (B)(4) to the Arizona State Laboratory for confirmatory testing.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

R9-6-1006. Notification

- A.** The Department or the Department's designee shall confidentially notify an individual reported to be at risk for HIV infection, as required under A.R.S. § 36-664(J), if all of the following conditions are met:
1. The Department receives the report of risk for HIV infection in a document that includes the following:
 - a. The name and address of the individual reported to be at risk for HIV infection or enough other identifying information about the individual to enable the individual to be recognized and located,

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- b. The name and address of the HIV-infected individual placing the individual named under subsection (A)(1)(a) at risk for HIV infection,
- c. The name and address of the individual making the report, and
- d. The type of exposure placing the individual named under subsection (A)(1)(a) at risk for HIV infection;
2. The individual making the report is in possession of confidential HIV-related information; and
3. The Department determines that the information provided in the report is accurate and contains sufficient detail to:
 - a. Indicate that the exposure described as required in subsection (A)(1)(d) constitutes a significant exposure for the individual reported to be at risk for HIV infection, and
 - b. Enable the individual reported to be at risk for HIV infection to be recognized and located.
- B.** As authorized under A.R.S. § 36-136(L), the Department shall notify the superintendent of a school district in a confidential document that a pupil of the school district tested positive for HIV if the Department determines that:
 1. The pupil places others in the school setting at risk for HIV infection; and
 2. The school district has an HIV policy that includes the following provisions:
 - a. That a school shall not exclude a pupil who tested positive for HIV from attending school or school functions or from participating in school activities solely due to HIV infection;
 - b. That school district personnel who are informed that a pupil tested positive for HIV shall keep the information confidential; and
 - c. That the school district shall provide HIV-education programs to pupils, parents or guardians of pupils, and school district personnel through age-appropriate curricula, workshops, or in-service training sessions.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

8-341. Disposition and commitment; definitions

A. After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

1. It may award a delinquent juvenile:

(a) To the care of the juvenile's parents, subject to the supervision of a probation department.

(b) To a probation department, subject to any conditions the court may impose, including a period of incarceration in a juvenile detention center of not more than one year.

(c) To a reputable citizen of good moral character, subject to the supervision of a probation department.

(d) To a private agency or institution, subject to the supervision of a probation officer.

(e) To the department of juvenile corrections.

(f) To maternal or paternal relatives, subject to the supervision of a probation department.

(g) To an appropriate official of a foreign country of which the juvenile is a foreign national who is unaccompanied by a parent or guardian in this state to remain on unsupervised probation for at least one year on the condition that the juvenile cooperate with that official.

2. It may award an incorrigible child:

(a) To the care of the child's parents, subject to the supervision of a probation department.

(b) To the protective supervision of a probation department, subject to any conditions the court may impose.

(c) To a reputable citizen of good moral character, subject to the supervision of a probation department.

(d) To a public or private agency, subject to the supervision of a probation department.

(e) To maternal or paternal relatives, subject to the supervision of a probation department.

B. If a juvenile is placed on probation pursuant to this section, the period of probation may continue until the juvenile's eighteenth birthday, except that the term of probation shall not exceed one year if all of the following apply:

1. The juvenile is not charged with a subsequent offense.
2. The juvenile has not been found in violation of a condition of probation.
3. The court has not made a determination that it is in the best interests of the juvenile or the public to require continued supervision. The court shall state by minute entry or written order its reasons for finding that continued supervision is required.
4. The offense for which the juvenile is placed on probation does not involve a dangerous offense as defined in section 13-105.
5. The offense for which the juvenile is placed on probation does not involve a violation of title 13, chapter 14 or 35.1.
6. Restitution ordered pursuant to section 8-344 has been made.
7. The juvenile's parents have not requested that the court continue the juvenile's probation for more than one year.

C. If a juvenile is adjudicated as a first time felony juvenile offender, the court shall provide the following written notice to the juvenile:

You have been adjudicated a first time felony juvenile offender. You are now on notice that if you are adjudicated of another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fourteen years of age or older, you will be placed on juvenile intensive probation, which may include home arrest and electronic monitoring, or you may be placed on juvenile intensive probation and may be incarcerated for a period of time in a juvenile detention center, or you may be committed to the department of juvenile corrections or you may be prosecuted as an adult. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

D. If a juvenile is fourteen years of age or older and is adjudicated as a repeat felony juvenile offender, the juvenile court shall place the juvenile on juvenile intensive probation, which may include home arrest and electronic monitoring, may place the

juvenile on juvenile intensive probation, which may include incarceration for a period of time in a juvenile detention center, or may commit the juvenile to the department of juvenile corrections pursuant to subsection A, paragraph 1, subdivision (e) of this section for a significant period of time.

E. If the juvenile is adjudicated as a repeat felony juvenile offender, the court shall provide the following written notice to the juvenile:

You have been adjudicated a repeat felony juvenile offender. You are now on notice that if you are arrested for another offense that would be a felony offense if committed by an adult and if you commit the other offense when you are fifteen years of age or older, you will be tried as an adult in the criminal division of the superior court. If you commit the other offense when you are fourteen years of age or older, you may be tried as an adult in the criminal division of the superior court. If you are convicted as an adult, you will be sentenced to a term of incarceration. If you are convicted as an adult of a felony offense and you commit any other offense, you will be prosecuted as an adult.

F. The failure or inability of the court to provide the notices required under subsections C and E of this section does not preclude the use of the prior adjudications for any purpose otherwise permitted.

G. Except as provided in subsection S of this section, after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, the court shall order the juvenile to pay a reasonable monetary assessment if the court determines that an assessment is in aid of rehabilitation. If the director of the department of juvenile corrections determines that enforcement of an order for monetary assessment as a term and condition of conditional liberty is not cost-effective, the director may require the youth to perform an equivalent amount of community restitution in lieu of the payment ordered as a condition of conditional liberty.

H. If a child is adjudicated incorrigible, the court may impose a monetary assessment on the child of not more than one hundred fifty dollars.

I. A juvenile who is charged with unlawful purchase, possession or consumption of spirituous liquor is subject to section 8-323. The monetary assessment for a conviction of unlawful purchase, possession or consumption of spirituous liquor by a juvenile shall not exceed five hundred dollars. The court of competent jurisdiction may order a monetary assessment or equivalent community restitution.

J. The court shall require the monetary assessment imposed under subsection G or H of this section on a juvenile who is not committed to the department of juvenile corrections to be satisfied in one or both of the following forms:

1. Monetary reimbursement by the juvenile in a lump sum or installment payments through the clerk of the superior court for appropriate distribution.

2. A program of work, not in conflict with regular schooling, to repair damage to the victim's property, to provide community restitution or to provide the juvenile with a job for wages. The court order for restitution or monetary assessment shall specify, according to the dispositional program, the amount of reimbursement and the portion of wages of either existing or provided work that is to be credited toward satisfaction of the restitution or assessment, or the nature of the work to be performed and the number of hours to be spent working. The number of hours to be spent working shall be set by the court based on the severity of the offense but shall not be less than sixteen hours.

K. If a juvenile is committed to the department of juvenile corrections, the court shall specify the amount of the monetary assessment imposed pursuant to subsection G or H of this section.

L. After considering the length of stay guidelines developed pursuant to section 41-2816, subsection C, the court may set forth in the order of commitment the minimum period during which the juvenile shall remain in secure care while in the custody of the department of juvenile corrections. When the court awards a juvenile to the department of juvenile corrections or an institution or agency, it shall transmit with the order of commitment copies of a diagnostic psychological evaluation and educational assessment if one has been administered, copies of the case report, all other psychological and medical reports, restitution orders, any request for postadjudication notice that has been submitted by a victim and any other documents or records pertaining to the case requested by the department of juvenile corrections or an institution or agency. The department shall not release a juvenile from secure care before the juvenile completes the length of stay determined by the court in the commitment order unless the county attorney in the county from which the juvenile was committed requests the committing court to reduce the length of stay. The department may temporarily escort the juvenile from secure care pursuant to section 41-2804, may release the juvenile from secure care without a further court order after the juvenile completes the length of stay determined by the court or may retain the juvenile in secure care for any period subsequent to the completion of the length of stay in accordance with the law.

M. Written notice of the release of any juvenile pursuant to subsection L of this section shall be made to any victim requesting notice, the juvenile court that committed the juvenile and the county attorney of the county from which the juvenile was committed.

N. Notwithstanding any law to the contrary, if a person is under the supervision of the court as an adjudicated delinquent juvenile at the time the person reaches eighteen years of age, treatment services may be provided until the person reaches twenty-one years of age if the court, the person and the state agree to the provision of the treatment and a motion to transfer the person pursuant to section 8-327 has not been filed or has been withdrawn. The court may terminate the provision of treatment services after the person reaches eighteen years of age if the court determines that any of the following applies:

1. The person is not progressing toward treatment goals.
2. The person terminates treatment.
3. The person commits a new offense after reaching eighteen years of age.
4. Continued treatment is not required or is not in the best interests of the state or the person.

O. On the request of a victim of an act that may have involved significant exposure as defined in section 13-1415 or that if committed by an adult would be a sexual offense, the prosecuting attorney shall petition the adjudicating court to require that the juvenile be tested for the presence of the human immunodeficiency virus. If the victim is a minor the prosecuting attorney shall file this petition at the request of the victim's parent or guardian. If the act committed against a victim is an act that if committed by an adult would be a sexual offense or the court determines that sufficient evidence exists to indicate that significant exposure occurred, it shall order the department of juvenile corrections or the department of health services to test the juvenile pursuant to section 13-1415. Notwithstanding any law to the contrary, the department of juvenile corrections and the department of health services shall release the test results only to the victim, the delinquent juvenile, the delinquent juvenile's parent or guardian and a minor victim's parent or guardian and shall counsel them regarding the meaning and health implications of the results.

P. If a juvenile has been adjudicated delinquent for an offense that if committed by an adult would be an offense listed in section 41-1750, subsection C, the court shall provide the department of public safety Arizona automated fingerprint identification system established in section 41-2411 with the juvenile's ten-print fingerprints,

personal identification data and other pertinent information. If a juvenile has been committed to the department of juvenile corrections the department shall provide the fingerprints and information required by this subsection to the Arizona automated fingerprint identification system. If the juvenile's fingerprints and information have been previously submitted to the Arizona automated fingerprint identification system the information is not required to be resubmitted.

Q. Access to fingerprint records submitted pursuant to subsection P of this section shall be limited to the administration of criminal justice as defined in section 41-1750. Dissemination of fingerprint information shall be limited to the name of the juvenile, juvenile case number, date of adjudication and court of adjudication.

R. If a juvenile is adjudicated delinquent for an offense that if committed by an adult would be a misdemeanor, the court may prohibit the juvenile from carrying or possessing a firearm while the juvenile is under the jurisdiction of the department of juvenile corrections or the juvenile court.

S. If a juvenile is adjudicated delinquent for a violation of section 13-1602, subsection A, paragraph 5, the court shall order the juvenile to pay a fine of at least three hundred dollars but not more than one thousand dollars. Any restitution ordered shall be paid in accordance with section 13-809, subsection A. The court may order the juvenile to perform community restitution in lieu of the payment for all or part of the fine if it is in the best interests of the juvenile. The amount of community restitution shall be equivalent to the amount of the fine by crediting any service performed at a rate of ten dollars per hour. If the juvenile is convicted of a second or subsequent violation of section 13-1602, subsection A, paragraph 5 and is ordered to perform community restitution, the court may order the parent or guardian of the juvenile to assist the juvenile in the performance of the community restitution if both of the following apply:

1. The parent or guardian had knowledge that the juvenile intended to engage in or was engaging in the conduct that gave rise to the violation.
2. The parent or guardian knowingly provided the juvenile with the means to engage in the conduct that gave rise to the violation.

T. If a juvenile is adjudicated delinquent for an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13, chapter 34 and is placed on juvenile probation, the court may order the juvenile to submit to random drug and alcohol testing at least two times per week as a condition of probation.

U. A juvenile who is adjudicated delinquent for an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13, chapter 34, who is placed on juvenile probation and who is found to have consumed any spirituous liquor or to have used any drug listed in section 13-3401 while on probation is in violation of the juvenile's probation. If a juvenile commits a third or subsequent violation of a condition of probation as prescribed by this subsection, the juvenile shall be brought before the juvenile court and, if the allegations are proven, the court shall either revoke probation and hold a disposition hearing pursuant to this section or select additional conditions of probation as it deems necessary, including detention, global position system monitoring, additional alcohol or drug treatment, community restitution, additional drug or alcohol testing or a monetary assessment.

V. For the purposes of this section:

1. "First time felony juvenile offender" means a juvenile who is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

2. "Repeat felony juvenile offender" means a juvenile to whom both of the following apply:

(a) Is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

(b) Previously has been adjudicated a first time felony juvenile offender.

3. "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

[13-1415. Human immunodeficiency virus and sexually transmitted disease testing; victim's rights; petition; definitions](#)

A. A defendant, including a defendant who is a minor, who is alleged to have committed a sexual offense or another offense involving significant exposure is subject to a court order that requires the defendant to submit to testing for the human immunodeficiency virus and other sexually transmitted diseases and to consent to the release of the test results to the victim.

B. Pursuant to subsection A of this section, the prosecuting attorney, if requested by the victim, or, if the victim is a minor, by the parent or guardian of the minor, shall petition the court for an order requiring that the person submit a specimen, to be determined by the submitting entity, for laboratory testing by the department of health services or another licensed laboratory for the presence of the human

immunodeficiency virus and other sexually transmitted diseases. The court, within ten days, shall determine if sufficient evidence exists to indicate that significant exposure occurred. If the court makes this finding or the act committed against the victim is a sexual offense it shall order that the testing be performed in compliance with rules adopted by the department of health services. The prosecuting attorney shall provide the victim's name and last known address of record to the department of health services for notification purposes. The victim's name and address are confidential, except that the department of health services may disclose the information to a local health department for victim notification purposes.

C. After a specimen has been tested pursuant to subsection B of this section, the laboratory that performed the test shall report the results to the submitting entity.

D. The submitting entity shall provide the results to the department of health services or a local health department. The department of health services or a local health department shall notify the victim of the results of the test conducted pursuant to subsection B of this section and shall counsel the victim regarding the health implications of the results.

E. The submitting entity or the department of health services shall notify the person tested of the results of the test conducted pursuant to subsection B of this section and shall counsel the person regarding the health implications of the results. If the submitting entity does not notify the person tested of the test results, the submitting entity shall provide both the name and last known address of record of the person tested and the test results to the department of health services or a local health department for notification purposes.

F. Notwithstanding any other law, copies of the test results shall be provided only to the victim of the crime, the person tested, the submitting entity and the department of health services.

G. For the purposes of this section:

1. "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

2. "Sexually transmitted diseases" means:

(a) Chlamydia.

(b) Genital herpes.

(c) Gonorrhea.

(d) Syphilis.

(e) Trichomonas.

3. "Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with a person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

4. "Submitting entity" means one of the following:

(a) A local health department.

(b) A health unit of the state department of corrections.

(c) A health unit of any detention facility.

(d) A physician licensed pursuant to title 32, chapter 13, 17 or 29.

32-3207. Health professionals disease hazard; testing; petition; definition

A. A health professional may petition the court to allow for the testing of a patient or deceased person if there is probable cause to believe that in the course of that health professional's practice there was a significant exposure.

B. The court shall hear the petition promptly. If the court finds that probable cause exists to believe that significant exposure occurred between the patient or deceased person and the health professional, the court shall order that either:

1. The person who transferred blood or bodily fluids onto the health professional provide two specimens of blood for testing.

2. If the person is deceased, the medical examiner draw two specimens of blood for testing.

C. On written notice from the employer of the health professional, the medical examiner is authorized to draw two specimens of blood for testing during the autopsy or other examination of the deceased person's body. The medical examiner shall release the specimen to the employing agency or entity for testing only after the court issues its order pursuant to subsection B. If the court does not issue an order within

thirty days after the medical examiner collects the specimen, the medical examiner shall destroy the specimen.

D. Notice of the test results shall be provided as prescribed by the department of health services to the person tested, the health professional named in the petition and the health professional's employer. If the person is incarcerated or detained, the notice shall also be provided to the chief medical officer of the facility in which the person is incarcerated or detained.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or bodily fluid, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in the transmission of blood borne or bodily fluid carried diseases.

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to

conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are

free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an

accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definition

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the

duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best

use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not

comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
 - (b) Prepared at a cooking school that is conducted in an owner-occupied home.
 - (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
 - (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
 - (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
 - (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
 - (g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
 - (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-

causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles

as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public

health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer

assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-663. HIV-related testing; restrictions; exceptions

A. Except as otherwise specifically authorized or required by this state or by federal law, before an HIV-related test is ordered by a health care provider, the health care provider shall ensure that oral or written informed consent information is provided to the subject of the test who has capacity to consent or, if the subject lacks capacity to consent, to a person authorized pursuant to law to consent to health care for that person. For the purposes of this subsection, "informed consent information" means information that explains HIV infection and the meaning of a positive test result and that indicates that the patient may ask questions and decline testing.

B. This section does not apply to the performance of an HIV-related test:

1. By a health care provider or health facility in relation to the procuring, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or other body fluids, for use in medical research or therapy or for transplantation to other persons.

2. If testing is requested by a health care provider or first responder who has had an occupational significant exposure risk to the patient's blood or bodily fluid. HIV-related testing under this paragraph may be performed under a general consent to receive treatment, except in an emergency when consent may be implied. Such testing may be performed under this paragraph only on receipt of a written request from a health care provider or first responder who documents the occurrence and information regarding the nature of the occupational significant exposure risk and the report is reviewed and confirmed by a health care provider who is both licensed pursuant to title 32, chapter 13, 15 or 17 and competent to determine a significant exposure risk. A patient may not be forced to provide a blood sample for the purposes of this paragraph. When an HIV-related test is ordered, a health care provider shall provide the patient with the test results and information that explains HIV infection and the meaning of a positive or negative test result and that indicates that the patient may ask questions.

3. For the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

4. On a deceased person, if the test is conducted in order to determine the cause of death or for epidemiologic or public health purposes.

5. In the course of providing necessary emergency medical treatment to a patient who lacks capacity to consent to HIV-related testing and for whom no person authorized pursuant to law to consent to health care for that person can be identified on a timely basis if the testing is necessary for the diagnosis and treatment of the emergency condition. The attending physician shall document the existence of an emergency medical condition, the necessity of the HIV-related testing to diagnose and treat the emergency condition and the patient's lack of capacity.

6. On a patient who lacks capacity to consent and for whom no person authorized pursuant to law to consent to health care for that person can be identified on a timely basis if the HIV-related testing is directly related to and necessary for the diagnosis and treatment of the person's medical condition. HIV-related testing shall be performed under these circumstances only on written certification by the attending physician and a consulting physician that the HIV-related testing is directly related to and necessary for the diagnosis and treatment of the patient's medical condition.

7. That is performed on an anonymous basis at a public health agency.

C. A medical examiner or alternate medical examiner may provide a blood sample from a deceased person for the purpose of HIV-related testing pursuant to subsection B, paragraph 2 of this section. A medical examiner or alternate medical examiner is not required to perform an HIV-related test for an occupational significant exposure risk.

36-664. Confidentiality; exceptions

A. A person who obtains communicable disease related information in the course of providing a health service or obtains that information from a health care provider pursuant to an authorization shall not disclose or be compelled to disclose that information except to the following:

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

2. A health care provider or first responder who has had an occupational significant exposure risk to the protected person's blood or bodily fluid if the health care provider or first responder provides a written request that documents the occurrence and information regarding the nature of the occupational significant exposure risk and the report is reviewed and confirmed by a health care provider who is both licensed

pursuant to title 32, chapter 13, 15 or 17 and competent to determine a significant exposure risk. A health care provider who releases communicable disease information pursuant to this paragraph shall provide education and counseling to the person who has had the occupational significant exposure risk.

3. The department or a local health department for purposes of notifying a Good Samaritan pursuant to subsection E of this section.
4. An agent or employee of a health facility or health care provider to provide health services to the protected person or the protected person's child or for billing or reimbursement for health services.
5. A health facility or health care provider, in relation to the procurement, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or other body fluids, for use in medical education, research or therapy or for transplantation to another person.
6. A health facility or health care provider, or an organization, committee or individual designated by the health facility or health care provider, that is engaged in the review of professional practices, including the review of the quality, utilization or necessity of medical care, or an accreditation or oversight review organization responsible for the review of professional practices at a health facility or by a health care provider.
7. A private entity that accredits the health facility or health care provider and with whom the health facility or health care provider has an agreement requiring the agency to protect the confidentiality of patient information.
8. A federal, state, county or local health officer if disclosure is mandated by federal or state law.
9. A federal, state or local government agency authorized by law to receive the information. The agency is authorized to redisclose the information only pursuant to this article or as otherwise permitted by law.
10. An authorized employee or agent of a federal, state or local government agency that supervises or monitors the health care provider or health facility or administers the program under which the health service is provided. An authorized employee or agent includes only an employee or agent who, in the ordinary course of business of the government agency, has access to records relating to the care or treatment of the protected person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. The department or a local health department shall disclose communicable disease related information to a Good Samaritan who submits a request to the department or the local health department. The request shall document the occurrence of the accident, fire or other life-threatening emergency and shall include information regarding the nature of the significant exposure risk. The department shall adopt rules that prescribe standards of significant exposure risk based on the best available medical evidence. The department shall adopt rules that establish procedures for processing requests from Good Samaritans pursuant to this subsection. The rules shall provide that the disclosure to the Good Samaritan shall not reveal the protected person's name and shall be accompanied by a written statement that warns the Good Samaritan that the confidentiality of the information is protected by state law.

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

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

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

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

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

K. This section and sections 36-663, 36-666, 36-667 and 36-668 do not apply to persons or entities subject to regulation under title 20.

DEPARTMENT OF HEALTH SERVICES (F-18-0308)

Title 9, Chapter 6, Article 11, STD-Related Testing and Notification



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: March 6, 2018

AGENDA ITEM: G-8

TO: Members of the Governor's Regulatory Review Council (Council)
FROM: Council Staff
DATE : February 20, 2018
SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0308)
Title 9, Chapter 6, Article 11, STD-Related Testing and Notification

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Department of Health Services (Department) covers four rules in A.A.C. Title 9, Chapter 6, Article 11 associated with STD-related testing and notification. In its 2013 five-year review report, the Department did not propose any action on the rules. Sections 1102 and 1103 were amended to correct cross-references, effective January 1, 2018.

The Department indicates that the purpose of the rules is to establish requirements for STD-related testing. The rules implement A.R.S. § 13-1415, which relates to court-ordered STD-related testing.

Proposed Action

The Department does not anticipate taking any action on the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is 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. **Summary of the agency's economic impact comparison and identification of stakeholders:**

In 2007, there were 285 cases of primary and secondary syphilis; 256 cases of early latent syphilis; 22 cases of congenital syphilis; 5,043 cases of gonorrhea; and 24,752 cases of chlamydia reported to the Department. In 2016, there were 721 cases of primary and secondary syphilis; 488 cases of early latent syphilis; 16 cases of congenital syphilis; 10,330 cases of gonorrhea; and 34,923 cases of chlamydia reported to the Department.

The estimated average lifetime direct medical costs per case is \$434 and \$36 for chlamydia in women and men, respectively; \$473 and \$94 for gonorrhea in women and men, respectively; and \$789 for syphilis in women and men. The first-year direct medical cost for congenital syphilis is \$9,293, while the lifetime indirect cost per case of congenital syphilis is \$71,932, mainly associated with lost productivity.

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

The Department has determined that the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department indicates that it has received no written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the rules are effective, are consistent with other rules and statutes, and are clear, concise, and understandable.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that the rules are enforced as written.

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

No. The Department indicates that no federal laws relate to the rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No. The rules do not require the issuance of a permit, license, or agency authorization.

9. Conclusion

No action is proposed on the rules. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

January 18, 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: Report for A.A.C. Title 9, Chapter 6, Article 11 of Communicable Diseases and Infestations

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 6, Article 11 is due to the Council no later than April 30, 2018. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 6, Article 11 and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific authority, and an economic impact statement are included in the package. As described in the report, the Department does not plan to amend the rule in 9 A.A.C. 6, Article 11 unless a threat to public health or safety occurs.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

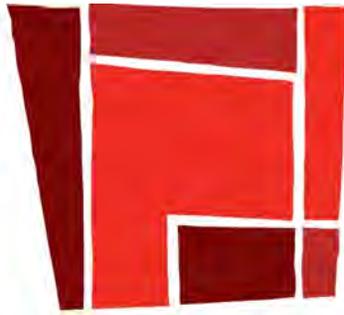
Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a horizontal line.

Robert Lane
Director's Designee

RL:rms
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES

COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 11. STD-RELATED TESTING AND NOTIFICATION

JANUARY 2018

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS
ARTICLE 11. STD-RELATED TESTING AND NOTIFICATION

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FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.” A.R.S. § 13-1415 specifies requirements for court-ordered sexually transmitted disease (STD)-related testing. The Department has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 11.

After an analysis of the rules in 9 A.A.C. 6, Article 11, the Department has determined that the rules are clear, concise, and understandable; are effective; pose the least burden on regulated persons, consistent with state and federal statutes and rules; and are enforced as written. The Department has received no written criticism of the rules. The Department believes the rules are sufficient to protect public health and does not plan to amend the rules in 9 A.A.C. 6, Article 11 unless a threat to public health or safety arises that would require amending the rules.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Authorization of the rule by existing statute

The general statutory authority for the rules in 9 A.A.C. 6, Article 11 are A.R.S. §§ 36-132(A)(1), 36-136(A)(7), and 36-136(G).

The specific statutory authority for the rules in 9 A.A.C. 6, Article 11 is A.R.S. § 36-136(I)(1).

2. The purpose of the rule

The purpose of the rules in 9 A.A.C. 6, Article 11 is to establish requirements for STD-related testing.

3. Analysis of effectiveness in achieving the objective

The rules in 9 A.A.C. 6, Article 11 are effective in achieving their respective objectives.

4. Analysis of consistency with state and federal statutes and rules

The rules in 9 A.A.C. 6, Article 11 are consistent with applicable statutes and rules.

5. Status of enforcement of the rule

The rules in 9 A.A.C. 6, Article 11 are enforced by the Department as written.

6. Analysis of clarity, conciseness, and understandability

The rules in 9 A.A.C. 6, Article 11 are clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

The Department has not received any written criticisms of the rules in 9 A.A.C. 6, Article 11 in the past five years.

8. Economic, small business, and consumer impact comparison

In 2007, there were 285 cases of primary and secondary syphilis; 256 cases of early latent syphilis; 22 cases of congenital syphilis; 5,043 cases of gonorrhea; and 24,752 cases of chlamydia reported to the Department. In 2016, there were 721 cases of primary and secondary syphilis; 488 cases of early latent syphilis; 16 cases of congenital syphilis; 10,330 cases of gonorrhea; and 34,923 cases of chlamydia reported to the Department. The estimated average lifetime direct medical costs per case is \$434 and \$36 for chlamydia in women and men, respectively; \$473 and \$94 for gonorrhea in women and men, respectively; and \$789 for syphilis in women and men. The first-year direct medical cost for congenital syphilis is \$9,293, while the lifetime indirect cost per case of congenital syphilis is \$71,932, mainly associated with lost productivity.

The rules in 9 A.A.C. 6, Article 11 were made by final rulemakings published in the *Arizona Administrative Register* (A.A.R.) at 14 A.A.R. 1502, effective April 1, 2008. An economic, small business, and consumer impact statement (EIS) was submitted to the Governor's Regulatory Review Council as part of the final rulemaking. The EIS designated annual costs/revenue changes as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when

\$10,000 or greater in additional costs or revenues. A cost or benefit was “significant” when meaningful or important, but not readily subject to quantification.

The Department believed that the Department and local health agencies would incur minimal costs for testing court-ordered specimens and notifying victims and possibly court-ordered subjects under A.R.S. § 13-1415 and receive a minimal benefit from the notification and identification of an STD-infected individual. The Department tested 13 court-ordered specimens in 2012. In the past five years, the Department is aware of only three court-ordered specimens being received, two in 2014 and one in 2015. Prosecuting attorneys were also believed to incur a minimal cost and receive a minimal benefit from the addition of requirements related to A.R.S. § 13-1415 and the clarity of the requirements.

The Department anticipated that physicians and other health care providers could incur minimal costs and receive minimal benefits from specifying requirements for notification of court-ordered subjects and the Department. Court-ordered subjects, victims of sexual assault, and society in general were believed to receive a significant benefit from knowing the requirements for testing and notification under the new rules.

The Department believes that the costs and benefits identified in the EISs are generally consistent with the actual costs and benefits of the rule.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rules in 9 A.A.C. 6, Article 11 in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

In the 2013 five-year-review report, the Department stated that the Department believed the rules were sufficient to protect public health and did not plan to amend the rules in 9 A.A.C. 6, Article 11 unless a threat to public health or safety arose that would require amending the rules. Since no such threat arose in the past five years, the Department complied with this plan.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

The Department has determined that the rules in 9 A.A.C. 6, Article 11 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

12. Analysis of stringency compared to federal laws

Federal laws do not apply to the rules in 9 A.A.C. 6, Article 11.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

Except for the correction of cross-references in R9-6-1102 and R9-6-1103 that were effective January 1, 2018, the rules were adopted before July 29, 2010. The rules do not require the issuance of a permit, license, or agency authorization.

14. Proposed course of action

The Department believes the rules are sufficient to protect public health and does not plan to amend the rules in 9 A.A.C. 6, Article 11 unless a threat to public health or safety arises that would require amending the rules.

INFORMATION FOR INDIVIDUAL RULES

R9-6-1101. Definitions

2. Objective

The objective of the rule is to define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.

R9-6-1102. Health Care Provider Requirements

2. Objective

The objective of the rule is to specify STD-related requirements for health care providers.

R9-6-1103. Local Health Agency Requirements

2. Objective

The objective of the rule is to specify STD-related requirements for local health agencies.

R9-6-1104. Court-ordered STD-related Testing

1. Authorization of the rule by existing statute

The rule has A.R.S. § 13-1415 as additional specific authority.

2. Objective

The objectives of the rule are to:

- a. Specify where requirements related to testing performed as a result of a court order issued under A.R.S. § 13-1210 or 32-3207 are located,
- b. Provide requirements for a prosecuting attorney who petitioned a court for STD-related testing under A.R.S. § 13-1415,
- c. Provide requirements for a person who tests a specimen as a result of a court order issued under A.R.S. § 13-1415, and
- d. Specify notification requirements for STD-related testing performed as a result of a court order.

Department of Health Services - Communicable Diseases and Infestations

ARTICLE 11. STD-RELATED TESTING AND NOTIFICATION

R9-6-1101. Definitions

In this Article, unless otherwise specified:

1. "Primary syphilis" means the initial stage of syphilis infection characterized by the appearance of one or more open sores in the genital area, anus, or mouth of an infected individual.
2. "Secondary syphilis" means the stage of syphilis infection occurring after primary syphilis and characterized by a rash that does not itch, fever, swollen lymph glands, and fatigue in an infected individual.
3. "Sexually transmitted diseases" means the same as in A.R.S. § 13-1415.
4. "STD" means a sexually transmitted disease or other disease that may be transmitted through sexual contact.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

R9-6-1102. Health Care Provider Requirements

When a laboratory report for a test ordered by a health care provider for a subject indicates that the subject is infected with an STD, the ordering health care provider or the ordering health care provider's designee shall:

1. Describe the test results to the subject;
2. Provide or arrange for the subject to receive the following information about the STD for which the subject was tested:
 - a. A description of the disease or syndrome caused by the STD, including its symptoms;
 - b. Treatment options for the STD and where treatment may be obtained;
 - c. A description of how the STD is transmitted to others;
 - d. A description of measures to reduce the likelihood of transmitting the STD to others and that it is necessary to continue the measures until the infection is eliminated;
 - e. That it is necessary for the subject to notify individuals who may have been infected by the subject that the individuals need to be tested for the STD;
 - f. The availability of assistance from local health agencies or other resources; and
 - g. The confidential nature of the subject's test results;
3. Report the information required in R9-6-202 to a local health agency; and
4. If the subject is pregnant and is a syphilis case, inform the subject of the requirement that the subject obtain serologic testing for syphilis according to R9-6-381.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

R9-6-1103. Local Health Agency Requirements

A. For each STD case, a local health agency shall:

1. Comply with the requirements in:
 - a. R9-6-317(A)(1) and (2) for each chancroid case reported to the local health agency, and
 - b. R9-6-381(A)(3)(a) through (c) for each syphilis case reported to the local health agency;
2. Offer or arrange for treatment for each STD case that seeks treatment from the local health agency for symptoms of:
 - a. Chancroid,
 - b. Chlamydia infection,
 - c. Gonorrhea, or
 - d. Syphilis;
3. Provide information about the following to each STD case that seeks treatment from the local health agency:
 - a. A description of the disease or syndrome caused by the applicable STD, including its symptoms;
 - b. Treatment options for the applicable STD;
 - c. A description of measures to reduce the likelihood of transmitting the STD to others and that it is necessary to continue the measures until the infection is eliminated; and
 - d. The confidential nature of the STD case's test results; and
4. Inform the STD case that:
 - a. A chlamydia or gonorrhea case must notify each individual, with whom the chlamydia or gonorrhea case has had sexual contact within 60 days preceding the onset of chlamydia or gonorrhea symptoms up to the date the chlamydia or gonorrhea case began treatment for chlamydia or gonorrhea infection, of the need for the individual to be tested for chlamydia or gonorrhea; and
 - b. The Department or local health agency will notify, as specified in subsection (B), each contact named by a chancroid or syphilis case.

B. For each contact named by a chancroid or syphilis case, the Department or a local health agency shall:

1. Notify the contact named by a chancroid or syphilis case of the contact's exposure to chancroid or syphilis and of the need for the contact to be tested for:

Department of Health Services - Communicable Diseases and Infestations

- a. Chancroid, if the chancroid case has had sexual contact with the contact within 10 days preceding the onset of chancroid symptoms up to the date the chancroid case began treatment for chancroid infection; or
- b. Syphilis, if the syphilis case has had sexual contact with the contact within:
 - i. 90 days preceding the onset of symptoms of primary syphilis up to the date the syphilis case began treatment for primary syphilis infection;
 - ii. Six months preceding the onset of symptoms of secondary syphilis up to the date the syphilis case began treatment for secondary syphilis infection; or
 - iii. 12 months preceding the date the syphilis case was diagnosed with syphilis if the syphilis case cannot identify when symptoms of primary or secondary syphilis began;
2. Offer or arrange for each contact named by a chancroid or syphilis case to receive testing and, if appropriate, treatment for chancroid or syphilis; and
3. Provide information to each contact named by a chancroid or syphilis case about:
 - a. The characteristics of the applicable STD,
 - b. The syndrome caused by the applicable STD,
 - c. Measures to reduce the likelihood of transmitting the applicable STD, and
 - d. The confidential nature of the contact's test results.
- C. For each contact of a chlamydia or gonorrhea case who seeks treatment from a local health agency for symptoms of chlamydia or gonorrhea, the local health agency shall:
 1. Offer or arrange for treatment for chlamydia or gonorrhea;
 2. Provide information to each contact of a chlamydia or gonorrhea case about:
 - a. The characteristics of the applicable STD,
 - b. The syndrome caused by the applicable STD,
 - c. Measures to reduce the likelihood of transmitting the applicable STD, and
 - d. The confidential nature of the contact's test results.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2). Amended by final rulemaking at 23 A.A.R. 2605, effective January 1, 2018 (Supp. 17-3).

R9-6-1104. Court-ordered STD-related Testing

- A. A health care provider who receives the results of a test, ordered by the health care provider to detect an STD and performed as a result of a court order issued under A.R.S. § 13-1210, shall comply with the requirements in 9 A.A.C. 6, Article 8.
- B. A health care provider who receives the results of a test, ordered by the health care provider to detect an STD and performed as a result of a court order issued under A.R.S. § 32-3207, shall comply with the requirements in 9 A.A.C. 6, Article 9.
- C. When a court orders a test under A.R.S. § 13-1415 to detect a sexually-transmitted disease, the prosecuting attorney who petitioned the court for the order shall provide to the Department:
 1. A copy of the court order, including an identifying number associated with the court order;
 2. The name and address of the victim; and
 3. The name and telephone number of the prosecuting attorney or the prosecuting attorney's designee.
- D. A person who tests a specimen of blood or another body fluid from a subject to detect a sexually-transmitted disease as authorized by a court order issued under A.R.S. § 13-1415 shall:
 1. Be a certified laboratory, as defined in A.R.S. § 36-451;
 2. Use a test approved by the U.S. Food and Drug Administration for use in STD-related testing; and
 3. Report the test results for each subject to the submitting entity within five working days after obtaining the test results.
- E. A submitting entity that receives the results of a test to detect a sexually-transmitted disease that was performed as a result of a court order issued under A.R.S. § 13-1415 shall:
 1. Notify the Department within five working days after receiving the results of the test to detect a sexually-transmitted disease;
 2. Provide to the Department:
 - a. A written copy of the court order,
 - b. A written copy of the results of the test to detect a sexually-transmitted disease, and
 - c. The name and telephone number of the submitting entity or submitting entity's designee; and
 3. Either:
 - a. Comply with the requirements in:
 - i. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
 - ii. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained; or
 - b. Provide to the Department or the local health agency in whose designated service area the subject is living:
 - i. The name and address of the subject;
 - ii. A written copy of the results of the test to detect a sexually-transmitted disease, if not provided as specified in subsection (E)(2)(b); and
 - iii. Notice that the submitting entity did not provide notification as specified in subsection (E)(3)(a).
- F. If the Department or a local health agency is notified by a submitting entity as specified in subsection (E)(3)(b), the Department or local health agency shall comply with the requirements in:

Department of Health Services - Communicable Diseases and Infestations

1. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
 2. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained.
- G.** When the Department receives the results of a test to detect a sexually-transmitted disease that was performed for a subject as a result of a court order issued under A.R.S. § 13-1415, the Department shall:
1. Provide to the victim:
 - a. A description of the results of the test to detect the sexually-transmitted disease,
 - b. The information specified in R9-6-802(D), and
 - c. A written copy of the test results for the sexually-transmitted disease; or
 2. Provide to the local health agency in whose designated service area the victim is living:
 - a. The name and address of the victim,
 - b. A written copy of the results of the test to detect the sexually-transmitted disease, and
 - c. Notice that the Department did not provide notification as specified in subsection (G)(1).
- H.** If a local health agency is notified by the Department as specified in subsection (G)(2), the local health agency shall:
1. Provide to the victim:
 - a. A description of the results of the test to detect the sexually-transmitted disease;
 - b. The information specified in R9-6-802(D); and
 - c. A written copy of the test results for the sexually-transmitted disease; or
 2. If the local health agency is unable to locate the victim, notify the Department that the local health agency did not inform the victim of the results of the test to detect the sexually-transmitted disease.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

13-1415. Human immunodeficiency virus and sexually transmitted disease testing; victim's rights; petition; definitions

A. A defendant, including a defendant who is a minor, who is alleged to have committed a sexual offense or another offense involving significant exposure is subject to a court order that requires the defendant to submit to testing for the human immunodeficiency virus and other sexually transmitted diseases and to consent to the release of the test results to the victim.

B. Pursuant to subsection A of this section, the prosecuting attorney, if requested by the victim, or, if the victim is a minor, by the parent or guardian of the minor, shall petition the court for an order requiring that the person submit a specimen, to be determined by the submitting entity, for laboratory testing by the department of health services or another licensed laboratory for the presence of the human immunodeficiency virus and other sexually transmitted diseases. The court, within ten days, shall determine if sufficient evidence exists to indicate that significant exposure occurred. If the court makes this finding or the act committed against the victim is a sexual offense it shall order that the testing be performed in compliance with rules adopted by the department of health services. The prosecuting attorney shall provide the victim's name and last known address of record to the department of health services for notification purposes. The victim's name and address are confidential, except that the department of health services may disclose the information to a local health department for victim notification purposes.

C. After a specimen has been tested pursuant to subsection B of this section, the laboratory that performed the test shall report the results to the submitting entity.

D. The submitting entity shall provide the results to the department of health services or a local health department. The department of health services or a local health department shall notify the victim of the results of the test conducted pursuant to subsection B of this section and shall counsel the victim regarding the health implications of the results.

E. The submitting entity or the department of health services shall notify the person tested of the results of the test conducted pursuant to subsection B of this section and shall counsel the person regarding the health implications of the results. If the submitting entity does not notify the person tested of the test results, the submitting entity shall provide both the name and last known address of record of the person tested and the test results to the department of health services or a local health department for notification purposes.

F. Notwithstanding any other law, copies of the test results shall be provided only to the victim of the crime, the person tested, the submitting entity and the department of health services.

G. For the purposes of this section:

1. "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

2. "Sexually transmitted diseases" means:

(a) Chlamydia.

(b) Genital herpes.

(c) Gonorrhea.

(d) Syphilis.

(e) Trichomonas.

3. "Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with a person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

4. "Submitting entity" means one of the following:

(a) A local health department.

(b) A health unit of the state department of corrections.

(c) A health unit of any detention facility.

(d) A physician licensed pursuant to title 32, chapter 13, 17 or 29.

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's

cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definition

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a

label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the

sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall

determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

G-9

DEPARTMENT OF HEALTH SERVICES (F-18-0309)
Title 9, Chapter 10, Article 4, Nursing Care Institutions



GOVERNOR'S REGULATORY REVIEW COUNCIL
STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: March 6, 2018

AGENDA ITEM: G-9

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

FROM: Council Staff

DATE : February 20, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0309)
Title 9, Chapter 10, Article 4, Nursing Care Institutions

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Department of Health Services (Department) covers 27 rules in A.A.C. Title 9, Chapter 10, Article 4 associated with nursing care institutions. The rules were substantially amended in 2013 and 2014, and this is the first five-year review report on the new rules.

The Department indicates that the purpose of the rules is to establish requirements for licensure of nursing care institutions and for issuance of quality ratings. The rules implement a number of statutes, including A.R.S. § 36-425.02 which requires the Department to issue a quality rating to each nursing care institution based on the results of a licensing survey.

Proposed Action

The Department intends to complete a rulemaking by July 2019 to address the following issues:

- Section 402 – *Supplemental Application Requirements*: The rule is now inconsistent with A.R.S. § 36-425, because of references to “initial” licenses.
- Section 408 – *Discharge*: The requirements for transfer should be moved from Section 409(C) to this rule.
- Section 414 – *Comprehensive Assessment; Care Plan*: The use of the term “restraint” in subsection (A)(1)(d)(xvii) should be clarified.
- Section 415 – *Behavioral Health Services*: The use of the term “chemical restraint” in subsection (2) should be clarified.

- Section 418 – *Radiology Services and Diagnostic Imaging Services*: Legislative Counsel may decide to recodify requirements in A.R.S. Title 30, Chapter 4, into A.R.S. Title 36, which would make a citation in the rule incorrect.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is 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. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Department indicates that there are currently 146 licensed nursing care institutions in the state. The Department’s Bureau of Long Term Care Licensing receives approximately 75% of its budget from the federal Centers for Medicare and Medicaid Services to inspect and certify nursing care institutions for Medicare. In the past year, the Department indicates that it has received approximately 900 complaints about nursing care institutions and has completed investigations on approximately 500 of them. Of the 37 enforcement actions undertaken by the Department in the past year, the Department states that none resulted in the suspension or revocation of a license, but \$18,250 in civil money penalties were assessed.

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

The Department has determined that the rules impose the least burden and costs to persons regulated by the rules necessary to achieve 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 received no written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Department indicates that the rules are generally effective, are generally consistent with other rules and statutes, and are generally clear, concise, and understandable. As noted above, the Department is proposing action to address minor issues with the effectiveness, consistency, and clarity of the rules.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are enforced as written.

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

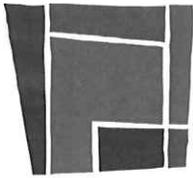
No. The Department indicates that the rules are not more stringent than corresponding federal laws, namely 42 C.F.R. § 483, Requirements for States and Long Term Care Facilities.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes. The rules require the issuance of a specific agency authorization, authorized by A.R.S. § 36-405, and use of a general permit is not applicable.

9. **Conclusion**

The Department intends to complete a rulemaking by July 2019 to address the issues identified in the report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

January 18, 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: Report for A.A.C. Title 9, Chapter 10, Article 4 Health Care Institutions: Licensing – Nursing Care Institutions

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 10, Article 4 is due to the Council no later than February 28, 2018. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 10, Article 4 and is enclosing a report to the Council for this rule.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, and the general and specific authority for the rules are included in the package. As described in the report, the Department plans to amend the rules in 9 A.A.C. 10, Article 4 by July 2019.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL' followed by a stylized flourish.

Robert Lane
Director's Designee

RL:rms
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 4. NURSING CARE INSTITUTIONS

JANUARY 2018

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 4. NURSING CARE INSTITUTIONS

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5.	GENERAL AND SPECIFIC AUTHORITY	Attachment B

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-405(A) requires the Director of the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety, and welfare. It further requires that the standards and requirements relate to the construction; equipment; sanitation; staffing for medical, nursing, and personal care services; and record keeping pertaining to the administration of medical, nursing, and personal care services according to generally accepted practices of health care. A.R.S. § 36-405(B)(1) allows the Director to classify and sub-classify health care institutions based on six statutory licensing criteria. A.R.S. § 36-406 gives the Department the right to enforce the provisions of A.R.S. Title 36, Chapter 4 and the rules adopted under that Chapter. A.R.S. § 36-411 requires employees, owners, and contracted persons who provide direct care in a nursing care institution to have or apply for a valid fingerprint card. A.R.S. § 36-425.02 requires the Department to issue a quality rating to each nursing care institution based on the results of a licensing survey.

The Department has implemented A.R.S. §§ 36-405, 36-406, 36-411, and 36-425.02 in the 27 rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10, Article 4. The rules in 9 A.A.C. 10, Article 4 were revised in their entirety in 2013 as part of an exempt rulemaking of 9 A.A.C. 10 to comply with Laws 2011, Ch. 96. All but eight of the rules were further revised in another exempt rulemaking of 9 A.A.C. 10, Article 4 conducted under Laws 2011, Ch. 96, and Laws 2013, Ch. 10, effective October 1, 2013. All but one rule were again revised in another exempt rulemaking of 9 A.A.C. 10 conducted under Laws 2013, Ch. 10, effective July 1, 2014.

After an analysis of the rules in 9 A.A.C. 10, Article 4, the Department has determined that the rules are effective; consistent with state and federal statutes and rules; enforced; and clear, concise, and understandable. The Department has received no written criticisms of the rules in the past five years. The Department plans to amend the rules in 9 A.A.C. 10, Article 4 as necessary to comply with Laws 2017, Ch. 122, and to address other items mentioned in this report, submitting a Notice of Final Rulemaking to the Governor's Regulatory Review Council (Council) by July 2019.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Authorization of the rule by existing statute

The general statutory authority for the rules in 9 A.A.C. 10, Article 4 are A.R.S. §§ 36-132(A)(1), 36-132(A)(17), and 36-136(G).

The specific statutory authority for the rules in 9 A.A.C. 10, Article 4 is A.R.S. § 36-405.

2. The purpose of the rule

The purpose of the rules in 9 A.A.C. 10, Article 4 is to establish requirements for licensure of a nursing care institution and for issuance of a quality rating.

3. Analysis of effectiveness in achieving the objective

Except as described for R9-10-408, the rules in 9 A.A.C. 10, Article 4 are effective in achieving their respective objectives.

4. Analysis of consistency with state and federal statutes and rules

Except as described for R9-10-402, the rules in 9 A.A.C. 10, Article 4 are consistent with applicable statutes and rules. As described under *Information for Individual Rules*, R9-10-418 may also become inconsistent in the future.

5. Status of enforcement of the rule

The rules in 9 A.A.C. 10, Article 4 are enforced by the Department as written.

6. Analysis of clarity, conciseness, and understandability

Except as described for R9-10-414 and R9-10-415, the rules in 9 A.A.C. 10, Article 4 are clear, concise, and understandable, although R9-10-401, R9-10-403, R9-10-415, R9-10-416, R9-10-419, R9-10-421, and R9-10-425 contain minor punctuation, grammatical, or typographical errors.

7. Summary of the written criticisms of the rule received within the last five years

The Department has not received any written criticisms of the rules in the past five years.

8. Economic, small business, and consumer impact comparison

Presently, there are 146 licensed nursing care institutions in Arizona. The Department's Bureau of Long Term Care Licensing, which licenses Arizona's nursing care institutions, receives approximately 75% of its budget from the federal Centers for Medicare and Medicaid Services to inspect and certify nursing care institutions for Medicare. All of Arizona's nursing care institutions are licensed by the Department, meet federal Medicare requirements, are Medicare-certified through the Department, and receive federal funding. In the past year, the Department has received approximately 900 complaints about nursing care institutions, and has completed investigations on approximately 500 of them. Of the 37 enforcement actions undertaken by the Department in the past year, none resulted in the suspension or revocation of a license, but \$18,250 in civil money penalties

were assessed.

The rules in 9 A.A.C. 10, Article 4 were revised in their entirety in 2013 as part of an exempt rulemaking of 9 A.A.C. 10 to comply with Laws 2011, Ch. 96. All but eight of the rules were further revised in another exempt rulemaking of 9 A.A.C. 10, Article 4 conducted under Laws 2011, Ch. 96, and Laws 2013, Ch. 10, effective October 1, 2013. All but one rule were again revised in another exempt rulemaking of 9 A.A.C. 10 conducted under Laws 2013, Ch. 10, effective July 1, 2014.. Stakeholders for these rulemakings include the Department, Arizona nursing care institutions, residents and their families, and the general public. Annual cost/revenue changes are designated as minimal when more than \$0 and \$5,000 or less, moderate when between \$5,000 and \$30,000, and substantial when \$30,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

As part of the initial 2013 exempt rulemaking, many definitions were removed, some of which were included in R9-10-101, while others were unnecessary. The rulemaking clarified supplementary requirements for initial and renewal licenses; made distinctions in application requirements for single group licenses; clarified requirements related to quality management, contracted services, personnel, and medical staff; and clarified requirements related to admissions, discharge planning and discharge, transport, and transfer. Requirements related to resident rights and medical records were also revised to make them more consistent across the Chapter. The Department believes that these changes provided a significant benefit to the Department by reducing confusion about the rules and the number of calls from stakeholders asking for clarification. Arizona nursing care institutions, may also have received a significant benefit from the clarity of the new requirements.

The new rules allowed the governing authority of a nursing care institution to establish the qualifications of an administrator, clarified and amended requirements for policies and procedures, and consolidated requirements related to providing documents to the Department in one location in the rules. Requirements related to nursing services, surgical services, anesthesia services, emergency services, pharmaceutical services, clinical laboratory services and pathology services, radiology services and diagnostic imaging services, respiratory care services, perinatal services, psychiatric services, rehabilitation services, multi-organized service units, social services, infection control, dietary services, disaster management, environmental standards, and physical plant standards were also revised to include the administrator “ensuring” compliance, rather than “requiring” compliance. The Department believes that these changes provided a significant benefit to a nursing care institution by providing more flexibility in the appointment of an administrator and allowing a better understanding of requirements. A nursing care institution may have also incurred a minimal-to-

moderate cost from having to take action to ensure compliance with requirements in the rules, rather than just requiring compliance. Residents may have received a significant benefit from a nursing care institution being required to ensure compliance with the rules.

Requirements for medication services were clarified, separating requirements related to medication administration from those for providing assistance in the self-administration of medication. Requirements related to informing a patient about a medication's anticipated results, potential adverse reactions and side effects, and results of not taking the medication were added to protect a resident's health and safety, as were the added requirements related to preventing, responding to, and reporting a medication error, adverse response, or overdose. Requirements related to food services were clarified, and requirements related to nutrition and feeding assistants were added. The new rules also clarified requirements related to emergency and safety standards, expanding on requirements related to a disaster plan (medical record/medication/food and water availability). Environmental standards were expanded to add requirements related to the supply of hot and cold water, linens, oxygen containers, and poisonous or toxic materials stored by the facility. Requirements related to pets or animals allowed in the nursing care institution, the use of non-municipal water source, and a swimming pool on the premises were also added. The Department believes that added requirements may have caused a nursing care institution to incur minimal-to-substantial costs, depending on how many of these added requirements were already being implemented by the nursing care institution as the standard of care.

The new rules clarified requirements related to a nursing care institution's physical plant, removing redundant requirements related to submission of architectural plans or to construction, modification, or a change of licensed capacity. Quality rating standards were moved from R9-10-919 into R9-10-427 without change. The Department anticipates that these changes may have provided a significant benefit to a nursing care institution. The Department believes the benefit of the initial 2013 rulemaking outweighs the costs.

At the suggestion of stakeholders, the rules in 9 A.A.C. 10, Article 4, were again revised in a second exempt rulemaking, effective October 2013. Definitions for "behavioral care," "intermittent," and "ventilator" were added; the definition of "medically-related social services" was replaced with a definition for "social services"; and the definitions of "care plan," "direct care," and "nursing care institution services" were revised. The requirement for requesting authorization to provide respiratory care services or rehabilitation services was removed since these are ancillary services included in the new definition of nursing care institution services, as was a requirement related to having full-time social worker, along with the related quality rating factor. Requirements related to tuberculosis testing and posting of a notice where license survey reports could be viewed were also

revised, providing a minimal-to-moderate benefit to a nursing care institution.

The new rules also clarified and reorganized requirements related to initial assessments, comprehensive assessments, and care plans; clarified and removed redundant requirements related to medical records and medication administration; and clarified the distinction between a fire drill and a disaster drill. Requirements related to the storage of garbage and refuse and to the storage of hazardous materials, the vaccination of pets or animals allowed in the facility, and the meaning of a non-municipal water source were also clarified and changed. The retention time for documentation of water quality testing was also reduced from two years to 12 months. The Department believes that these changes reduced the burden on nursing care institutions and provided a minimal-to-moderate benefit to a nursing care institution. The Department believes the benefit of the second 2013 rulemaking outweighs the costs.

As part of a second exempt rulemaking of rules in 9 A.A.C. 10 in 2014, the rules in Article 4 were revised a third time. Many of these changes were made to improve clarity or correct grammatical issues. In addition, changes were also made to remove a requirement for policies and procedures to include deadlines related to complaints and steps for obtaining documentation of fingerprint clearance; revise a requirement for policies and procedures related to restraints and seclusion; lengthen the review interval for policies and procedures from every two to every three years; allow health screening services to be provided by a nursing care institution to an individual who is not a resident; and change the requirements for reporting, investigating, and documenting abuse, neglect, or exploitation. The Department believes that these changes provided a significant benefit to a nursing care institution.

Changes that may have imposed a cost on a nursing care institution include the removal of the ability of the facility to restrain a resident. The new rules also prohibited the release of information in a resident's medical records or financial records without consent. Requirements were added for a resident's medical record to contain documentation, if applicable, of a resident's representative, of action to control a resident's sudden, intense, or out-of-control behavior, and, if applicable, that evacuation during a drill would cause a resident harm. The meal planning guidelines reference was also updated to be more specific to the population served. The Department believes at these changes may have imposed a minimal-to-moderate additional cost on a health care institution.

The new rules also allowed longer for providing personnel records for someone who had not provided services to residents in the previous 12 months, provided more flexibility in who was required to develop an in-service education plan, allowed a resident up to seven days after admission to receive a tuberculosis test, added that a 30-day prior notification is not required for a resident who no longer needs nursing care institution services to be discharged, and added circumstances when

transport requirements would not apply. The Department estimates that these changes may have provided a nursing care institution with a minimal-to-moderate benefit, depending on what procedures were currently being implemented. The new rules removed requirements related to providing assistance in the self-administration of medication, reduced the retention time for infection control documentation from two years to 12 months, and removed requirements related to compliance with communicable disease reporting and control measures required in other department rules. Also removed with the changes made during this rulemaking were the requirement that combustible or flammable liquids be stored outside the facility and the prohibition on the restriction on the use of tobacco products. These changes may also have resulted in a minimal-to-moderate benefit to a nursing care institution. The Department believes the benefit of the 2014 rulemaking outweighs the costs.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

The rules in 9 A.A.C. 10, Article 4 were substantially amended twice in 2013 and again in 2014. This is the first five-year-review of the new rules.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

The Department has determined that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. Analysis of stringency compared to federal laws

The rules in 9 A.A.C. 10, Article 4 are not more stringent than the related federal laws, 42 CFR 483 - Requirements for States and Long Term Care Facilities.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, so a general permit is not applicable.

14. Proposed course of action

The Department plans to amend the rules in 9 A.A.C. 10, Article 4 as necessary to comply with Laws 2017, Ch. 122, and to address other items mentioned in this report, and to submit a Notice of Final Rulemaking to the Council by July 2019.

INFORMATION FOR INDIVIDUAL RULES

R9-10-401. Definitions

2. Objective

The objective of the rule is to define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.

R9-10-402. Supplemental Application Requirements

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-422, 36-424, and 36-425 as additional specific authority.

2. Objective

The objective of the rule is to specify license application requirements, in addition to those in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, that are specific to nursing care institutions.

4. Analysis of consistency with state and federal statutes and rules

The rule is inconsistent with A.R.S. § 36-425 as amended by Laws 2017, Ch. 122, because of references to “initial” licenses.

R9-10-403. Administration

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-411 and 36-446.01 as additional specific authority.

2. Objective

The objective of the rule is to establish minimum requirements for a nursing care institution’s governing authority and administrative office.

R9-10-404. Quality Management

2. Objective

The objective of the rule is to establish minimum requirements for a nursing care institution’s quality management program.

R9-10-405. Contracted Services

2. Objective

The objective of the rule is to establish minimum requirements for nursing care institution services provided by a person who contracts with the licensee to provide nursing care institution services to ensure that the contractor complies with applicable requirements.

R9-10-406. Personnel

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-411 as additional specific authority.

2. Objective

The objective of the rule is to establish minimum standards for nursing care institution personnel.

R9-10-407. Admission

2. Objective

The objective of the rule is to establish minimum requirements for an individual's admission to a nursing care institution.

R9-10-408. Discharge

2. Objective

The objective of the rule is to establish minimum requirements for a resident's transfer or discharge from a nursing care institution.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective but could be improved by moving the requirements for transfer from R9-10-409(C) to this Section.

R9-10-409. Transport; Transfer

2. Objective

The objective of the rule is to establish minimum requirements for transport and transfer to ensure that a resident's health and safety are not compromised as a result of a transport or transfer.

R9-10-410. Resident Rights

2. Objective

The objective of the rule is to establish minimum standards for resident rights.

R9-10-411. Medical Records

2. Objective

The objective of the rule is to establish minimum requirements for residents' medical records.

R9-10-412. Nursing Services

2. **Objective**

The objective of the rule is to establish minimum requirements for nursing services in a nursing care institution.

R9-10-413. Medical Services

2. **Objective**

The objective of the rule is to establish minimum requirements for medical services in a nursing care institution.

R9-10-414. Comprehensive Assessment; Care Plan

2. **Objective**

The objective of the rule is to establish minimum requirements for nursing services in a nursing care institution.

6. **Analysis of clarity, conciseness, and understandability**

The rule is concise and understandable but could be clearer in the use of the term “restraint” in subsection (A)(1)(d)(xvii). The term is defined in R9-10-101 and is applicable to all Articles in the Chapter. Requirements for the use of restraint are specified in R9-10-225, related to psychiatric services provided by a hospital, and in R9-10-316, related to services provided in a behavioral health inpatient facility. According to R9-10-410(B)(3)(i), a resident is not subjected to restraint in a nursing care institution. However, a nursing care institution is required by R9-10-403(C)(2)(f) to specify in policies and procedures how personnel members of a nursing care institution will respond to a resident’s sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual. The use of the term “restraint” in subsection (A)(1)(d)(xvii) relates to this requirement and could be clarified.

R9-10-415. Behavioral Health Services

2. **Objective**

The objective of the rule is to establish minimum requirements for behavioral health services in a nursing care institution.

6. **Analysis of clarity, conciseness, and understandability**

The rule is concise and understandable but could be clearer in the use of the term “chemical restraint” in subsection (2). As described in paragraph 6 for R9-10-414, a patient is not subject to restraint in a nursing care institution, but a nursing care institution is required to specify in policies and procedures how personnel members of a nursing care institution will respond to a resident’s

sudden, intense, or out-of-control behavior. It is for this purpose that a “chemical restraint” may be used in a nursing care institution, so the rule should be clarified.

R9-10-416. Clinical Laboratory Services

2. Objective

The objective of the rule is to establish minimum requirements for clinical laboratory services provided on a nursing care institution’s premises.

R9-10-417. Dialysis Services

2. Objective

The objective of the rule is to establish minimum requirements for dialysis services provided on a nursing care institution’s premises.

R9-10-418. Radiology Services and Diagnostic Imaging Services

2. Objective

The objective of the rule is to establish minimum requirements for radiology services and diagnostic imaging services provided on a nursing care institution’s premises.

4. Analysis of consistency with state and federal statutes and rules

While the rule is currently consistent with state statutes and rules, the rule references A.R.S. Title 30, Chapter 4 and 12 A.A.C. 1, relating to the Arizona Radiation Regulatory Agency (ARRA). Laws 2017, Ch. 313 transferred ARRA’s authority, powers, and duties to the Department, effective January 1, 2018. The Department is proposing language to amend the language in A.R.S. Title 30, Chapter 4, which would mean the citation would still be correct, although requirements are changed. However, Legislative Counsel may decide to recodify requirements in A.R.S. Title 30, Chapter 4, into A.R.S. Title 36, which would make the citation incorrect. Similarly, the rules in A.A.C. Title 12, Chapter 1 may be repealed and new rules adopted in A.A.C. Title 9 at some future date, making the reference incorrect.

R9-10-419. Respiratory Care Services

2. Objective

The objective of the rule is to establish minimum requirements for respiratory care services provided on a nursing care institution’s premises.

R9-10-420. Rehabilitation Services

2. **Objective**

The objective of the rule is to establish minimum requirements for rehabilitation services provided on a nursing care institution's premises.

R9-10-421. Medication Services

2. **Objective**

The objective of the rule is to establish minimum requirements for medication services provided by a nursing care institution.

R9-10-422. Infection Control

2. **Objective**

The objective of the rule is to establish minimum requirements for infection control in a nursing care institution.

R9-10-423. Food Services

1. **Authorization of the rule by existing statute**

The rule has A.R.S. §§ 36-411 and 36-413 as additional specific authority.

2. **Objective**

The objectives of the rule are to establish minimum requirements for:

- a. Food services, and
- b. Use of nutrition and feeding assistants.

R9-10-424. Emergency and Safety Standards

2. **Objective**

The objective of the rule is to establish minimum requirements for emergency and safety Standards, including standards for a disaster plan, disaster drill, evacuation drill, oxygen use, and fire inspection.

R9-10-425. Environmental Standards

2. **Objective**

The objective of the rule is to establish minimum requirements for a nursing care institution's environmental services, storage of materials that could be dangerous to a resident's health or safety, and safety of a resident in a pool area.

R9-10-426. Physical Plant Standards

2. Objective

The objective of the rule is to establish physical plant requirements for a nursing care institution's physical plant.

R9-10-427. Quality Rating

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-425.02 as additional specific authority.

2. Objective

The objective of the rule is to establish a qualifying rating for nursing care institutions based on nursing services, resident rights, administration, environment and infection control, and food services.

Department of Health Services - Health Care Institutions: Licensing

ARTICLE 4. NURSING CARE INSTITUTIONS

Article 4, consisting of Sections R9-10-411 through R9-10-438, repealed at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

R9-10-401. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Administrator" has the meaning in A.R.S. § 36-446.
2. "Care plan" means a documented description of physical health services and behavioral health services expected to be provided to a resident, based on the resident's comprehensive assessment, that includes measurable objectives and the methods for meeting the objectives.
3. "Direct care" means medical services, nursing services, or social services provided to a resident.
4. "Director of nursing" means an individual who is responsible for the nursing services provided in a nursing care institution.
5. "Full-time" means 40 hours or more every consecutive seven calendar days.
6. "Highest practicable" means a resident's optimal level of functioning and well-being based on the resident's current functional status and potential for improvement as determined by the resident's comprehensive assessment.
7. "Interdisciplinary team" means a group of individuals consisting of a resident's attending physician, a registered nurse responsible for the resident, and other individuals as determined in the resident's comprehensive assessment.
8. "Intermittent" means not on a regular basis.
9. "Nursing care institution services" means medical services, nursing services, health-related services, ancillary services, social services, and environmental services provided to a resident.
10. "Resident group" means residents or residents' family members who:
 - a. Plan and participate in resident activities, or
 - b. Meet to discuss nursing care institution issues and policies.
11. "Secured" means the use of a method, device, or structure that:
 - a. Prevents a resident from leaving an area of the nursing care institution's premises, or
 - b. Alerts a personnel member of a resident's departure from the nursing care institution.
12. "Social services" means assistance provided to or activities provided for a resident to maintain or improve the resident's physical, mental, and psychosocial capabilities.
13. "Total health condition" means a resident's overall physical and psychosocial well-being as determined by the resident's comprehensive assessment.
14. "Unnecessary drug" means a medication that is not required because:
 - a. There is no documented indication for a resident's use of the medication;
 - b. The medication is duplicative;
 - c. The medication is administered before determining whether the resident requires the medication; or
 - d. The resident has experienced an adverse reaction from the medication, indicating that the medication should be reduced or discontinued.
15. "Ventilator" means a device designed to provide, to a resident who is physically unable to breathe or who is breathing insufficiently, the mechanism of breathing by mechanically moving breathable air into and out of the resident's lungs.

Historical Note

New Section R9-10-401 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-402. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for an initial license as a nursing care institution shall include:

1. In a Department-provided format whether the applicant:
 - a. Has:
 - i. A secured area for a resident with Alzheimer's disease or other dementia, or
 - ii. An area for a resident on a ventilator;
 - b. Is requesting authorization to provide to a resident:
 - i. Behavioral health services,
 - ii. Clinical laboratory services,
 - iii. Dialysis services, or
 - iv. Radiology services and diagnostic imaging services; and
 - c. Is requesting authorization to operate a nutrition and feeding assistant training program; and
2. If the governing authority is requesting authorization to operate a nutrition and feeding assistant training program, the information in R9-10-116(B)(1)(a), (B)(1)(c), and (B)(2).

Historical Note

New Section R9-10-402 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

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R9-10-403. Administration

- A.** A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of a nursing care institution;
 2. Establish, in writing, the nursing care institution's scope of services;
 3. Designate, in writing, a nursing care institution administrator licensed according to A.R.S. Title 36, Chapter 4, Article 6;
 4. Adopt a quality management program according to R9-10-404;
 5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
 6. Designate, in writing, an acting administrator licensed according to A.R.S. § Title 36, Chapter 4, Article 6, if the administrator is:
 - a. Expected not to be present on the nursing care institution's premises for more than 30 calendar days, or
 - b. Not present on the nursing care institution's premises for more than 30 calendar days; and
 7. Except as permitted in subsection (A)(6), when there is a change of administrator, notify the Department according to A.R.S. § 36-425(I) and submit a copy of the new administrator's license under A.R.S. Title 36, Chapter 4, Article 6 to the Department.
- B.** An administrator:
1. Is directly accountable to the governing authority of a nursing care institution for the daily operation of the nursing care institution and all services provided by or at the nursing care institution;
 2. Has the authority and responsibility to manage the nursing care institution;
 3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the nursing care institution's premises and accountable for the nursing care institution when the administrator is not present on the nursing care institution's premises;
 4. Ensures the nursing care institution's compliance with A.R.S. § 36-411; and
 5. If the nursing care institution provides feeding and nutrition assistant training, ensures the nursing care institution complies with the requirements for the operation of a feeding and nutrition assistant training program in R9-10-116.
- C.** An administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that:
 - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
 - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
 - c. Include how a personnel member may submit a complaint relating to resident care;
 - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
 - e. Cover cardiopulmonary resuscitation training including:
 - i. Which personnel members are required to obtain cardiopulmonary resuscitation training,
 - ii. The method and content of cardiopulmonary resuscitation training,
 - iii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
 - iv. The time-frame for renewal of cardiopulmonary resuscitation training, and
 - v. The documentation that verifies an individual has received cardiopulmonary resuscitation training;
 - f. Cover first aid training;
 - g. Include a method to identify a resident to ensure the resident receives physical health services and behavioral health services as ordered;
 - h. Cover resident rights, including assisting a resident who does not speak English or who has a disability to become aware of resident rights;
 - i. Cover specific steps for:
 - i. A resident to file a complaint, and
 - ii. The nursing care institution to respond to a resident's complaint;
 - j. Cover health care directives;
 - k. Cover medical records, including electronic medical records;
 - l. Cover a quality management program, including incident reports and supporting documentation;
 - m. Cover contracted services;
 - n. Cover resident's personal accounts;
 - o. Cover petty cash funds;
 - p. Cover fees and refund policies;
 - q. Cover misappropriation of resident property; and
 - r. Cover when an individual may visit a resident in a nursing care institution; and
 2. Policies and procedures for physical health services and behavioral health services are established, documented, and implemented to protect the health and safety of a resident that:
 - a. Cover resident screening, admission, transport, transfer, discharge planning, and discharge;
 - b. Cover the provision of physical health services and behavioral health services;
 - c. Include when general consent and informed consent are required;
 - d. Cover storing, dispensing, administering, and disposing of medication;
 - e. Cover infection control;
 - f. Cover how personnel members will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
 - g. Cover telemedicine, if applicable; and

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- h. Cover environmental services that affect resident care;
3. Policies and procedures are reviewed at least once every three years and updated as needed;
4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
5. Unless otherwise stated:
 - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 - b. When documentation or information is required by this Chapter to be submitted on behalf of a nursing care institution, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the nursing care institution.
- D. Except for health screening services, an administrator shall ensure that medical services, nursing services, health-related services, behavioral health services, or ancillary services provided by a nursing care institution are only provided to a resident.
- E. If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was admitted or while the resident is not on the premises and not receiving services from a nursing care institution's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the resident as follows:
 1. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
 2. For a resident under 18 years of age, according to A.R.S. § 13-3620;
- F. If an administrator has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving services from a nursing care institution's employee or personnel member, an administrator shall:
 1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
 2. Report the suspected abuse, neglect, or exploitation of the resident as follows:
 - a. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
 - b. For a resident under 18 years of age, according to A.R.S. § 13-3620;
 3. Document:
 - a. The suspected abuse, neglect, or exploitation;
 - b. Any action taken according to subsection (F)(1); and
 - c. The report in subsection (F)(2);
 4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
 5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
 - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
 - b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
 - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
 - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
 6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- G. An administrator shall:
 1. Allow a resident advocate to assist a resident, the resident's representative, or a resident group with a request or recommendation, and document in writing any complaint submitted to the nursing care institution;
 2. Ensure that a monthly schedule of recreational activities for residents is developed, documented and implemented; and
 3. Ensure that the following are conspicuously posted on the premises:
 - a. The current nursing care institution license and quality rating issued by the Department;
 - b. The name, address, and telephone number of:
 - i. The Department's Office of Long Term Care,
 - ii. The State Long-Term Care Ombudsman Program, and
 - iii. Adult Protective Services of the Department of Economic Security;
 - c. A notice that a resident may file a complaint with the Department concerning the nursing care institution;
 - d. The monthly schedule of recreational activities; and
 - e. One of the following:
 - i. A copy of the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect; or
 - ii. A notice that the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect are available for review upon request.
- H. An administrator shall provide written notification to the Department of a resident's:
 1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
 2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency medical services provider.
- I. If an administrator administers a resident's personal account at the request of the resident or the resident's representative, the administrator shall:
 1. Comply with policies and procedures established according to subsection (C)(1)(n);

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2. Designate a personnel member who is responsible for the personal accounts;
 3. Maintain a complete and separate accounting of each personal account;
 4. Obtain written authorization from the resident or the resident's representative for a personal account transaction;
 5. Document an account transaction and provide a copy of the documentation to the resident or the resident's representative upon request and at least every three months;
 6. Transfer all money from the resident's personal account in excess of \$50.00 to an interest-bearing account and credit the interest to the resident's personal account; and
 7. Within 30 calendar days after the resident's death, transfer, or discharge, return all money in the resident's personal account and a final accounting to the resident, the resident's representative, or the probate jurisdiction administering the resident's estate.
- J.** If a petty cash fund is established for use by residents, the administrator shall ensure that:
1. The policies and procedures established according to subsection (C)(1)(o) include:
 - a. A prescribed cash limit of the petty cash fund, and
 - b. The hours of the day a resident may access the petty cash fund; and
 2. A resident's written acknowledgment is obtained for a petty cash transaction.

Historical Note

New Section R9-10-403 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-404. Quality Management

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
 - a. A method to identify, document, and evaluate incidents;
 - b. A method to collect data to evaluate services provided to residents;
 - c. A method to evaluate the data collected to identify a concern about the delivery of services related to resident care;
 - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to resident care; and
 - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
 - a. An identification of each concern about the delivery of services related to resident care; and
 - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to resident care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

Historical Note

New Section R9-10-404 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

R9-10-405. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

Historical Note

New Section R9-10-405 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-406. Personnel

A. An administrator shall ensure that:

1. A behavioral health technician is at least 21 years old, and
2. A behavioral health paraprofessional is at least 21 years old.

B. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
 - a. Are based on:
 - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
 - ii. The acuity of the residents receiving physical health services or behavioral health services from the personnel member according to the established job description; and
 - b. Include:
 - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
 - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and

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- iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
 - a. Before the personnel member provides physical health services or behavioral health services, and
 - b. According to policies and procedures; and
3. Sufficient personnel members are present on a nursing care institution's premises with the qualifications, skills, and knowledge necessary to:
 - a. Provide the services in the nursing care institution's scope of services,
 - b. Meet the needs of a resident, and
 - c. Ensure the health and safety of a resident.
- C. Except as provided in R9-10-415, an administrator shall ensure that, if a personnel member provides social services that require a license under A.R.S. Title 32, Chapter 33, Article 5, the personnel member is licensed under A.R.S. Title 32, Chapter 33, Article 5.
- D. An administrator shall ensure that an individual who is a licensed baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision as defined in 4 A.A.C. 6, Article 1.
- E. An administrator shall ensure that a personnel member or an employee or volunteer who has or is expected to have direct interaction with a resident for more than eight hours a week provides evidence of freedom from infectious tuberculosis:
 1. On or before the date the individual begins providing services at or on behalf of the nursing care institution, and
 2. As specified in R9-10-113.
- F. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
 1. The individual's name, date of birth, and contact telephone number;
 2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
 3. Documentation of:
 - a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
 - b. The individual's education and experience applicable to the individual's job duties;
 - c. The individual's compliance with the requirements in A.R.S. § 36-411;
 - d. Orientation and in-service education as required by policies and procedures;
 - e. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
 - f. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
 - g. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-403(C)(1)(e);
 - h. First aid training, if required for the individual according to this Article or policies and procedures;
 - i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (E); and
 - j. If the individual is a nutrition and feeding assistant:
 - i. Completion of the nutrition and feeding assistant training course required in R9-10-116, and
 - ii. A nurse's observations required in R9-10-423(C)(6).
- G. An administrator shall ensure that personnel records are:
 1. Maintained:
 - a. Throughout the individual's period of providing services in or for the nursing care institution, and
 - b. For at least 24 months after the last date the individual provided services in or for the nursing care institution; and
 2. For a personnel member who has not provided physical health services or behavioral health services at or for the nursing care institution during the previous 12 months, provided to the Department within 72 hours after the Department's request.
- H. An administrator shall ensure that:
 1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
 2. A personnel member completes orientation before providing physical health services or behavioral health services;
 3. An individual's orientation is documented, to include:
 - a. The individual's name,
 - b. The date of the orientation, and
 - c. The subject or topics covered in the orientation;
 4. A plan to provide in-service education specific to the duties of a personnel member is developed, documented, and implemented;
 5. A personnel member's in-service education is documented, to include:
 - a. The personnel member's name,
 - b. The date of the training, and
 - c. The subject or topics covered in the training; and
 6. A work schedule of each personnel member is developed and maintained at the nursing care institution for at least 12 months after the date of the work schedule.
- I. An administrator shall designate a qualified individual to provide:
 1. Social services, and
 2. Recreational activities.

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Historical Note

New Section R9-10-406 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-407. Admission

An administrator shall ensure that:

1. A resident is admitted only on a physician's order;
2. The physician's admitting order includes the nursing care institution services required to meet the immediate needs of a resident, such as medication and food services;
3. At the time of a resident's admission, a registered nurse conducts or coordinates an initial assessment on a resident to ensure the resident's immediate needs for nursing care institution services are met;
4. A resident's needs do not exceed the medical services and nursing services available at the nursing care institution as established in the nursing care institution's scope of services;
5. Before or at the time of admission, a resident or the resident's representative:
 - a. Receives a documented agreement with the nursing care institution that includes rates and charges,
 - b. Is informed of third-party coverage for rates and charges,
 - c. Is informed of the nursing care institution's refund policy, and
 - d. Receives written information concerning the nursing care institution's policies and procedures related to a resident's health care directives;
6. Within 30 calendar days before admission or 10 working days after admission, a medical history and physical examination is completed on a resident by:
 - a. A physician, or
 - b. A physician assistant or a registered nurse practitioner designated by the attending physician;
7. Except as specified in subsection (8), a resident provides evidence of freedom from infectious tuberculosis:
 - a. Before or within seven calendar days after the resident's admission, and
 - b. As specified in R9-10-113;
8. A resident who transfers from a nursing care institution to another nursing care institution is not required to be rescreened for tuberculosis or provide another written statement by a physician, physician assistant, or registered nurse practitioner as specified in R9-10-113(1) if:
 - a. Fewer than 12 months have passed since the resident was screened for tuberculosis or since the date of the written statement, and
 - b. The documentation of freedom from infectious tuberculosis required in subsection (7) accompanies the resident at the time of transfer; and
9. Compliance with the requirements in subsection (6) is documented in the resident's medical record.

Historical Note

New Section R9-10-407 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-408. Discharge

A. An administrator shall ensure that:

1. A resident is transferred or discharged if:
 - a. The nursing care institution is not authorized or not able to meet the needs of the resident, or
 - b. The resident's behavior is a threat to the health or safety of the resident or other individuals at the nursing care institution; and
2. Documentation of a resident's transfer or discharge includes:
 - a. The date of the transfer or discharge;
 - b. The reason for the transfer or discharge;
 - c. A 30-day written notice except:
 - i. In an emergency, or
 - ii. If the resident no longer requires nursing care institution services as determined by a physician or the physician's designee;
 - d. A notation by a physician or the physician's designee if the transfer or discharge is due to any of the reasons listed in subsection (A)(1); and
 - e. If applicable, actions taken by a personnel member to protect the resident or other individuals if the resident's behavior is a threat to the health and safety of the resident or other individuals in the nursing care institution.

B. An administrator may transfer or discharge a resident for failure to pay for residency if:

1. The resident or resident's representative receives a 30-day written notice of transfer or discharge, and
2. The 30-day written notice includes an explanation of the resident's right to appeal the transfer or discharge.

C. Except in an emergency, a director of nursing shall ensure that before a resident is discharged:

1. Written follow-up instructions are developed with the resident or the resident's representative that includes:
 - a. Information necessary to meet the resident's need for medical services and nursing services; and

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- b. The state long-term care ombudsman's name, address, and telephone number;
2. A copy of the written follow-up instructions is provided to the resident or the resident's representative; and
3. A discharge summary is developed by a personnel member and authenticated by the resident's attending physician or designee and includes:
 - a. The resident's medical condition at the time of transfer or discharge,
 - b. The resident's medical and psychosocial history,
 - c. The date of the transfer or discharge, and
 - d. The location of the resident after discharge.

Historical Note

New Section R9-10-408 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-409. Transport; Transfer

- A. Except as provided in subsection (B), an administrator shall ensure that:
 1. A personnel member coordinates the transport and the services provided to the resident;
 2. According to policies and procedures:
 - a. An evaluation of the resident is conducted before and after the transport,
 - b. Information from the resident's medical record is provided to a receiving health care institution, and
 - c. A personnel member explains risks and benefits of the transport to the resident or the resident's representative; and
 3. Documentation in the resident's medical record includes:
 - a. Communication with an individual at a receiving health care institution;
 - b. The date and time of the transport;
 - c. The mode of transportation; and
 - d. If applicable, the name of the personnel member accompanying the resident during a transport.
- B. Subsection (A) does not apply to:
 1. Transportation to a location other than a licensed health care institution,
 2. Transportation provided for a resident by the resident or the resident's representative,
 3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative, or
 4. A transport to another licensed health care institution in an emergency.
- C. Except for a transfer of a resident due to an emergency, an administrator shall ensure that:
 1. A personnel member coordinates the transfer and the services provided to the resident;
 2. According to policies and procedures:
 - a. An evaluation of the resident is conducted before the transfer;
 - b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
 - c. A personnel member explains risks and benefits of the transfer to the resident or the resident's representative; and
 3. Documentation in the resident's medical record includes:
 - a. Communication with an individual at a receiving health care institution;
 - b. The date and time of the transfer;
 - c. The mode of transportation; and
 - d. If applicable, the name of the personnel member accompanying the resident during a transfer.

Historical Note

New Section R9-10-409 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-410. Resident Rights

- A. An administrator shall ensure that:
 1. The requirements in subsection (B) and the resident rights in subsection (C) are conspicuously posted on the premises;
 2. At the time of admission, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C); and
 3. Policies and procedures include:
 - a. How and when a resident or the resident's representative is informed of resident rights in subsection (C), and
 - b. Where resident rights are posted as required in subsection (A)(1).
- B. An administrator shall ensure that:
 1. A resident has privacy in:
 - a. Treatment,
 - b. Bathing and toileting,
 - c. Room accommodations, and
 - d. A visit or meeting with another resident or an individual;
 2. A resident is treated with dignity, respect, and consideration;
 3. A resident is not subjected to:
 - a. Abuse;

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- b. Neglect;
 - c. Exploitation;
 - d. Coercion;
 - e. Manipulation;
 - f. Sexual abuse;
 - g. Sexual assault;
 - h. Seclusion;
 - i. Restraint;
 - j. Retaliation for submitting a complaint to the Department or another entity; or
 - k. Misappropriation of personal and private property by a nursing care institution's personnel members, employees, volunteers, or students; and
4. A resident or the resident's representative:
- a. Except in an emergency, either consents to or refuses treatment;
 - b. May refuse or withdraw consent for treatment before treatment is initiated;
 - c. Except in an emergency, is informed of proposed alternatives to psychotropic medication or a surgical procedure and the associated risks and possible complications of the psychotropic medication or surgical procedure;
 - d. Is informed of the following:
 - i. The health care institution's policy on health care directives, and
 - ii. The resident complaint process;
 - e. Consents to photographs of the resident before the resident is photographed, except that the resident may be photographed when admitted to a nursing care institution for identification and administrative purposes;
 - f. May manage the resident's financial affairs;
 - g. May review the nursing care institution's current license survey report and, if applicable, plan of correction in effect;
 - h. Has access to and may communicate with any individual, organization, or agency;
 - i. May participate in a resident group;
 - j. May review the resident's financial records within two working days and medical record within one working day after the resident's or the resident's representative's request;
 - k. May obtain a copy of the resident's financial records and medical record within two working days after the resident's request and in compliance with A.R.S. § 12-2295;
 - l. Except as otherwise permitted by law, consents, in writing, to the release of information in the resident's:
 - i. Medical record, and
 - ii. Financial records;
 - m. May select a pharmacy of choice if the pharmacy complies with policies and procedures and does not pose a risk to the resident;
 - n. Is informed of the method for contacting the resident's attending physician;
 - o. Is informed of the resident's total health condition;
 - p. Is provided with a copy of those sections of the resident's medical record that are required for continuity of care free of charge, according to A.R.S. § 12-2295, if the resident is transferred or discharged;
 - q. Is informed in writing of a change in rates and charges at least 60 calendar days before the effective date of the change; and
 - r. Except in the event of an emergency, is informed orally or in writing before the nursing care institution makes a change in a resident's room or roommate assignment and notification is documented in the resident's medical record.
- C. A resident has the following rights:
- 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
 - 2. To receive treatment that supports and respects the resident's individuality, choices, strengths, and abilities;
 - 3. To choose activities and schedules consistent with the resident's interests that do not interfere with other residents;
 - 4. To participate in social, religious, political, and community activities that do not interfere with other residents;
 - 5. To retain personal possessions including furnishings and clothing as space permits unless use of the personal possession infringes on the rights or health and safety of other residents;
 - 6. To share a room with the resident's spouse if space is available and the spouse consents;
 - 7. To receive a referral to another health care institution if the nursing care institution is not authorized or not able to provide physical health services or behavioral health services needed by the resident;
 - 8. To participate or have the resident's representative participate in the development of, or decisions concerning, treatment;
 - 9. To participate or refuse to participate in research or experimental treatment; and
 - 10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

Historical Note

New Section R9-10-410 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

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R9-10-411. Medical Records

- A.** An administrator shall ensure that:
1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
 2. An entry in a resident's medical record is:
 - a. Recorded only by an individual authorized by policies and procedures to make the entry;
 - b. Dated, legible, and authenticated; and
 - c. Not changed to make the initial entry illegible;
 3. An order is:
 - a. Dated when the order is entered in the resident's medical record and includes the time of the order;
 - b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
 - c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
 4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
 5. A resident's medical record is available to an individual:
 - a. Authorized to access the resident's medical record according to policies and procedures;
 - b. If the individual is not authorized to access the resident's medical record according to policies and procedures, with the written consent of the resident or the resident's representative; or
 - c. As permitted by law; and
 6. A resident's medical record is protected from loss, damage, or unauthorized use.
- B.** If a nursing care institution maintains residents' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
 2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a resident's medical record contains:
1. Resident information that includes:
 - a. The resident's name;
 - b. The resident's date of birth; and
 - c. Any known allergies, including medication allergies;
 2. The admission date and, if applicable, the date of discharge;
 3. The admitting diagnosis or presenting symptoms;
 4. Documentation of general consent and, if applicable, informed consent;
 5. If applicable, the name and contact information of the resident's representative and:
 - a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
 - b. If the resident's representative:
 - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
 - ii. Is a legal guardian, a copy of the court order establishing guardianship;
 6. The medical history and physical examination required in R9-10-407(6);
 7. A copy of the resident's living will or other health care directive, if applicable;
 8. The name and telephone number of the resident's attending physician;
 9. Orders;
 10. Care plans;
 11. Behavioral care plans, if the resident is receiving behavioral care;
 12. Documentation of nursing care institution services provided to the resident;
 13. Progress notes;
 14. If applicable, documentation of any actions taken to control the resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
 15. If applicable, documentation that evacuation from the nursing care institution would cause harm to the resident;
 16. The disposition of the resident after discharge;
 17. The discharge plan;
 18. The discharge summary;
 19. Transfer documentation;
 20. If applicable:
 - a. A laboratory report,
 - b. A radiologic report,
 - c. A diagnostic report, and
 - d. A consultation report;
 21. Documentation of freedom from infectious tuberculosis required in R9-10-407(7);
 22. Documentation of a medication administered to the resident that includes:
 - a. The date and time of administration;
 - b. The name, strength, dosage, and route of administration;
 - c. The type of vaccine, if applicable;

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- d. For a medication administered for pain on a PRN basis:
 - i. An evaluation of the resident's pain before administering the medication, and
 - ii. The effect of the medication administered;
 - e. For a psychotropic medication administered on a PRN basis:
 - i. An evaluation of the resident's symptoms before administering the psychotropic medication, and
 - ii. The effect of the psychotropic medication administered;
 - f. The identification, signature, and professional designation of the individual administering the medication; and
 - g. Any adverse reaction a resident has to the medication;
23. If the resident has been assessed for receiving nutrition and feeding assistance from a nutrition and feeding assistant, documentation of the assessment and the determination of eligibility; and
24. If applicable, a copy of written notices, including follow-up instructions, provided to the resident or the resident's representative.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-411 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-412. Nursing Services

- A.** An administrator shall ensure that:
- 1. Nursing services are provided 24 hours a day in a nursing care institution;
 - 2. A director of nursing is appointed who:
 - a. Is a registered nurse,
 - b. Works full-time at the nursing care institution, and
 - c. Is responsible for the direction of nursing services;
 - 3. The director of nursing or an individual designated by the administrator participates in the quality management program; and
 - 4. If the daily census of the nursing care institution is less than 60, the director of nursing may provide direct care to residents on a regular basis.
- B.** A director of nursing shall ensure that:
- 1. A method is established and documented that identifies the types and numbers of nursing personnel that are necessary to provide nursing services to residents based on the residents' comprehensive assessments, orders for physical health services and behavioral health services, and care plans and the nursing care institution's scope of services;
 - 2. Sufficient nursing personnel, as determined by the method in subsection (B)(1), are on the nursing care institution premises to meet the needs of a resident for nursing services;
 - 3. At least one nurse is present on the nursing care institution's premises and responsible for providing direct care to not more than 64 residents;
 - 4. Documentation of nursing personnel present on the nursing care institution's premises each day is maintained and includes:
 - a. The date,
 - b. The number of residents,
 - c. The name and license or certification title of each nursing personnel member who worked that day, and
 - d. The actual number of hours each nursing personnel member worked that day;
 - 5. The documentation of nursing personnel required in subsection (B)(4) is maintained for at least 12 months after the date of the documentation;
 - 6. As soon as possible but not more than 24 hours after one of the following events occur, a nurse notifies a resident's attending physician and, if applicable, the resident's representative, if the resident:
 - a. Is injured,
 - b. Is involved in an incident that may require medical services, or
 - c. Has a significant change in condition; and
 - 7. An unnecessary drug is not administered to a resident.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-412 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-413. Medical Services

- A.** An administrator shall appoint a medical director.
- B.** A medical director shall ensure that:
- 1. A resident has an attending physician;
 - 2. An attending physician is available 24 hours a day;
 - 3. An attending physician designates a physician who is available when the attending physician is not available;
 - 4. A physical examination is performed on a resident at least once every 12 months after the date of admission by an individual listed in R9-10-407(6);

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5. As required in A.R.S. § 36-406, vaccinations for influenza and pneumonia are available to each resident at least once every 12 months unless:
 - a. The attending physician provides documentation that the vaccination is medically contraindicated;
 - b. The resident or the resident's representative refuses the vaccination or vaccinations and documentation is maintained in the resident's medical record that the resident or the resident's representative has been informed of the risks and benefits of a vaccination refused; or
 - c. The resident or the resident's representative provides documentation that the resident received a pneumonia vaccination within the last five years or the current recommendation from the U.S. Department of Health and Human Services, Center for Disease Control and Prevention; and
6. If the any of the following services are not provided by the nursing care institution and needed by a resident, the resident is assisted in obtaining, at the resident's expense:
 - a. Vision services;
 - b. Hearing services;
 - c. Dental services;
 - d. Clinical laboratory services from a laboratory that holds a certificate of accreditation or certificate of compliance issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
 - e. Psychosocial services;
 - f. Physical therapy;
 - g. Speech therapy;
 - h. Occupational therapy;
 - i. Behavioral health services; and
 - j. Services for an individual who has a developmental disability, as defined in A.R.S. Title 36, Chapter 5.1, Article 1.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-413 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-414. Comprehensive Assessment; Care Plan

- A. A director of nursing shall ensure that:
 1. A comprehensive assessment of a resident:
 - a. Is conducted or coordinated by a registered nurse in collaboration with an interdisciplinary team;
 - b. Is completed for the resident within 14 calendar days after the resident's admission to a nursing care institution;
 - c. Is updated:
 - i. No later than 12 months after the date of the resident's last comprehensive assessment, and
 - ii. When the resident experiences a significant change;
 - d. Includes the following information for the resident:
 - i. Identifying information;
 - ii. An evaluation of the resident's hearing, speech, and vision;
 - iii. An evaluation of the resident's ability to understand and recall information;
 - iv. An evaluation of the resident's mental status;
 - v. Whether the resident's mental status or behaviors:
 - (1) Put the resident at risk for physical illness or injury,
 - (2) Significantly interfere with the resident's care,
 - (3) Significantly interfere with the resident's ability to participate in activities or social interactions,
 - (4) Put other residents or personnel members at significant risk for physical injury,
 - (5) Significantly intrude on another resident's privacy, or
 - (6) Significantly disrupt care for another resident;
 - vi. Preferences for customary routine and activities;
 - vii. An evaluation of the resident's ability to perform activities of daily living;
 - viii. Need for a mobility device;
 - ix. An evaluation of the resident's ability to control the resident's bladder and bowels;
 - x. Any diagnosis that impacts nursing care institution services that the resident may require;
 - xi. Any medical conditions that impact the resident's functional status, quality of life, or need for nursing care institution services;
 - xii. An evaluation of the resident's ability to maintain adequate nutrition and hydration;
 - xiii. An evaluation of the resident's oral and dental status;
 - xiv. An evaluation of the condition of the resident's skin;
 - xv. Identification of any medication or treatment administered to the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;
 - xvi. Identification of any treatment or medication ordered for the resident;

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- xvii. Whether any restraints have been used for the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;
 - xviii. A description of the resident or resident's representative's participation in the comprehensive assessment;
 - xix. The name and title of the interdisciplinary team members who participated in the resident's comprehensive assessment;
 - xx. Potential for rehabilitation; and
 - xxi. Potential for discharge; and
- e. Is signed and dated by:
- i. The registered nurse who conducts or coordinates the comprehensive assessment or review; and
 - ii. If a behavioral health professional is required to review according to subsection (A)(2), the behavioral health professional who reviewed the comprehensive assessment or review;
2. If any of the conditions in (A)(1)(d)(v) are answered in the affirmative during the comprehensive assessment or review, a behavioral health professional reviews a resident's comprehensive assessment or review and care plan to ensure that the resident's needs for behavioral health services are being met;
3. A new comprehensive assessment is not required for a resident who is hospitalized and readmitted to a nursing care institution unless a physician, an individual designated by the physician, or a registered nurse determines the resident has a significant change in condition; and
4. A resident's comprehensive assessment is reviewed by a registered nurse at least once every three months after the date of the current comprehensive assessment and if there is a significant change in the resident's condition.
- B.** An administrator shall ensure that a care plan for a resident:
- 1. Is developed, documented, and implemented for the resident within seven calendar days after completing the resident's comprehensive assessment required in subsection (A)(1);
 - 2. Is reviewed and revised based on any change to the resident's comprehensive assessment; and
 - 3. Ensures that a resident is provided nursing care institution services that:
 - a. Address any medical condition or behavioral health issue identified in the resident's comprehensive assessment, and
 - b. Assist the resident in maintaining the resident's highest practicable well-being according to the resident's comprehensive assessment.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-414 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-415. Behavioral Health Services

Except for behavioral care, if a nursing care institution is authorized to provide behavioral health services, an administrator shall ensure that:

- 1. The behavioral health services are provided:
 - a. Under the direction of a behavioral health professional licensed or certified to provide the type of behavioral health services in the nursing care institution's scope of services, and
 - b. In compliance with the requirements:
 - i. For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115; and
 - ii. For an assessment, in R9-10-1011(B); and
- 2. Except for a psychotropic drug used as a chemical restraint or administered according to an order from a court of competent jurisdiction, informed consent is obtained from a resident or the resident's representative for a psychotropic drug and documented in the resident's medical record before the psychotropic drug is administered to the resident.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-415 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-416. Clinical Laboratory Services

If clinical laboratory services are authorized to be provided on a nursing care institution's premises, an administrator shall ensure that:

- 1. Clinical laboratory services and pathology services are provided through a laboratory that holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
- 2. A copy of the certificate of accreditation, certificate of compliance, or certificate of waiver in subsection (1) is provided to the Department for review upon the Department's request;
- 3. The nursing care institution:
 - a. Is able to provide the clinical laboratory services delineated in the nursing care institution's scope of services when needed by the residents,
 - b. Obtains specimens for the clinical laboratory services delineated in the nursing care institution's scope of services without transporting the residents from the nursing care institution's premises, and

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- c. Has the examination of the specimens performed by a clinical laboratory;
4. Clinical laboratory and pathology test results are:
 - a. Available to the ordering physician:
 - i. Within 24 hours after the test is complete with results if the test is performed at a laboratory on the nursing care institution's premises, or
 - ii. Within 24 hours after the test result is received if the test is performed at a laboratory outside of the nursing care institution's premises; and
 - b. Documented in a resident's medical record;
5. If a test result is obtained that indicates a resident may have an emergency medical condition, as established in policies and procedures, personnel notify:
 - a. The ordering physician,
 - b. A registered nurse in the resident's assigned unit,
 - c. The nursing care institution's administrator, or
 - d. The director of nursing;
6. If a clinical laboratory report is completed on a resident, a copy of the report is included in the resident's medical record;
7. If the nursing care institution provides blood or blood products, policies and procedures are established, documented, and implemented for:
 - a. Procuring, storing, transfusing, and disposing of blood or blood products;
 - b. Blood typing, antibody detection, and blood compatibility testing; and
 - c. Investigating transfusion adverse reactions that specify a process for review through the quality management program; and
8. Expired laboratory supplies are discarded according to policies and procedures

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-416 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-417. Dialysis Services

If dialysis services are authorized to be provided on a nursing care institution's premises, an administrator shall ensure that the dialysis services are provided in compliance with the requirements in R9-10-1018.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-417 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-418. Radiology Services and Diagnostic Imaging Services

If radiology services or diagnostic imaging services are authorized to be provided on a nursing care institution's premises, an administrator shall ensure that:

1. Radiology services and diagnostic imaging services are provided in compliance with A.R.S. Title 30, Chapter 4 and 12 A.A.C. 1;
2. A copy of a certificate documenting compliance with subsection (1) is maintained by the nursing care institution;
3. When needed by a resident, radiology services and diagnostic imaging services delineated in the nursing care institution's scope of services are provided on the nursing care institution's premises;
4. Radiology services and diagnostic imaging services are provided:
 - a. Under the direction of a physician; and
 - b. According to an order that includes:
 - i. The resident's name,
 - ii. The name of the ordering individual,
 - iii. The radiological or diagnostic imaging procedure ordered, and
 - iv. The reason for the procedure;
5. A medical director, attending physician, or radiologist interprets the radiologic or diagnostic image;
6. A radiologic or diagnostic imaging report is prepared that includes:
 - a. The resident's name;
 - b. The date of the procedure;
 - c. A medical director, attending physician, or radiologist's interpretation of the image;
 - d. The type and amount of radiopharmaceutical used, if applicable; and
 - e. The resident's adverse reaction to the radiopharmaceutical, if any; and
7. A radiologic or diagnostic imaging report is included in the resident's medical record.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-418 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

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R9-10-419. Respiratory Care Services

If respiratory care services are provided on a nursing care institution's premises, an administrator shall ensure that:

1. Respiratory care services are provided under the direction of a medical director or attending physician;
2. Respiratory care services are provided according to an order that includes:
 - a. The resident's name;
 - b. The name and signature of the ordering individual;
 - c. The type, frequency, and, if applicable, duration of treatment;
 - d. The type and dosage of medication and diluent; and
 - e. The oxygen concentration or oxygen liter flow and method of administration;
3. Respiratory care services provided to a resident are documented in the resident's medical record and include:
 - a. The date and time of administration;
 - b. The type of respiratory care services provided;
 - c. The effect of the respiratory care services;
 - d. The resident's adverse reaction to the respiratory care services, if any; and
 - e. The authentication of the individual providing the respiratory care services; and
4. Any area or unit that performs blood gases or clinical laboratory tests complies with the requirements in R9-10-416

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-419 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-420. Rehabilitation Services

If rehabilitation services are provided on a nursing care institution's premises, an administrator shall ensure that:

1. Rehabilitation services are provided:
 - a. Under the direction of an individual qualified according to policies and procedures,
 - b. By an individual licensed to provide the rehabilitation services, and
 - c. According to an order; and
2. The medical record of a resident receiving rehabilitation services includes:
 - a. An order for rehabilitation services that includes the name of the ordering individual and a referring diagnosis,
 - b. A documented care plan that is developed in coordination with the ordering individual and the individual providing the rehabilitation services,
 - c. The rehabilitation services provided,
 - d. The resident's response to the rehabilitation services, and
 - e. The authentication of the individual providing the rehabilitation services.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-420 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-421. Medication Services

A. An administrator shall ensure that policies and procedures for medication services:

1. Include:
 - a. A process for providing information to a resident about medication prescribed for the resident including:
 - i. The prescribed medication's anticipated results,
 - ii. The prescribed medication's potential adverse reactions,
 - iii. The prescribed medication's potential side effects, and
 - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
 - b. Procedures for preventing, responding to, and reporting:
 - i. A medication error,
 - ii. An adverse response to a medication, or
 - iii. A medication overdose;
 - c. Procedures to ensure that a pharmacist reviews a resident's medications at least once every three months and provides documentation to the resident's attending physician and the director of nursing indicating potential medication problems such as incompatible or duplicative medications;
 - d. Procedures for documenting medication services; and
 - e. Procedures for assisting a resident in obtaining medication; and
2. Specify a process for review through the quality management program of:
 - a. A medication administration error, and
 - b. An adverse reaction to a medication.

B. An administrator shall ensure that:

1. Policies and procedures for medication administration:

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- a. Are reviewed and approved by the director of nursing;
 - b. Specify the individuals who may:
 - i. Order medication, and
 - ii. Administer medication;
 - c. Ensure that medication is administered to a resident only as prescribed; and
 - d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law;
 3. A medication administered to a resident:
 - a. Is administered in compliance with an order, and
 - b. Is documented in the resident's medical record; and
 4. If a psychotropic medication is administered to a resident, the psychotropic medication:
 - a. Is only administered to a resident for a diagnosed medical condition; and
 - b. Unless clinically contraindicated or otherwise ordered by an attending physician or the attending physician's designee, is gradually reduced in dosage while the resident is simultaneously provided with interventions such as behavior and environment modification in an effort to discontinue the psychotropic medication, unless a dose reduction is attempted and the resident displays behavior justifying the need for the psychotropic medication, and the attending physician documents the necessity for the continued use and dosage.
- C. An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members; and
 2. If pharmaceutical services are provided:
 - a. The pharmaceutical services are provided under the direction of a pharmacist;
 - b. The pharmaceutical services comply with ARS Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
 - c. A copy of the pharmacy license is provided to the Department upon request.
- D. When medication is stored at a nursing care institution, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
 2. Medication is stored according to the instructions on the medication container; and
 3. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident for:
 - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
 - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
 - c. A medication recall and notification of residents who received recalled medication; and
 - d. Storing, inventorying, and dispensing controlled substances.
- E. An administrator shall ensure that a personnel member immediately reports a medication error or a resident's adverse reaction to a medication to the medical practitioner who ordered the medication and the nursing care institution's director of nursing.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-421 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-422. Infection Control

An administrator shall ensure that:

1. An infection control program is established, under the direction of an individual qualified according to policies and procedures, to prevent the development and transmission of infections and communicable diseases including:
 - a. A method to identify and document infections occurring at the nursing care institution;
 - b. Analysis of the types, causes, and spread of infections and communicable diseases at the nursing care institution;
 - c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases at the nursing care institution; and
 - d. Documentation of infection control activities including:
 - i. The collection and analysis of infection control data,
 - ii. The actions taken related to infections and communicable diseases, and
 - iii. Reports of communicable diseases to the governing authority and state and county health departments;
2. Infection control documentation is maintained for at least 12 months after the date of the documentation;
3. Policies and procedures are established, documented, and implemented that cover:
 - a. Handling and disposal of biohazardous medical waste;
 - b. Sterilization, disinfection, and storage of medical equipment and supplies;
 - c. Using personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable;
 - d. Cleaning of an individual's hands when the individual's hands are visibly soiled and before and after providing a service to a resident;
 - e. Training of personnel members, employees, and volunteers in infection control practices; and
 - f. Work restrictions for a personnel member with a communicable disease or infected skin lesion;

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4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
5. Soiled linen and clothing are:
 - a. Collected in a manner to minimize or prevent contamination;
 - b. Bagged at the site of use; and
 - c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas; and
6. A personnel member, an employee, or a volunteer washes hands or uses a hand disinfection product after a resident contact and after handling soiled linen, soiled clothing, or potentially infectious material.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-422 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-423. Food Services

- A. An administrator shall ensure that:
 1. The nursing care institution has a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
 2. A copy of the nursing care institution's food establishment license or permit is maintained;
 3. If a nursing care institution contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the nursing care institution:
 - a. A copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the nursing care institution; and
 - b. The nursing care institution is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
 4. A registered dietitian:
 - a. Reviews a food menu before the food menu is used to ensure that a resident's nutritional needs are being met,
 - b. Documents the review of a food menu, and
 - c. Is available for consultation regarding a resident's nutritional needs; and
 5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to ensure that the nutritional needs of a resident are met.
- B. A registered dietitian or director of food services shall ensure that:
 1. Food is prepared:
 - a. Using methods that conserve nutritional value, flavor, and appearance; and
 - b. In a form to meet the needs of a resident such as cut, chopped, ground, pureed, or thickened;
 2. A food menu:
 - a. Is prepared at least one week in advance,
 - b. Includes the foods to be served on each day,
 - c. Is conspicuously posted at least one day before the first meal on the food menu will be served,
 - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
 - e. Is maintained for at least 60 calendar days after the last day included in the food menu;
 3. Meals and snacks for each day are planned and served using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
 4. A resident is provided:
 - a. A diet that meets the resident's nutritional needs as specified in the resident's comprehensive assessment and care plan;
 - b. Three meals a day with not more than 14 hours between the evening meal and breakfast except as provided in subsection (B)(4)(d);
 - c. The option to have a daily evening snack identified in subsection (B)(4)(d)(ii) or other snack; and
 - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
 - i. A resident group agrees; and
 - ii. The resident is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
 5. A resident is provided with food substitutions of similar nutritional value if:
 - a. The resident refuses to eat the food served, or
 - b. The resident requests a substitution;
 6. Recommendations and preferences are requested from a resident or the resident's representative for meal planning;
 7. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils;
 8. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair;
 9. A resident eats meals in a dining area unless the resident chooses to eat in the resident's room or is confined to the resident's room for medical reasons documented in the resident's medical record; and
 10. Water is available and accessible to residents.
- C. If a nursing care institution has nutrition and feeding assistants, an administrator shall ensure that:
 1. A nutrition and feeding assistant:
 - a. Is at least 16 years of age;

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- b. If applicable, complies with the fingerprint clearance card requirements in A.R.S. § 36-411;
 - c. Completes a nutrition and feeding assistant training course within 12 months before initially providing nutrition and feeding assistance;
 - d. Provides nutrition and feeding assistance where nursing personnel are present;
 - e. Immediately reports an emergency to a nurse or, if a nurse is not present in the common area, to nursing personnel; and
 - f. If the nutrition and feeding assistant observes a change in a resident's physical condition or behavior, reports the change to a nurse or, if a nurse is not present in the common area, to nursing personnel;
2. A resident is not eligible to receive nutrition and feeding assistance from a nutrition and feeding assistant if the resident:
 - a. Has difficulty swallowing,
 - b. Has had recurrent lung aspirations,
 - c. Requires enteral feedings,
 - d. Requires parenteral feedings, or
 - e. Has any other eating or drinking difficulty that may cause the resident's health or safety to be compromised if the resident receives nutrition and feeding assistance from a nutrition and feeding assistant;
 3. Only an eligible resident receives nutrition and feeding assistance from a nutrition and feeding assistant;
 4. A nurse determines if a resident is eligible to receive nutrition and feeding assistance from a nutrition and feeding assistant, based on:
 - a. The resident's comprehensive assessment,
 - b. The resident's care plan, and
 - c. An assessment conducted by the nurse when making the determination;
 5. A method is implemented that identifies eligible residents that ensures only eligible residents receive nutrition and feeding assistance from a nutrition and feeding assistant;
 6. When a nutrition and feeding assistant initially provides nutrition and feeding assistance and at least once every three months, a nurse observes the nutrition and feeding assistant while the nutrition and feeding assistant is providing nutrition and feeding assistance to ensure that the nutrition and feeding assistant is providing nutrition and feeding assistance appropriately;
 7. A nurse documents the nurse's observations required in subsection (C)(6); and
 8. A nutrition and feeding assistant is provided additional training:
 - a. According to policies and procedures, and
 - b. If a nurse identifies a need for additional training based on the nurse's observation in subsection (C)(6).

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-423 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-424. Emergency and Safety Standards

- A. An administrator shall ensure that:
 1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
 - a. When, how, and where residents will be relocated, including:
 - i. Instructions for the evacuation or transfer of residents,
 - ii. Assigned responsibilities for each employee and personnel member, and
 - iii. A plan for continuing to provide services to meet a resident's needs;
 - b. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
 - c. A plan for back-up power and water supply;
 - d. A plan to ensure a resident's medications will be available to administer to the resident during a disaster;
 - e. A plan to ensure a resident is provided nursing services and other services required by the resident during a disaster; and
 - f. A plan for obtaining food and water for individuals present in the nursing care institution or the nursing care institution's relocation site during a disaster;
 2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
 3. Documentation of a disaster plan review required in subsection (A)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
 - a. The date and time of the disaster plan review;
 - b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
 - c. A critique of the disaster plan review; and
 - d. If applicable, recommendations for improvement;
 4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
 5. An evacuation drill for employees and residents:
 - a. Is conducted at least once every six months; and
 - b. Includes all individuals on the premises except for:
 - i. A resident whose medical record contains documentation that evacuation from the nursing care institution would cause harm to the resident, and

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- ii. Sufficient personnel members to ensure the health and safety of residents not evacuated according to subsection (A)(5)(b)(i);
 6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the drill, and includes:
 - a. The date and time of the evacuation drill;
 - b. The amount of time taken for employees and residents to evacuate to a designated area;
 - c. If applicable:
 - i. An identification of residents needing assistance for evacuation, and
 - ii. An identification of residents who were not evacuated;
 - d. Any problems encountered in conducting the evacuation drill; and
 - e. Recommendations for improvement, if applicable; and
 7. An evacuation path is conspicuously posted on each hallway of each floor of the nursing care institution.
- B.** An administrator shall ensure that, if applicable, a sign is placed at the entrance to a room or area indicating that oxygen is in use.
- C.** An administrator shall:
1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
 2. Make any repairs or corrections stated on the fire inspection report, and
 3. Maintain documentation of a current fire inspection.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-424 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-425. Environmental Standards

- A.** An administrator shall ensure that:
1. A nursing care institution's premises and equipment are:
 - a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness and infection; and
 - b. Free from a condition or situation that may cause a resident or an individual to suffer physical injury;
 2. A pest control program is implemented and documented;
 3. Equipment used to provide direct care is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
 4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
 5. Garbage and refuse are:
 - a. In areas used for food storage, food preparation, or food service, stored in a covered container lined with a plastic bag;
 - b. In areas not used for food storage, food preparation, or food service, stored:
 - i. According to the requirements in subsection (5)(a), or
 - ii. In a paper-lined or plastic-lined container that is cleaned and sanitized as often as necessary to ensure that the container is clean; and
 - c. Removed from the premises at least once a week;
 6. Heating and cooling systems maintain the nursing care institution at a temperature between 70° F and 84° F;
 7. Common areas:
 - a. Are lighted to assure the safety of residents, and
 - b. Have lighting sufficient to allow personnel members to monitor resident activity;
 8. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
 9. Linens are clean before use, without holes and stains, and not in need of repair;
 10. Oxygen containers are secured in an upright position;
 11. Poisonous or toxic materials stored by the nursing care institution are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
 12. Combustible or flammable liquids stored by the nursing care institution are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
 13. If pets or animals are allowed in the nursing care institution, pets or animals are:
 - a. Controlled to prevent endangering the residents and to maintain sanitation;
 - b. Licensed consistent with local ordinances; and
 - c. For a dog or cat, vaccinated against rabies;
 14. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
 - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
 - b. If necessary, corrective action is taken to ensure the water is safe to drink; and

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- c. Documentation of testing is retained for at least 12 months after the date of the test; and
 15. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to all applicable state laws and rules.
- B.** An administrator shall ensure that:
1. Smoking tobacco products is not permitted within a nursing care institution, and
 2. Smoking tobacco products may be permitted outside a nursing care institution if:
 - a. Signs designating smoking areas are conspicuously posted, and
 - b. Smoking is prohibited in areas where combustible materials are stored or in use.
- C.** If a swimming pool is located on the premises, an administrator shall ensure that:
1. At least one personnel member with cardiopulmonary resuscitation training that meets the requirements in R9-10-403(C)(1)(e) is present in the pool area when a resident is in the pool area, and
 2. At least two personnel members are present in the pool area when two or more residents are in the pool area.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-425 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-426. Physical Plant Standards

- A.** An administrator shall ensure that:
1. A nursing care institution complies with:
 - a. The applicable physical plant health and safety codes and standards, incorporated by reference in A.A.C. R9-1-412, that were in effect on the date the nursing care institution submitted architectural plans and specifications to the Department for approval according to R9-10-104; and
 - b. The requirements for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in A.A.C. R9-1-412;
 2. The premises and equipment are sufficient to accommodate:
 - a. The services stated in the nursing care institution's scope of services, and
 - b. An individual accepted as a resident by the nursing care institution;
 3. A nursing care institution is ventilated by windows or mechanical ventilation, or a combination of both;
 4. The corridors are equipped with handrails on each side that are firmly attached to the walls and are not in need of repair;
 5. No more than two individuals reside in a resident room unless:
 - a. The nursing care institution was operating before October 31, 1982; and
 - b. The resident room has not undergone a modification as defined in A.R.S. § 36-401;
 6. A resident has a separate bed, a nurse call system, and furniture to meet the resident's needs in a resident room or suite of rooms;
 7. A resident room has:
 - a. A window to the outside with window coverings for controlling light and visual privacy, and the location of the window permits a resident to see outside from a sitting position;
 - b. A closet with clothing racks and shelves accessible to the resident; and
 - c. If the resident room contains more than one bed, a curtain or similar type of separation between the beds for privacy; and
 8. A resident room or a suite of rooms:
 - a. Is accessible without passing through another resident's room; and
 - b. Does not open into any area where food is prepared, served, or stored.
- B.** If a swimming pool is located on the premises, an administrator shall ensure that:
1. The swimming pool is enclosed by a wall or fence that:
 - a. Is at least five feet in height as measured on the exterior of the wall or fence;
 - b. Has no vertical openings greater than four inches across;
 - c. Has no horizontal openings, except as described in subsection (B)(1)(e);
 - d. Is not chain-link;
 - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
 - f. Has a self-closing, self-latching gate that:
 - i. Opens away from the swimming pool,
 - ii. Has a latch located at least 54 inches from the ground, and
 - iii. Is locked when the swimming pool is not in use; and
 2. A life preserver or shepherd's crook is available and accessible in the pool area.
- C.** An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (B)(1) is covered and locked when not in use.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-426 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

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R9-10-427. Quality Rating

- A.** As required in A.R.S. § 36-425.02(A), the Department shall issue a quality rating to each licensed nursing care institution based on the results of a compliance survey.
- B.** The following quality ratings are established:
1. A quality rating of "A" for excellent is issued if the nursing care institution achieves a score of 90 to 100 points,
 2. A quality rating of "B" is issued if the nursing care institution achieves a score of 80 to 89 points,
 3. A quality rating of "C" is issued if the nursing care institution achieves a score of 70 to 79 points, and
 4. A quality rating of "D" is issued if the nursing care institution achieves a score of 69 or fewer points.
- C.** The quality rating is determined by the total number of points awarded based on the following criteria:
1. Nursing Services:
 - a. 15 points: The nursing care institution is implementing a system that ensures residents are provided nursing services to maintain the resident's highest practicable physical, mental, and psychosocial well-being according to the resident's comprehensive assessment and care plan.
 - b. 5 points: The nursing care institution ensures that each resident is free from medication errors that resulted in actual harm.
 - c. 5 points: The nursing care institution ensures the resident's representative is notified and the resident's attending physician is consulted if a resident has a significant change in condition or if the resident is in an incident that requires medical services.
 2. Resident Rights:
 - a. 10 points: The nursing care institution is implementing a system that ensures a resident's privacy needs are met.
 - b. 10 points: The nursing care institution ensures that a resident is free from physical and chemical restraints for purposes other than to treat the resident's medical condition.
 - c. 5 points: The nursing care institution ensures that a resident or the resident's representative is allowed to participate in the planning of, or decisions concerning treatment including the right to refuse treatment and to formulate a health care directive.
 3. Administration:
 - a. 10 points: The nursing care institution has no repeat deficiencies that resulted in actual harm or immediate jeopardy to residents that were cited during the last survey or other survey or complaint investigation conducted between the last survey and the current survey.
 - b. 5 points: The nursing care institution is implementing a system to prevent abuse of a resident and misappropriation of resident property, investigate each allegation of abuse of a resident and misappropriation of resident's property, and report each allegation of abuse of a resident and misappropriation of resident's property to the Department and as required by A.R.S. § 46-454.
 - c. 5 points: The nursing care institution is implementing a quality management program that addresses nursing care institution services provided to residents, resident complaints, and resident concerns, and documents actions taken for response, resolution, or correction of issues about nursing care institution services provided to residents, resident complaints, and resident concerns.
 - d. 1 point: The nursing care institution is implementing a system to provide social services and a program of ongoing recreational activities to meet the resident's needs based on the resident's comprehensive assessment.
 - e. 1 point: The nursing care institution is implementing a system to ensure that records documenting freedom from infectious pulmonary tuberculosis are maintained for each personnel member, volunteer, and resident.
 - f. 2 points: The nursing care institution is implementing a system to ensure that a resident is free from unnecessary drugs.
 - g. 1 point: The nursing care institution is implementing a system to ensure a personnel member attends in-service education according to policies and procedures.
 4. Environment and Infection Control:
 - a. 5 points: The nursing care institution environment is free from a condition or situation within the nursing care institution's control that may cause a resident injury.
 - b. 1 point: The nursing care institution establishes and maintains a pest control program.
 - c. 1 point: The nursing care institution develops a written disaster plan that includes procedures for protecting the health and safety of residents.
 - d. 1 point: The nursing care institution ensures orientation to the disaster plan for each personnel member is completed within the first scheduled week of employment.
 - e. 1 point: The nursing care institution maintains a clean and sanitary environment.
 - f. 5 points: The nursing care institution is implementing a system to prevent and control infection.
 - g. 1 point: An employee cleans the employee's hands after each direct resident contact or when hand cleaning is indicated to prevent the spread of infection.
 5. Food Services:
 - a. 1 point: The nursing care institution complies with 9 A.A.C. 8, Article 1, for food preparation, storage and handling as evidenced by a current food establishment license.
 - b. 3 points: The nursing care institution provides each resident with food that meets the resident's needs as specified in the resident's comprehensive assessment and care plan.
 - c. 2 points: The nursing care institution obtains input from each resident or the resident's representative and implements recommendations for meal planning and food choices consistent with the resident's dietary needs.

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- d. 2 points: The nursing care institution provides assistance to a resident who needs help in eating so that the resident's nutritional, physical, and social needs are met.
 - e. 1 point: The nursing care institution prepares menus at least one week in advance, conspicuously posts each menu, and adheres to each planned menu unless an uncontrollable situation such as food spoilage or non-delivery of a specified food requires substitution.
 - f. 1 point: The nursing care institution provides food substitution of similar nutritive value for residents who refuse the food served or who request a substitution.
- D.** A nursing care institution's quality rating remains in effect until a survey is conducted by the Department for the next renewal period except as provided in subsection (E).
- E.** If the Department issues a provisional license, the current quality rating is terminated. A provisional licensee may submit an application for a substantial compliance survey. If the Department determines that, as a result of a substantial compliance survey, the nursing care institution is in substantial compliance, the Department shall issue a new quality rating according to subsection (C).
- F.** The issuance of a quality rating does not preclude the Department from seeking a civil penalty as provided in A.R.S. § 36-431.01, or suspension or revocation of a license as provided in A.R.S. § 36-427.

Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-427 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants.

The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definition

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum,

hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for

abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any

recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for the selection of health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees, and fees for architectural plans and specifications reviews.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

36-411. Residential care institutions; nursing care institutions; home health agencies; fingerprinting requirements; exemptions; definitions

A. Except as provided in subsections F, G, H and I of this section, as a condition of licensure or continued licensure of a residential care institution, a nursing care institution or a home health agency and as a condition of employment in a residential care institution, a nursing care institution or a home health agency, employees and owners of residential care institutions, nursing care institutions or home health agencies or contracted persons or volunteers who provide medical services, nursing services, behavioral health services, health-related services, home health services or supportive services and who have not been subject to the fingerprinting requirements of a health professional's regulatory board pursuant to title 32 shall have valid fingerprint clearance cards that are issued pursuant to title 41, chapter 12, article 3.1 or shall apply for a fingerprint clearance card within twenty working days of employment or beginning volunteer work.

B. A health professional who has complied with the fingerprinting requirements of the health professional's regulatory board as a condition of licensure or certification pursuant to title 32 is not required to submit an additional set of fingerprints to the department of public safety pursuant to this section.

C. Owners shall make documented, good faith efforts to:

1. Contact previous employers to obtain information or recommendations that may be relevant to a person's fitness to work in a residential care institution, nursing care institution or home health agency.
2. Verify the current status of a person's fingerprint clearance card.

D. An employee, an owner, a contracted person or a volunteer or a facility on behalf of the employee, the owner, the contracted person or the volunteer shall submit a completed application that is provided by the department of public safety within twenty days after the date the person begins work or volunteer service.

E. Except as provided in subsection F of this section, a residential care institution, nursing care institution or home health agency shall not allow an employee to continue employment or a contracted person to continue to provide medical services, nursing services, behavioral health services, health-related services, home health services or supportive services if the person has been denied a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1 or has been denied approval pursuant to this section before May 7, 2001.

F. An employee or contractor who is eligible pursuant to section 41-1758.07, subsection C to petition the board of fingerprinting for a good cause exception and who provides documentation of having applied for a good cause exception pursuant to section 41-619.55 but who has not yet received a decision is exempt from the fingerprinting requirements of this section if the person provides services to residents or patients while under the direct visual supervision of an owner or employee who has a valid fingerprint clearance card.

G. A residential care institution, nursing care institution or home health agency shall require that an owner or employee who has a valid fingerprint clearance card provide direct visual supervision of a volunteer who provides services to residents or patients unless the volunteer has a valid fingerprint clearance card.

H. Notwithstanding the requirements of section 41-1758.02, subsection B, an employee of a residential care institution, home health agency or nursing care institution, after meeting the fingerprinting and criminal records check requirements of this section, is not required to meet the fingerprint and criminal records check requirements of this section again if that person remains employed by the same employer or changes employment within two years after satisfying the requirements of this section. For the purposes of this subsection, if the employer changes through sale, lease or operation of law, a person is deemed to be employed by the same employer if that person remains employed by the new employer.

I. Notwithstanding the requirements of section 41-1758.02, subsection B, a person who has received approval pursuant to this section before May 7, 2001 and who remains employed by the same employer is not required to apply for a fingerprint clearance card.

J. If a person's employment record contains a six-month or longer time frame during which the person was not employed by any employer, a completed application with a new set of fingerprints shall be submitted to the department of public safety.

K. For the purposes of this section:

1. "Direct visual supervision" means continuous visual oversight of the supervised person that does not require the supervisor to be in a superior organizational role to the person being supervised.

2. "Home health services" has the same meaning prescribed in section 36-151.

3. "Supportive services" has the same meaning prescribed in section 36-151.

36-412. Nursing care institutions; employment

The department shall not adopt any rule that prohibits an administrator of a nursing care institution from employing a person who is sixteen years of age or older, who provides direct care to residents and who otherwise meets the requirements of section 32-1645.

36-413. Nutrition and feeding assistants; training programs; regulation; civil penalty; definition

A. The department may adopt rules to prescribe minimum standards for training programs for nutrition and feeding assistants in licensed skilled nursing facilities, including instructor qualifications, and may grant, deny, suspend and revoke approval of any training program that violates these standards. These standards must include:

1. Screening requirements.
2. Initial qualifications.
3. Continuing education requirements.
4. Testing requirements to assure competency.
5. Supervision requirements.
6. Requirements for additional training based on patient needs.
7. Maintenance of records.
8. Special feeding requirements based on level of care.

B. Pursuant to section 36-431.01, the department may impose a civil penalty on a training program that violates standards adopted by the department.

C. If the department adopts standards for training programs pursuant to subsection A of this section, the department, as part of its routine inspection of a health care facility that provides a training program, shall determine the facility's compliance with these standards.

D. For the purposes of this section, "nutrition and feeding assistant" has the same meaning as paid feeding assistant as defined in 42 Code of Federal Regulations part 483 and section 488.301.

36-425. Inspections; issuance of license; posting requirements; provisional license; denial of license

A. On receipt of a properly completed application for a health care institution license, the director shall conduct an inspection of the health care institution as prescribed by this chapter. If an application for a license is submitted due to a planned change of ownership, the director shall determine the need for an inspection of the health care institution. Based on the results of the inspection and after the submission of the applicable licensing fee, the director shall either deny the license or issue a regular or provisional license. A license issued by the department shall be posted in a conspicuous location in the reception area of that institution.

B. The director shall issue a license if the director determines that an applicant and the health care institution for which the license is sought substantially comply with the requirements of this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the director to eliminate any deficiencies. The director shall not require a health care institution that was designated as a critical access hospital to make any modifications required by this chapter or rules adopted pursuant to this chapter in order to obtain an amended license with the same licensed capacity the health care institution had before it was designated as a critical access hospital if all of the following are true:

1. The health care institution has subsequently terminated its critical access hospital designation.
2. The licensed capacity of the health care institution does not exceed its licensed capacity before its designation as a critical access hospital.
3. The health care institution remains in compliance with the applicable codes and standards that were in effect at the time the facility was originally licensed with the higher licensed capacity.

C. A health care institution license does not expire and remains valid unless:

1. The department subsequently revokes or suspends the license.
2. The license is considered void because the licensee did not pay the licensing fee before the licensing fee due date.

D. Except as provided in section 36-424, subsection B and subsection E of this section, the department shall conduct a compliance inspection of a health care

institution to determine compliance with this chapter and rules adopted pursuant to this chapter at least once annually.

E. If the department determines a facility to be deficiency free on a compliance survey, the department shall not conduct a compliance survey of that facility for twenty-four months after the date of the deficiency free survey. This subsection does not prohibit the department from enforcing licensing requirements as authorized by section 36-424.

F. A hospital licensed as a rural general hospital may provide intensive care services.

G. The director shall issue a provisional license for a period of not more than one year if an inspection or investigation of a currently licensed health care institution or a health care institution for which an applicant is seeking a license reveals that the institution is not in substantial compliance with department licensure requirements and the director believes that the immediate interests of the patients and the general public are best served if the institution is given an opportunity to correct deficiencies. The applicant or licensee shall agree to carry out a plan to eliminate deficiencies that is acceptable to the director. The director shall not issue consecutive provisional licenses to a single health care institution. The director shall not issue a license to the current licensee or a successor applicant before the expiration of the provisional license unless the health care institution submits an application for a substantial compliance survey and is found to be in substantial compliance. The director may issue a license only if the director determines that the institution is in substantial compliance with the licensure requirements of the department and this chapter. This subsection does not prevent the director from taking action to protect the safety of patients pursuant to section 36-427.

H. Subject to the confidentiality requirements of articles 4 and 5 of this chapter, title 12, chapter 13, article 7.1 and section 12-2235, the licensee shall keep current department inspection reports at the health care institution. Unless federal law requires otherwise, the licensee shall post in a conspicuous location a notice that identifies the location at that institution where the inspection reports are available for review.

I. A health care institution shall immediately notify the department in writing when there is a change of the chief administrative officer specified in section 36-422, subsection A, paragraph 1, subdivision (g).

J. When the department issues an original license or an original provisional license to a health care institution, it shall notify the owners and lessees of any agricultural land within one-fourth mile of the health care institution. The health care institution shall

provide the department with the names and addresses of owners or lessees of agricultural land within one-fourth mile of the proposed health care institution.

K. In addition to the grounds for denial of licensure prescribed pursuant to subsection A of this section, the director may deny a license because an applicant or anyone in a business relationship with the applicant, including stockholders and controlling persons, has had a license to operate a health care institution denied, revoked or suspended or a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title denied, revoked or suspended or has a licensing history of recent serious violations occurring in this state or in another state that posed a direct risk to the life, health or safety of patients or residents.

L. In addition to the requirements of this chapter, the director may prescribe by rule other licensure requirements.

36-425.02. Nursing care institutions; quality rating; issuance of license

A. The department shall issue to each licensed nursing care institution a quality rating based on the results of a licensure survey.

B. The director may determine the period of time for which a license issued to a nursing care institution is valid according to the quality rating category to which the institution is assigned, except that no license shall be valid for more than three years from the date of issuance.

36-446.01. Licensure or certification requirements

A. A nursing care institution shall not operate in this state except under the supervision of an administrator licensed pursuant to this article.

B. An assisted living facility shall not operate in this state except under the supervision of a manager certified pursuant to this article.

C. It is unlawful for any person who does not have a license or certificate, or whose license or certificate has lapsed or has been suspended or revoked, to practice or offer to practice skilled nursing facility administration or assisted living facility management or use any title, sign, card or device indicating that such person is an administrator or manager.

G-10

DEPARTMENT OF HEALTH SERVICES (F-18-0305)
Title 9, Chapter 10, Article 11, Adult Day Health Care Facilities



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: March 6, 2018

AGENDA ITEM: G-10

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

FROM: Council Staff

DATE : February 20, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0305)
Title 9, Chapter 10, Article 11, Adult Day Health Care Facilities

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Department of Health Services (Department) covers 17 rules in A.A.C. Title 9, Chapter 10, Article 11, related to adult day health care facilities. Per A.R.S. § 36-401(A)(4), an adult health care facility is a “facility that provides adult day health services during a portion of a continuous 24-hour period for compensation on a regular basis for five or more adults who are not related to the proprietor.”

The rules in Article 11 establish standards relating to the operation of an adult day health care facility including administration, personnel, participant rights, enrollment, discharge, care plans, participant records, and the physical plant and environmental and safety standards. The rules were last amended via exempt rulemaking in 2014.

Proposed Action

No action is proposed on the rules, as the Department believes that the rules are effective, consistent with state and federal statutes and rules, and clear, concise, and understandable.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to A.R.S. §§ 36-132(A)(1) and 36-136(G). Of particular significance is 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.”

As for specific authority, the Department cites to A.R.S. §§ 36-405 and 36-406. According to A.R.S. § 36-405(A), the director of the Department shall adopt rules to establish minimum standards and requirements for licensure of health care institutions necessary to ensure the public, health, safety, and welfare.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

Currently, there are 22 adult day health care facilities, with a total capacity of 1198 individuals who can receive adult day health services or residential services at any one time. In FY 2017, the Department issued two new licenses. Also, in the last fiscal year, there were five complaints, two complaint investigations were conducted, and zero enforcement actions were taken against any facility.

Key stakeholders include the Department, facility owners, physicians and other health care providers, facility participants, and the public.

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

Yes. The Department indicates that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes. The Department received one written comment on the rules over the last five years. The criticism originated from one of the Department’s surveyors. Department’s staff noted that R9-10-1108(2) should be amended so that an administrator needs to only ensure that a participant’s care plan has a signature, as opposed to “input” from, the participant or participant’s representative, the registered nurse who performs the assessment, and personnel who provides service for the participant. The Department did not issue a formal response, as this comment was made by Department’s staff.

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, are consistent with other rules and statutes, and are clear, concise, and understandable.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that the rules are enforced as written.

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

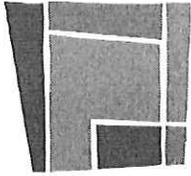
No. The Department indicates that no federal laws relate to the rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes. The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405.

9. **Conclusion**

The Department does not propose any action on the rules. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

December 29, 2017

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

RE: Report for A.A.C. Title 9, Chapter 10, Article 11, Adult Day Health Care Facilities

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for 9 A.A.C. 10, Article 11 is due to the Council no later than December 29, 2017. The Arizona Department of Health Services (Department) has reviewed 9 A.A.C. 10, Article 11 and is enclosing a report to the Council for this rule.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific authority, and written criticisms of the rules are included in the package. As described in the report, the Department does not plan to amend the rules in 9 A.A.C. 10, Article 11. The Department certifies that it is in compliance with A.R.S. § 41-1091. If you need any further information, please contact me at (602) 542-1020.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a white rectangular area.

Robert Lane
Director's Designee

RL:rms
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 11. ADULT DAY HEALTH CARE FACILITIES

DECEMBER 2017

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 11. ADULT DAY HEALTH CARE FACILITIES
DECEMBER 2017

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FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (“A.R.S.”) § 36-405(A) requires the Director of the Arizona Department of Health Services (“Department”) to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to ensure the public health, safety, and welfare. It further requires that the standards and requirements shall relate to the construction, equipment, sanitation, staffing, and recordkeeping pertaining to the administration of medical, nursing, and personal care services according to generally accepted practices of health care. A.R.S. § 36-405(B)(1) allows the Director to classify and sub-classify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care, and standard of patient care required for the purposes of licensure.

Pursuant to Arizona Administrative Code (“A.A.C.”) R9-10-102(16), one class of health care institution is an “[a]dult day health care facility.” As defined in A.R.S. § 36-401(A)(4), an adult day health care facility is a “facility that provides adult day health services during a portion of a continuous twenty-four-hour period for compensation on a regular basis for five or more adults who are not related to the proprietor.”

Rules governing adult day health care facilities are contained in 9 A.A.C. 10, Article 11. The rules provide standards relating to the operation of an adult day health care facility including requirements for administration, personnel, staffing, participant rights, participants' council, enrollment, discharge, adult day health services, care plans, participant records, and the physical plant and environmental and safety standards.

After analyzing the rules encompassed under 9 A.A.C. 10, Article 11, the Department has determined that the rules are effective; consistent with state and federal statutes and rules; enforced; as well as clear, concise, and understandable. The Department has received one written criticism of the rules in the past five years.

INFORMATION THAT IS IDENTICAL FOR ALL RULES

1. Authorization of the rule by existing statute

The general statutory authority for the rules in 9 A.A.C. 10, Article 11 is located in A.R.S. §§ 36-132(A)(1) and 36-136(G).

The specific statutory authority for the rules in 9 A.A.C. 10, Article 11 is located in A.R.S. §§ 36-405 and 36-406.

2. The purpose of the rule

The purpose of the rules in 9 A.A.C. 10, Article 11 is to establish administrative, personnel, staffing, participant rights, participant council, enrollment, discharge, adult day health services, care plans, participant records, and physical plant and environmental and safety standards.

3. Analysis of effectiveness in achieving the objective

The rules in 9 A.A.C. 10, Article 11 are effective in achieving their respective objectives.

4. Analysis of consistency with state and federal statutes and rules

The rules in 9 A.A.C. 10, Article 11 are consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rules in 9 A.A.C. 10, Article 11 are enforced as written by the Department.

6. Analysis of clarity, conciseness, and understandability

The rules are clear, concise and understandable.

7. Summary of the written criticisms of the rule received within the last five years

The Department received one written criticism of the rules in the past five years. The self-reported criticism originated from one of the Department's surveyors. According to the surveyor, A.A.C. R9-10-1108(2) should be modified so that an administrator need only ensure that a participant's care plan has a signature, as opposed to input from, the participant or participant's represent, the registered nurse who performed the comprehensive assessment, and personnel who have provided service for the participant. Given that the written criticism originated as an internal staff comment, the Department did not issue a formal written response.

8. Economic, small business, and consumer impact comparison

Presently, there are 22 adult day health care facilities with a total licensed capacity of 1198. Assisted living facilities may provide adult day health services (with prior approval by the Department); however, the number of individuals present in the facility at any one time receiving either adult day health services or residential services may not exceed the assisted living facility's licensed capacity and the Department does not know how many individuals are receiving adult day health services as a result.

The Department issued two initial licenses last fiscal year. 22 adult day health care facility licenses were renewed. In the last fiscal year, there were five complaints, two complaint investigations conducted, and zero enforcement actions taken against adult day health care facilities.

The rules governing adult day health care facilities in 9 A.A.C. 10, Article 11 were enacted through an exempt rulemaking in October 2013 at 19 A.A.R. 2015 and renumbered/amended by exempt rulemaking at 20 A.A.R. 1409, effective July 1, 2014 (collectively, the “2013 rulemaking”). In the course of the 2013 rulemaking, former rules governing adult day health care facilities contained in 9 A.A.C. 10, Article 5 were repealed and replaced in substantial part with the new rules. Stakeholders for these rulemakings included the Department, facility owners, physicians and other health care providers, facility participants, and the general public. Annual cost/revenue changes are designated as minimal when more than \$0 and \$5,000 or less, moderate when between \$5,000 and \$30,000, and substantial when \$30,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. Due to the substantial overlap between the former and new rules, each affected subject area shall be taken in turn below:

a. Administration

Through the 2013 rulemaking, the Department added new rules requiring that a facility's governing authority establish, in writing, the adult day health care facility's scope of services and appoint an “acting administrator” in the event the administrator is either expected not to be present or actually not present on the adult day health care facility's premises for more than 30 days. *See* A.A.C. R9-10-1103(A)(3), -1103(A)(2)(a). Whereas the previous rules simply required that an administrator be “responsible” for certain administrative tasks (i.e. personnel, training, orientation, recordkeeping, etc.), the new rules delegate responsibility to an administrator to ensure that policies and procedures are “established, documented, and implemented” covering a substantially similar set of administrative duties. Facility administrators are also now required to establish policies covering cardiopulmonary resuscitation and first aid training, personnel complaints relating to services provided to participants, and patient safety reporting and non-retaliation. The Department estimates that these changes had a minimal cost on facilities.

b. Quality Management

Under the new rules, A.A.C. R9-10-1104 now requires that the facility's administrator ensure that a quality management plan is established, documented, and implemented for ongoing quality

management. The rule enumerates a number of minimal requirements that a facility must adhere to and requires that the administrator prepare and submit a documented report to the governing authority that includes identification of each concern about the delivery of services related to participant care and any changes undertaken by the facility in response to said concern. The Department estimates that these new requirements imposed a minimal cost on facilities while providing a benefit to participants.

c. Contracted Services

A.A.C. R9-10-1105, a new rule requiring documentation for a facility's contracted services, was added through the 2013 rulemaking. The Department estimates that the new documentation requirements imposed a minimal cost on operating adult day health care facilities while providing a benefit to the general public through greater operations transparency.

d. Personnel

Rules covering personnel, previously codified under A.A.C. R9-10-503, were repealed and replaced by A.A.C. R9-10-1106 during the 2013 rulemaking. In general, the new rules did away with specific requirements (e.g. hourly training quotas, descriptions of subject matter required to be covered in training and orientation) for personnel, instead providing administrators with discretion to craft policies and procedures covering orientation, in-service training, patient rights, personnel qualifications, and job duties. *See* A.A.C. R9-10-1103(C), -1106(A).

In terms of specific changes, the requirement that all personnel submit evidence of freedom from pulmonary tuberculosis was narrowed to only apply to personnel expected to have direct interaction with a participant for more than eight hours a week. *See* A.A.C. R9-10-1106.

With respect to personnel records, the new rules added a requirement that a personnel member, employee, volunteer, or student's personnel record include documentation of cardiopulmonary resuscitation training and first aid training. *See* A.A.C. R9-10-1106(C)(1)(v). A 24-month retention schedule for personnel records was also added. *See* A.A.C. R9-10-1106(C)(2). The Department estimates that the changes imposed a minimal cost on facilities and produced a benefit for participants and the general public by enhancing participant safety.

e. Staffing

Rules covering staffing requirements, previously codified under A.A.C. R9-10-504, were repealed and replaced through the 2013 rulemaking. The new rules substantially mirror the prior rules with the exception that prior rule A.A.C. R9-10-504(E), prohibiting an adult day health care facility operated by a nursing care institution from sharing staff with the nursing care institution during the course of the day, was repealed without replacement. The Department estimates that the changes imposed a minimal cost on facilities.

f. Enrollment

Prior rule A.A.C. R9-10-507, governing patient enrollment, was repealed and replaced through the 2013 rulemaking. Whereas the old rule required emergency contact and advance directive

information to be provided as part of a comprehensive written assessment due within 60 days of a participant's enrollment, the new rules now require that such information be provided at the time of enrollment. The Department estimates that this change had a minimal economic effect on facilities and provided a substantial benefit to participants by reducing liability in the case of an emergency shortly after enrollment.

g. Care Plan

Under the new rules, a facility's administrator holds ultimate responsibility for the development, review, and updating of a participant's care plan. *See* A.A.C. R9-10-1108. Whereas the former rule delegated such responsibilities to an interdisciplinary team comprised of the patient or patient's representative, representatives of staff, and service providers, the new rule only provides that the administrator receive input from the patient or patient's representative, the registered nurse who performed the comprehensive assessment, and personnel who have provided services to the participant. *See* A.A.C. R9-10-1108(2). The remainder of the rule was left intact and it is estimated that the change had a minimal economic cost on facilities by changing the procedures for creating participant care plans.

h. Discharge

Under the new rules, a discharged participant is entitled to written notice five working days prior to termination of the enrollment agreement in A.A.C. R9-10-1107(B). *See* A.A.C. R9-10-1109(A)(1). With the exception of the new notice requirement, the prior rules regarding the provision of a discharge plan and grounds of discharge were kept largely in place. It is estimated that the new notice requirement had a minimal economic effect on facilities and provided a significant benefit to participants by providing them time to make personal arrangements in anticipation of discharge.

i. Participant Rights

Through the promulgation of A.A.C. R9-10-1110, the Department effectively expanded the rights enumerated under the former rule, A.A.C. R9-10-505. Under the new rule, a facility's administrator is now explicitly barred from subjecting a participant to neglect, exploitation, coercion, manipulation, sexual abuse, sexual assault, seclusion, and misappropriation of property. *See* A.A.C. R9-10-1110(B)(2). The new rule also granted participants rights including, but not limited, to freedom from discrimination based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis; an expanded right to privacy in treatment and care for personal needs; and the right to receive assistance from a family member, the participant's representative, or other individuals in understanding, protecting, or exercising the participant's rights. *See* A.A.C. R9-10-1110(C). The Department estimates that the new rule imposed a minimal cost on adult day health care facilities by forcing them to draft new policies and provided a substantial benefit to participants by expanding their rights.

j. Medical Records

Under the new rules, A.A.C. R9-10-1111 explicitly instructs administrators to establish and maintain records according to A.R.S. Title 12, Chapter 13, Article 7.1. In accordance with this

change, the three-year record retention schedule previously set out in A.A.C. R9-10-511 was expanded to a six-year term set to run from the last date of service. In terms of the content of a participant's medical record, the new rules now require, in addition to the items listed under the former rule, documentation of a medication administered to a participant, a list of the names and telephone numbers of individuals to be notified in the event of an emergency, documentation of a participant's disposition upon discharge, documentation of any actions taken to control a participant's sudden, intense, or out-of-control behavior to prevent harm to the participant or another individual, and documented general consent and informed consent by the participant or the participant's representative. The rules also strengthened the steps facilities must take to secure records, including electronic records, from loss, damage, or unauthorized use. Based on the changes above, the Department estimates that the new rules imposed a moderate cost on adult day health care facilities due to the longer retention schedules imposed by statute. The rules produced a benefit to participants, however, by ensuring that adult day health care facilities maintain medication administration records and other vital information.

k. Adult Day Health Services

Pursuant to the 2013 rulemaking, former rule A.A.C. R9-10-509 was repealed and replaced in substantial part with A.A.C. R9-10-1113. The new rule requires that a facility's policies and procedures cover the process for providing information to a participant about medication prescribed for the participant and the procedures for preventing, responding to, reporting, and reviewing medication errors, adverse reactions, and overdoses. Additionally, the new rule mandates that a facility's policies and procedures for medication administration be reviewed and approved by a pharmacist, medical practitioner, or registered nurse. Finally, while provisions for injury reporting were preserved, the new rule expanded the former by specifically prescribing reporting periods for medication errors and adverse reactions. *See* A.A.C. R9-10-1113(J)-(K). The Department estimates that the changes imposed a minimal cost on adult day health care facilities by requiring third-party review of policies and procedures. The Department further estimates that the new rules provided a benefit to participants by improving incident reporting and professional oversight.

l. Food Services

Pursuant to the 2013 rulemaking, former rule A.A.C. R9-10-509(G) detailing requirements for food services was repealed and replaced by A.A.C. R9-10-1114. Whereas the former rule set strict nutritional guidelines for participant meals, the new rule provides that a designated food service supervisor prepare a weekly menu with food options meeting the nutritional needs contained in each participant's comprehensive assessment or care plan. The rule also sets out new environmental safety standards for food service, preparation, and storage. *See* A.A.C. R9-10-1114(C). The Department estimates that the new environmental rules imposed a minimal cost on facilities through the need for additional oversight in kitchens and mess halls. The rule change creates a benefit for participants, however, by improving facility sanitation standards.

9. **Summary of business competitiveness analyses of the rules**

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. **Status of the completion of action indicated in the previous five-year-review report**

The rules in 9 A.A.C. 10, Article 11, were enacted under an exempted rulemaking in October of 2013. This is the first five-year-review of the new rules.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective**

The Department has determined that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Analysis of stringency compared to federal laws**

The rules in Title 9, Chapter 10, Article 11 are not governed by federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037**

The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, so a general permit is not applicable.

14. **Plan of Action**

The Department does not plan to take any action on the rules.

INFORMATION FOR INDIVIDUAL RULES

R9-10-1101. Definitions.

The objective of the rule is to set out definitions clarifying and interpreting the terms contained in 9 A.A.C. 10, Article 11.

R9-10-1102. Supplemental Application Requirements.

The objective of the rule is to add the “number of participants for whom the applicant is requesting authorization to provide adult day health services” to the initial license application required contained in A.R.S. § 36-422 and A.A.C. R9-10-105.

R9-10-1103. Administration

The objectives of the rule are to:

- a. Set out the qualifications, duties, and appointment procedures for an adult day health care facility’s administrator;
- b. Mandate the adoption and annual review of a quality management program according to A.A.C. R9-10-1104;
- c. Ensure that a facility’s administrator establishes, documents, and implements policies and procedures to protect the health and safety of a participant that cover a facility’s administrative functions including, but not limited to: personnel, training, participant rights, records, and quality management;
- d. Ensure that a facility’s administrator establishes, documents, and implements policies and procedures for services that cover intake, discharge, medication, infection control, food services, environmental services, emergency treatment, and participant control;
- e. Require that policies and procedures are available and reviewed at least once every three years;
- f. Require that a facility’s administrator maintain the facility’s schedule of rates and charges and monthly calendar of planned activities.

R9-10-1104. Quality Management

The objectives of the rule are to:

- a. Mandate the establishment, documentation, and implementation of an ongoing quality management program in adult day health care facilities.
- b. Require the submission of a documented report to the governing authority that identifies concerns about the delivery of services at the facility and the facility’s actions in response to identified concerns.

R9-10-1105. Contracted Services

The objectives of the rule are to:

- a. Ensure that a facility's contracted services comply with the requirements of A.A.C. Title 9, Chapter 10, Article 11.
- b. Require that a facility's administrator maintains documentation of a facility's current contracted services.

R9-10-1106. Personnel

The objectives of the rule are to:

- a. Mandate that personnel members possess the minimum qualifications, skills, and knowledge required for their respective position.
- b. Establish minimum safety standards for personnel interacting on a regular basis with facility participants.
- c. Require documentation for each personnel member, employee, volunteer, or student in the form of a personnel record.
- d. Put in place minimum staffing requirements during a facility's operating hours.

R9-10-1107. Enrollment

The objectives of the rule are to:

- a. Require that participants provide evidence of freedom from infectious tuberculosis before or within seven calendar days after the participant's enrollment;
- b. Set out the elements of a facility's enrollment agreement;
- c. Ensure that the facility receives a signed written medical assessment from each participant's medical practitioners within 60 calendar days before enrollment;
- d. Establish sign in / sign out procedures for participants;
- e. Mandate the taking of a comprehensive assessment of each participant's physical health, mental and emotional status, and social history

R9-10-1108. Care Plan

The objectives of the rule are to

- a. Ensure that a care plan for an adult day health care facility participant is developed within seven calendar days after the completion of the participant's comprehensive assessment containing a summary of the participant's medical or health problems, the services to be provided, the goals and objectives of the stay, interventions required to achieve said goals and objectives, and discharge instructions;
- b. Require that a participant's care plan is reviewed and updated on a semi-annual basis.

R9-10-1109. Discharge

The objective of the rule is to set out the notice period, permissible grounds, and required documentation for a participant's discharge.

R9-10-1110. Participant Rights

The objectives of the rule are to:

- a. Establish a process by which a participant or participant's representative receives notice of a participant's rights;
- b. Set out prohibited practices in adult day health care facilities;
- c. Provide participant's with the right to expressly consent to or refuse treatment;
- d. Enumerate patient rights.

R9-10-1111. Medical Records

The objectives of the rule are to:

- a. Establish the contents of a participant's medical record;
- b. Implement safeguards for physical and electronic medical records.

R9-10-1112. Participant's Council

The objective of the rule is to establish a council that enables participants to provide input on their adult day health care facility's policies and planned activities on a quarterly basis.

R9-10-1113. Adult Day Health Services

The objectives of the rule are to:

- a. Require that personnel provides participants with planned therapeutic individual and group activities;
- b. Require that participants' health status is monitored by a registered nurse on a regular basis;
- c. Set out requirements for medication administration and assistance in the self-administration of medication;
- d. Ensure that medications are safely stored;
- e. Prescribe reporting periods for medication errors, adverse reactions, injuries and overdoses.

R9-10-1114. Food Services

The objectives of the rule are to:

- a. Require the designation of a food service supervisor;
- b. Set out the process for giving notice of upcoming meals;
- c. Ensure that food is obtained, prepared, served and stored in a safe manner;

R9-10-1115. Emergency and Safety Standards

The objectives of the rule are to:

- a. Require the development, documentation, implementation, and review of a disaster plan;
- b. Ensure that evacuation drills are regularly conducted and documented.

R9-10-1116. Environmental Standards

The objectives of the rule are to:

- a. Ensure that an adult day health care facility's premises are regularly cleaned, disinfected, and kept free from potentially hazardous conditions;
- b. Require regular equipment testing, calibration, and repair;
- c. Set out water quality standards in the event an adult day health care facility maintains a swimming pool for participants.

R9-10-1117. Physical Plant Standards

The objectives of the rule are to:

- a. Require compliance with physical plan health and safety codes incorporated by reference in A.A.C. R9-1-412(A)(2)(b);
- b. Prescribe physical premises requirements for facility bathrooms, outdoor activity spaces, indoor areas, storage spaces, and swimming pools.

ATTACHMENT A

ARTICLE 11. ADULT DAY HEALTH CARE FACILITIES

R9-10-1101. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following applies in this Article, unless otherwise specified:

1. “Care plan” means a written program of action for a participant's care based upon an assessment of the participant's physical, nutritional, psychosocial, economic, and environmental strengths and needs and implemented according to established short- and long-term goals.

R9-10-1102. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for an initial license as an adult day health care facility shall include on the application the number of participants for whom the applicant is requesting authorization to provide adult day health services.

R9-10-1103. Administration

A. A governing authority shall:

1. Consist of one or more individuals responsible for the organization, operation, and administration of an adult day health care facility;
2. Establish, in writing:
 - a. An adult day health care facility's scope of services, and
 - b. Qualifications for an administrator;
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Adopt a quality management program according to R9-10-1104;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;

6. Designate, in writing, an acting administrator, who has the qualifications established in subsection (A)(2)(b) if the administrator is:

- a. Expected not to be present on an adult day health care facility's premises for more than 30 calendar days, or
- b. Not present on an adult day health care facility's premises for more than 30 calendar days; and

7. Except as provided in (A)(6), notify the Department according to [A.R.S. § 36-425\(I\)](#), when there is a change in an administrator and identify the name and qualifications of the new administrator.

B. An administrator:

1. Is 21 years of age or older;
2. Is directly accountable to the governing authority of an adult day health care facility for the daily operation of the adult day health care facility and all services provided by or at the adult day health care facility;
3. Has the authority and responsibility to manage the adult day health care facility; and
4. Except as provided in subsection (A)(6), designates, in writing, an individual who is 21 years of age or older and present on the adult day health care facility's premises and accountable for the adult day health care facility when the administrator is not present on the adult day health care facility premises and participants are present on the adult day health care facility's premises.

C. An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a participant that:
 - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
 - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;

- c. Cover certification in cardiopulmonary resuscitation and first aid training;
- d. Include how a personnel member may submit a complaint relating to services provided to a participant;
- e. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
- f. Include a method to identify a participant to ensure that the participant receives the appropriate services;
- g. Cover participant rights, including assisting a participant who does not speak English or who has a disability to become aware of participant rights;
- h. Cover specific steps for:
 - i. A participant to file a complaint, and
 - ii. The adult day health care facility to respond to a participant complaint;
- i. Cover medical records, including electronic medical records; and
- j. Cover a quality management program, including incident reports and supporting documentation;

2. Policies and procedures for services provided by an adult day health care facility are established, documented, and implemented to protect the health and safety of a participant that:

- a. Cover screening, enrollment, and discharge;
- b. Cover the provision of the services in the adult day health care facility's scope of services;
- c. Cover dispensing, administering, and disposing of medications, including provisions for inventory control and preventing diversion of controlled substances;
- d. Cover how personnel members will respond to a participant's sudden, intense, or out-of-control behavior to prevent harm to the participant or another individual;
- e. Cover food services;
- f. Cover environmental services;
- g. Cover infection control;

- h. Cover contracted services;
 - i. Cover emergency treatment provided at the adult day health care facility; and
 - j. Designate which employees or personnel members are required to have current certification in cardiopulmonary resuscitation and first aid training;
3. Policies and procedures are:
- a. Available to personnel members, employees, volunteers, and students, and
 - b. Reviewed at least once every three years and updated as needed; and
4. Unless otherwise stated:
- a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
 - b. When documentation or information is required by this Chapter to be submitted on behalf of an adult day health care facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the adult day health care facility.

D. An administrator shall:

- 1. Maintain, and make available to individuals upon request, a schedule of rates and charges;
- 2. Ensure that a monthly calendar of planned activities is:
 - a. Posted before the beginning of a month, and
 - b. Maintained on the premises for at least 90 calendar days after the end of the month;
- 3. Ensure that materials, supplies, and equipment are provided for the planned activities; and
- 4. Assist in the formation of a participants' council according to R9-10-1112.

R9-10-1104. Quality Management

An administrator shall ensure that:

- 1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:

- a. A method to identify, document, and evaluate incidents;
 - b. A method to collect data to evaluate services provided to participants;
 - c. A method to evaluate the data collected to identify a concern about the delivery of services related to participant care;
 - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to participant care; and
 - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
 - a. An identification of each concern about the delivery of services related to participant care, and
 - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to participant care; and
 3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

R9-10-1105. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

R9-10-1106. Personnel

A. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
 - a. Are based on:

- i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
- ii. The acuity of the participants receiving physical health services or behavioral health services from the personnel member according to the established job description; and

b. Include:

- i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
- ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
- iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;

2. A personnel member's skills and knowledge are verified and documented:

- a. Before the personnel member provides physical health services or behavioral health services, and
- b. According to policies and procedures;

3. Sufficient personnel members are present on an adult day health care facility's premises when participants are present and have the qualifications, skills, and knowledge necessary to:

- a. Provide the services in the adult day health care facility's scope of services,
- b. Meet the needs of a participant, and

c. Ensure the health and safety of a participant; and

4. A personnel member, or an employee or a volunteer who has or is expected to have direct interaction with a participant for more than eight hours a week, provides evidence of freedom from infectious tuberculosis:

a. On or before the date the individual begins providing services at or on behalf of the adult day health care facility, and

b. As specified in R9-10-113.

B. An administrator shall ensure that a personnel member:

1. Is 18 years of age or older, and

2. Is not a participant of the adult day health care facility.

C. An administrator shall ensure that a personnel record for each personnel member, employee, volunteer, or student:

1. Includes:

a. The individual's name, date of birth, and contact telephone number;

b. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and

c. Documentation of:

i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;

ii. The individual's education and experience applicable to the individual's job duties;

iii. The individual's completed orientation and in-service education as required by policies and procedures;

iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;

- v. Cardiopulmonary resuscitation training, if required for the individual according to this Article and policies and procedures;
- vi. First aid training, if required for the individual according to this Article and policies and procedures; and
- vii. Evidence of freedom from infectious tuberculosis, if required for the individual according to this Article or policies and procedures;

2. Is maintained :

- a. Throughout the individual's period of providing services in or for the adult day health care facility, and
- b. For at least 24 months after the last date the individual provided service in or for the adult day health care facility; and

3. For a personnel member who has not provided physical health services or behavioral health services at or for the adult day health care facility during the previous 12 months, is provided to the Department within 72 hours after the Department's request.

D. An administrator shall ensure that:

- 1. At least two personnel members are present on the premises whenever two or more participants are in the adult day health care facility;
- 2. At least one personnel member with cardiopulmonary resuscitation and first-aid certification is on the premises at all times;
- 3. A registered nurse manages the nursing services and provides direction for health-related services provided by the adult day health care facility; and
- 4. A nurse is on the premises daily to:
 - a. Administer medications and treatments, and
 - b. Monitor a participant's health status.

R9-10-1107. Enrollment

A. An administrator shall ensure that a participant provides evidence of freedom from infectious tuberculosis:

1. Before or within seven calendar days after the participant's enrollment, and
2. As specified in R9-10-113.

B. Before or at the time of enrollment, an administrator shall ensure that a participant or the participant's representative signs a written agreement with the adult day health care facility that includes:

1. The participant's name and date of birth,
2. Enrollment requirements,
3. A list of the customary services that the adult day health care facility provides,
4. A list of services that are available at an additional cost,
5. A list of fees and charges,
6. Procedures for termination of the agreement,
7. The requirements of the adult day health care facility,
8. The names and telephone numbers of individuals designated by the participant to be notified in the event of an emergency, and
9. A copy of the adult day health care facility's procedure on health care directives.

C. An administrator shall give a copy of the agreement in subsection (B) to the participant or the participant's representative and keep the original in the participant's medical record.

D. An administrator shall ensure that a participant has a signed written medical assessment that:

1. Was completed by the participant's medical practitioner within 60 calendar days before enrollment; and
2. Includes:
 - a. Information that addresses the participant's:
 - i. Physical health;
 - ii. Cognitive awareness of self, location, and time; and

- iii. Deficits in cognitive awareness;
- b. Physical, mental, and emotional problems experienced by the participant;
- c. A schedule of the participant's medications;
- d. A list of treatments the participant is receiving;
- e. The participant's special dietary needs; and
- f. The participant's known allergies.

E. At the time of enrollment, an administrator shall ensure that the participant or participant's representative:

- 1. Documents whether the participant may sign in and out of the adult day health care facility;
and
- 2. Provides the following:
 - a. The name and telephone number of the:
 - i. Participant's representative;
 - ii. Family member to be contacted in an emergency;
 - iii. Participant's medical practitioner; and
 - iv. Adult who provides the participant with supervision and assistance in the preparation of meals, housework, and personal grooming, if applicable; and
 - b. If applicable, a copy of the participant's health care directive.

F. An administrator shall ensure that a comprehensive assessment of the participant:

- 1. Is completed by a registered nurse before the participant's tenth visit or within 30 calendar days after enrollment, whichever comes first;
- 2. Documents the participant's:
 - a. Physical health,
 - b. Mental and emotional status, and
 - c. Social history; and
- 3. Includes:

- a. Medical practitioner orders,
- b. Adult day health care services recommended for the participant's care plan, and
- c. The signature of the registered nurse conducting the comprehensive assessment and date signed.

R9-10-1108. Care Plan

An administrator shall ensure that a care plan for a participant:

1. Is developed within seven calendar days after the completion of the participant's comprehensive assessment;
2. Has input from:
 - a. The participant or participant's representative,
 - b. The registered nurse who performed the comprehensive assessment, and
 - c. Personnel who have provided services to the participant;
3. Is based on the participant's comprehensive assessment;
4. Includes:
 - a. A summary of the participant's medical or health problems, including physical, mental, and emotional disabilities or impairments;
 - b. Adult day health services to be provided;
 - c. Goals and objectives of care that are time-limited and measurable;
 - d. Interventions required to achieve objectives, including recommendations for therapy and referrals to other service providers; and
 - e. Discharge instructions according to R9-10-1109(B); and
5. Is reviewed and updated at least once every six months and whenever there is a significant change in the participant's condition.

R9-10-1109. Discharge

A. An administrator may discharge a participant from an adult day health care facility by terminating the agreement in R9-10-1107(B):

1. After giving the participant or participant's representative five working days written notice; and
2. For any of the following reasons:
 - a. Evidence of repeated failure to comply with the requirements of the adult day health care facility,
 - b. Documented proof of failure to pay,
 - c. Behavior that is dangerous to self or that interferes with the physical or psychological well-being of other participants, or
 - d. The participant requires services not in the adult day health care facility's scope of services.

B. An administrator shall ensure that discharge instructions for a participant are:

1. Developed that:
 - a. Identify any specific needs of the participant after discharge,
 - b. Are completed before discharge occurs,
 - c. Include a description of the level of care that may meet the participant's assessed and anticipated needs after discharge, and
 - d. Are documented in the participant's medical record within 48 hours after the discharge instructions are completed; and
2. Provided to the participant or the participant's representative before the discharge occurs.

R9-10-1110. Participant Rights

A. An administrator shall ensure that:

1. The requirements in subsection (B) and the participant rights in subsection (C) are conspicuously posted on the premises;
2. At the time of enrollment, a participant or the participant's representative receives a written copy of the requirements in subsection (B) and the participant rights in subsection (C); and
3. Policies and procedures include:
 - a. How and when a participant or the participant's representative is informed of participant rights in subsection (C), and
 - b. Where participant rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:

1. A participant is treated with dignity, respect, and consideration;
2. A participant is not subjected to:
 - a. Abuse;
 - b. Neglect;
 - c. Exploitation;
 - d. Coercion;
 - e. Manipulation;
 - f. Sexual abuse;
 - g. Sexual assault;
 - h. Seclusion;
 - i. Restraint;
 - j. Retaliation for submitting a complaint to the Department or another entity; or
 - k. Misappropriation of personal and private property by the adult day health care facility's personnel members, employees, volunteers, or students; and
3. A participant or the participant's representative:

- a. Except in an emergency, either consents to or refuses treatment;
- b. May refuse or withdraw consent for treatment before treatment is initiated;
- c. Except in an emergency, is informed of proposed alternatives to the treatment, associated risks, and possible complications;
- d. Is informed of the following:
 - i. The policy on health care directives,
 - ii. The participant complaint process,
 - iii. Rates and charges for participating at the adult day health care facility, and
 - iv. The process for contacting the local office of Adult Protective Services;
- e. Consents to photographs of the participant before the participant is photographed, except that a participant may be photographed when enrolled at an adult day health care facility for identification and administrative purposes; and
- f. Except as otherwise permitted by law, provides written consent to the release of information in the participant's:
 - i. Medical record, or
 - ii. Financial records.

C. A participant has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that supports and respects the participant's individuality, choices, strengths, and abilities;
3. To communicate, associate, and meet privately with individuals of the participant's choice;
4. To have access to a telephone, to make and receive calls, and to send and receive correspondence without interception or interference by the adult day health care facility;
5. To arrive and depart from the adult day health care facility, consistent with the participant's care plan and personal safety;

6. To receive privacy in treatment and care for personal needs;
7. To review, upon written request, the participant's own records;
8. To receive a referral to another health care institution if the adult day health care facility is not authorized or not able to provide physical health services or behavioral health services needed by the participant;
9. To participate or have the participant's representative participate in the development of a care plan or decisions concerning treatment;
10. To participate or refuse to participate in research or experimental treatment; and
11. To receive assistance from a family member, the participant's representative, or other individual in understanding, protecting, or exercising the participant's rights.

R9-10-1111. Medical Records

A. An administrator shall ensure that:

1. A medical record is established and maintained for a participant according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a participant's medical record is:
 - a. Recorded only by an individual authorized by policies and procedures to make the entry;
 - b. Dated, legible, and authenticated; and
 - c. Not changed to make the initial entry illegible; the medical practitioner or;
3. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic e signature represents is accountable for the use of the rubber-stamp signature or electronic e signature;
4. A participant's medical record is available to an individual:
 - a. Authorized according to policies and procedures to access the participant's medical record;

- b. If the individual is not authorized according to policies and procedures, with the written consent of the participant or the participant's representative; or
- c. As permitted by law; and

5. A participant's medical record is protected from loss, damage, or unauthorized use.

B. If an adult day health care facility maintains participant's medical records electronically, an administrator shall ensure that:

- 1. Safeguards exist to prevent unauthorized access, and
- 2. The date and time of an entry in a participant's medical record is recorded by the computer's internal clock.

C. An administrator shall ensure that a participant's medical record contains:

- 1. Participant information that includes:
 - a. The participant's name;
 - b. The participant's address;
 - c. The participant's date of birth; and
 - d. Any known allergies, including medication allergies;
- 2. The name of the participant's medical practitioner or other individuals involved in the care of the participant;
- 3. An enrollment agreement and date of the participant's first visit;
- 4. If applicable, documented general consent and informed consent by the participant or the participant's representative;
- 5. If applicable, the name and contact information of the participant's representative and:
 - a. The document signed by the participant consenting for the participant's representative to act on the participant's behalf; or
 - b. If the participant's representative:

- i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
 - ii. Is a legal guardian, a copy of the court order establishing guardianship;
6. Documentation of medical history;
7. A copy of the participant's health care directive, if applicable;
8. Orders;
9. The medical assessment required in R9-10-1107(D);
10. A care plan;
11. The comprehensive assessment required in R9-10-1107(F);
12. Progress notes;
13. If applicable, documentation of any actions taken to control the participant's sudden, intense, or out-of-control behavior to prevent harm to the participant or another individual;
14. Documentation of adult day health services provided to the participant;
15. The disposition of the participant upon discharge;
16. The discharge date, if applicable;
17. Documentation of a medication administered to the participant that includes:
 - a. The date and time of administration;
 - b. The name, strength, dosage, and route of administration;
 - c. The identification and signature of the individual administering, providing assistance in the self-administration of medication, or observing the participant's self-administration of the medication;
 - d. If medication for pain is administered on a PRN basis to a participant:
 - i. An identification of the participant's pain before administering the medication, and
 - ii. The effect of the medication administered; and

e. Any adverse reaction a participant has to the medication;

18. If applicable, documentation of:

a. A significant change in the participant's condition,

b. An injury or accident that occurred at the adult day health care facility and required medical services, and

c. Notification provided to the participant's medical practitioner or the participant's representative of the significant change in subsection (C)(18)(a) or the injury or accident in subsection (C)(18)(b);

19. Documentation of whether the participant may sign in or out of the adult day health care facility;

20. Documentation of freedom from infectious tuberculosis required in R9-10-1107(A); and

21. Names and telephone numbers of individuals to be notified in the event of an emergency.

R9-10-1112. Participant's Council

A. A participants' council:

1. Is composed of participants, who are willing to serve on the council and take part in scheduled meetings;

2. May develop guidelines that govern the council's activities;

3. May meet quarterly;

4. May record minutes of the meetings; and

5. May provide written input on planned activities and policies of the adult day health care facility.

B. A participants' council may invite personnel or the administrator to attend their meetings.

C. An administrator shall act as a liaison between the participants' council and personnel members, employees, and volunteers.

R9-10-1113. Adult Day Health Services

A. An administrator shall ensure that a personnel member provides supervision for a participant, except during periods of the day when the participant signs out or is signed out according to policies and procedures.

B. An administrator shall ensure that a personnel member provides assistance with activities of daily living and supervision of personal hygiene according to the participant's care plan and policies and procedures.

C. An administrator shall ensure that a personnel member provides a participant with planned therapeutic individual and group activities:

1. According to the:

- a. Participant's care plan,
- b. Policies and procedures, and
- c. Monthly calendar of planned activities required in R9-10-1103(D)(2); and

2. That include:

- a. Physical activities,
- b. Group discussion,
- c. Techniques a participant may use to maintain or improve the participant's independence in performing activities of daily living,
- d. Assessment of deficits in cognitive awareness and reinforcement of remaining cognitive awareness,
- e. Activities of daily living,
- f. Participants' council meetings, and
- g. Leisure time.

D. An administrator shall ensure that a nurse monitors the health status of a participant according to the participant's care plan and policies and procedures by:

1. Observing the participant's mental and physical condition, including monthly monitoring of the participant's vital signs and nutritional status;
2. Documenting changes in the participant's mental and physical condition in the participant's medical record; and
3. Reporting any changes to the participant's representative or medical practitioner.

E. If an adult day health care facility administers medication or provides assistance in the self-administration of medication, an administrator shall ensure that policies and procedures for medication administration or assistance in the self-administration of medication:

1. Include:
 - a. A process for providing information to a participant about medication prescribed for the participant including:
 - i. The prescribed medication's anticipated results,
 - ii. The prescribed medication's potential adverse reactions,
 - iii. The prescribed medication's potential side effects, and
 - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
 - b. Procedures for preventing, responding to, and reporting:
 - i. A medication error,
 - ii. An adverse response to a medication, or
 - iii. A medication overdose; and
 - c. Procedures for documenting medication services and assistance in the self-administration of medication; and
2. Specify a process for review through the quality management program of:
 - a. A medication administration error, and
 - b. An adverse reaction to a medication.

F. An administrator shall ensure that:

1. Policies and procedures for medication administration:
 - a. Are reviewed and approved by a pharmacist, medical practitioner, or registered nurse;
and
 - b. Ensure that medication is administered to a participant only as prescribed;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law;
and
3. A medication administered to a participant:
 - a. Is administered in compliance with an order, and
 - b. Is documented in the participant's medical record.

G. If an adult day health care facility provides assistance in the self-administration of medication, an administrator shall ensure that:

1. A participant's medication is stored by the adult day health care facility;
2. The following assistance is provided to a participant:
 - a. A reminder when it is time to take the medication;
 - b. Opening the medication container for the participant;
 - c. Observing the participant while the participant removes the medication from the container;
 - d. Verifying that the medication is taken as ordered by the participant's medical practitioner by confirming that:
 - i. The participant taking the medication is the individual stated on the medication container label,
 - ii. The participant is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and

iii. The participant is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label; or

e. Observing the participant while the participant takes the medication;

3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a pharmacist, medical practitioner, or registered nurse;

4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:

a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and

b. Includes:

i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,

ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and

iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;

5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (G)(4) before the personnel member provides assistance in the self-administration of medication; and

6. Assistance in the self-administration of medication provided to a participant:

a. Is in compliance with an order, and

b. Is documented in the participant's medical record.

H. An administrator shall ensure that:

1. A current drug reference guide is available for use by personnel members, and

2. A current toxicology reference guide is available for use by personnel members.

I. When medication is stored at an adult day health care facility, an administrator shall ensure that:

1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented to protect the health and safety of a participant for:
 - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication; and
 - b. Storing, inventorying, and dispensing controlled substances.

J. A medication error or a participant's refusal to take a medication is:

1. Reported to the participant's representative within 12 hours, and
2. Documented in the participant's medical record within 24 hours.

K. An adverse reaction is:

1. Reported to the participant's representative and medical practitioner within 12 hours, and
2. Documented in the participant's medical record within 24 hours.

L. An administrator shall:

1. Immediately notify a participant's representative and medical practitioner of an injury that may require medical services;
2. Report an injury to Adult Protective Services according to A.R.S. § 46-454, when applicable;
3. Prepare a written report on the day of occurrence or when any injury of unknown origin is detected that includes the:
 - a. Name of the participant;
 - b. Type of injury;
 - c. Names of witnesses, if applicable; and
 - d. Action taken;
4. Investigate the injury within 24 hours and documenting any corrective action in the report; and

5. Retain the report for at least 12 months after the date of the injury.

M. For a participant whose care plan includes counseling on an individual or group basis, an administrator shall ensure that:

1. If the counseling needed by the participant is within the adult day health care facility's scope of services, a personnel member provides the counseling to the participant according to policies and procedures; or

2. If the counseling needed by the participant is not within the adult day health care facility's scope of services, a personnel member assists the participant or the participant's representative to obtain counseling for the participant according to policies and procedures.

R9-10-1114. Food Services

A. An administrator shall:

1. Designate a food service supervisor who is responsible for food service in an adult day health care facility; and

2. If an adult day health care facility provides a therapeutic diet to participants, ensure that:

a. The therapeutic diet is prescribed in writing by:

i. The participant's medical practitioner, or

ii. A registered dietitian; and

b. A current therapeutic diet reference manual is available to the food service supervisor.

B. A food service supervisor shall ensure that:

1. A food menu:

a. Is prepared at least one week in advance,

b. Includes the foods to be served each day,

c. Is conspicuously posted at least one calendar day before the first meal on the food menu will be served,

- d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
 - e. Is maintained for at least 60 calendar days after the last day included in the food menu;
2. Meals and snacks provided by the adult day health care facility are served according to posted menus;
 3. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
 4. A participant is provided a diet that meets the participant's nutritional needs as specified in the participant's comprehensive assessment, under R9-10-1107(F), or the participant's care plan;
 5. Water is available and accessible to participants at all times, unless otherwise stated by the participant's medical practitioner; and
 6. A participant requiring assistance to eat is provided with assistance that recognizes the participant's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils, such as a plate guard, rocking fork, or assistive hand device, if not provided by the participant.

C. An administrator shall ensure that food is obtained, prepared, served, and stored as follows:

1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
2. Food is protected from potential contamination;
3. Food is prepared:
 - a. Using methods that conserve nutritional value, flavor, and appearance; and
 - b. In a form to meet the needs of a participant, such as cut, chopped, ground, pureed, or thickened;
4. Potentially hazardous food is maintained as follows:
 - a. Foods requiring refrigeration are maintained at 41° F or below;
 - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:

- i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
- ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
- iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
- iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155 °F;
- v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
- vi. Leftovers are reheated to a temperature of at least 165° F;

5. A refrigerator contains a thermometer, accurate to plus or minus 3° F, at the warmest part of the refrigerator;

6. Frozen foods are stored at a temperature of 0° F or below; and

7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

D. An administrator shall ensure that:

1. If an adult day health care facility is licensed to provide adult day health services to more than 15 participants, the adult day health care facility:

- a. Has a license or permit as a food establishment under 9 A.A.C. 8, Article 1; and
- b. Maintains a copy of the adult day health care facility's food establishment license or permit;

2. If the adult day health care facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the adult day health care facility, a copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the adult day health care facility; and

3. The adult day health care facility is able to store, refrigerate, and reheat food to meet the dietary needs of a participant.

R9-10-1115. Emergency and Safety Standards

A. An administrator shall ensure that:

1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and employees, and, if necessary, implemented that includes:

a. Procedures for protecting the health and safety of participants and other individuals on the premises;

b. Assigned responsibilities for each personnel member and employee;

c. Instructions for the evacuation of participants, including:

i. When, how, and where participants will be relocated; and

ii. A plan for notifying the emergency contact for each participant;

d. A plan to ensure each participant's medications will be available to administer to the participant during a disaster; and

e. A plan for providing water, food, and needed services to participants present in the adult day health care facility or the adult day health care facility's relocation site during a disaster;

2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;

3. Documentation of a disaster plan review required in subsection (A)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:

a. The date and time of the disaster plan review;

b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;

c. A critique of the disaster plan review; and

d. If applicable, recommendations for improvement; and

4. A disaster drill for assigned personnel is conducted on each shift at least once every three months and documented.

B. An administrator shall ensure that:

1. A participant receives orientation to the exits from the adult day health care facility and the route to be used when evacuating participants within two visits after the participant's enrollment, and

2. A participant's orientation is documented in the participant's medical record.

C. An administrator shall ensure that:

1. An evacuation drill for employees and participants is conducted at least once every six months;

2. Documentation of an evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:

a. The date and time of the evacuation drill;

b. The amount of time taken for all employees and participants to evacuate to a designated area;

d. Any problems encountered in conducting the evacuation drill; and

e. Recommendations for improvement, if applicable; and

3. An evacuation path is conspicuously posted on each hallway of each floor of the adult day health care facility.

R9-10-1116. Environmental Standards

A. An administrator shall ensure that:

1. The adult day health care facility's premises are:

a. Cleaned and disinfected according to policies and procedures to prevent, minimize, and control illness and infection; and

b. Free from a condition or situation that may cause a participant or an individual to suffer physical injury;

2. A pest control program is implemented and documented;
3. Windows and doors opening to the outside are screened if they are kept open at any time for ventilation or other purposes;
4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
5. Equipment used at the adult day health care facility is:
 - a. Maintained in working order;
 - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
 - c. Used according to the manufacturer's recommendations;
6. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
7. Garbage and refuse are:
 - a. Stored in covered containers lined with plastic bags, and
 - b. Removed from the premises at least once a week;
8. Heating and cooling systems maintain the adult day health care facility at a temperature between 70° F and 84° F;
9. The supply of hot and cold water is sufficient to meet the personal hygiene needs of participants and the cleaning and sanitation requirements in this Article;
10. Soiled linen and soiled clothing stored by the adult day health care facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
11. Oxygen containers are secured in an upright position;
12. Poisonous or toxic materials stored by the adult day health care facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to participants;

13. Combustible or flammable liquids and hazardous materials stored by the adult day health care facility are stored in the original labeled containers or safety containers in a locked area inaccessible to participants; and

14. Pets or animals are:

- a. Controlled to prevent endangering the participants and to maintain sanitation;
- b. Not allowed in treatment, food storage, food preparation, or dining areas;
- c. Licensed consistent with local ordinances; and
- d. For a dog or cat, vaccinated against rabies.

B. If a swimming pool is located on the premises, an administrator shall ensure that:

1. On a day that a participant uses the swimming pool, an employee:

a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:

i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;

ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or

iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and

b. Records the results of the water quality tests in a log that includes the date tested and test result;

2. Documentation of the water quality test is maintained for at least 12 months after the date of the test;

3. A swimming pool is not used by a participant if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a);

4. At least one personnel member with cardiopulmonary resuscitation training, required in R9-10-1106(D), is present in the pool area when a participant is in the pool area; and

5. At least two personnel members are present in the pool area if two or more participants are in the pool area.

R9-10-1117. Physical Plant Standards

A. An administrator shall ensure that an adult day health care facility complies with the physical plant health and safety codes and standards applicable to existing educational occupancies in the Life Safety Code, incorporated by reference in A.A.C. R9-1-412(A)(2)(b), in effect on the date the adult day health care facility submitted architectural plans and specifications to the Department for approval, according to R9-10-104.

B. An administrator shall ensure that the premises and equipment are sufficient to accommodate:

1. The services stated in the adult day health care facility's scope of services, and
2. An individual accepted as a participant by the adult day health care facility.

C. An administrator shall ensure that an adult day health care facility has at least 40 square feet of indoor activity space for each participant, excluding bathrooms, halls, storage areas, kitchens, wall thicknesses, and rooms designated for use by individuals who are not participants.

D. An administrator shall ensure that an outside activity space is provided and available that:

1. Is on the premises,
2. Has a hard-surfaced section for wheelchairs,
3. Has an available shaded area, and
4. Has a means of egress without entering the adult day health care facility.

E. An administrator shall ensure that:

1. There is at least one working toilet that flushes and has a seat and one sink with running water for each ten participants;
2. A bathroom for use by participants provides privacy when in use and contains in a location accessible to participants:
 - a. A mirror;

- b. Toilet paper for each toilet;
 - c. Soap accessible from each sink;
 - d. Paper towels in a dispenser or an air hand dryer; and
 - e. Grab bars for the toilet and other assistive devices, if required, to provide for participant safety;
3. A bathroom has a window that opens or another means of ventilation;
4. If a bathing facility is provided:
- a. The bathing facility provides privacy when in use,
 - b. Shower enclosures have nonporous surfaces,
 - c. Showers and tubs have grab bars for participant safety, and
 - d. Tub and shower floors have slip-resistant surfaces;
5. Dining areas are furnished with dining tables and chairs and large enough to accommodate participants;
6. There is a wall or other means of physical separation between dining facilities and food preparation areas;
7. If the adult day health care facility serves food, areas are designated for food preparation, storage, and handling and are not used as a passageway by participants; and
8. All flooring is slip-resistant.

F. If the adult day health care facility has a swimming pool on the premises, an administrator shall ensure that:

1. The swimming pool is equipped with the following:
- a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
 - i. A removable strainer,
 - ii. Two swimming pool inlets located on opposite sides of the swimming pool,and

- iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
 - b. An operational vacuum cleaning system;
- 2. The swimming pool is enclosed by a wall or fence that:
 - a. Is at least five feet in height as measured on the exterior of the wall or fence;
 - b. Has no vertical openings greater than four inches across;
 - c. Has no horizontal openings, except as described in subsection (C)(2)(e);
 - d. Is not chain-link;
 - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
 - f. Has a self-closing, self-latching gate that:
 - i. Opens away from the swimming pool,
 - ii. Has a latch located at least 54 inches from the ground; and
 - iii. Is locked when the swimming pool is not in use;
- 3. A life preserver or shepherd's crook is available and accessible in the pool area; and
- 4. If the swimming pool is used by participants, pool safety requirements are conspicuously posted in the pool area.

ATTACHMENT B

STATUTORY AUTHORITY

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and §§ 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health

of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by § 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to § 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code §§ 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

- (a) Screening in early pregnancy for detecting high-risk conditions.
- (b) Comprehensive prenatal health care.
- (c) Maternity, delivery and postpartum care.
- (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
- (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definition

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to

this subsection in the Arizona state hospital charitable trust fund established by § 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to § 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 17,1 prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:
 - (a) Served at a noncommercial social event such as a potluck.
 - (b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign

substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to § 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in § 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 § 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as “the hospital consumer assessment of healthcare providers and systems”.

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the

department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6.2 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 § 36-2151.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to the administration of medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or

those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.
2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.
3. Prescribe the criteria for the licensure inspection process.
4. Prescribe standards for the selection of health care-related demonstration projects.
5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees, and fees for architectural plans and specifications reviews.
6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.
7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.1

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to §§ 35-146 and 35-147, in the health services licensing fund established by § 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis.

The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized.

The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.