

**GOVERNOR'S REGULATORY REVIEW COUNCIL
NOTICE OF PUBLIC MEETING AND AGENDA
FOR AUGUST 2, 2011**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to members of the Governor's Regulatory Review Council and to the general public that the Governor's Regulatory Review Council will hold a regular meeting, open to the public on **Tuesday, August 2, 2011 at 9:00 a.m.** in the Pharmacy Boardroom located at **1700 West Washington Street, Third Floor, Phoenix, Arizona 85007**. For additional information, call the Governor's Regulatory Review Council office at (602) 542-2058.

At its discretion, the Council may consider and act upon any agenda item out of order. Members of the Council may appear by telephone.

Under A.R.S. §38-431.03(A)(3), the Governor's Regulatory Review Council may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item on the agenda.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting (602) 542-2058. Requests should be made as early as possible to allow time to arrange the accommodation.

A copy of the material provided to Council members (with the exception of material relating to possible executive sessions) is available for public inspection at the Council's office, located at 100 N. 15th Avenue, Suite 402, Phoenix, AZ 85007.

The agenda for the meeting is as follows: (This agenda is subject to change up to 24 hours before the meeting.)

A. CALL TO ORDER

1. Pledge of Allegiance

B. DISCUSSION AND APPROVAL OF MINUTES

- 1. Study Session Minutes 7/05/2011**
- 2. Council Meeting Minutes 7/12/2011**

C. DISCLOSURE OF CONFLICTS OF INTEREST

D. CONSIDERATION AND APPROVAL OF FIVE-YEAR-REVIEW REPORTS:

The Council will consider five-year review reports filed under A.R.S. 41-1056 and may approve or return the reports, in whole or in part. The Council may request information from the agency or members of the public.

**1. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
(F-11-0704)**

Title 18, Chapter 2, Article 14, Conformity Determinations; Article 15, Forest and Range Management Burns; Article 17, Arizona State Hazardous Air Pollutants Program; Appendix 12, Procedures for Determining Ambient Air Concentrations for Hazardous Air Pollutants

**2. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
(F-11-0705)**

Title 18, Chapter 9, Article 5, Grazing Best Management Practices

**3. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
(F-11-0706)**

Title 18, Chapter 9, Article 1, Aquifer Protection Permits-General Provisions; Article 3, Aquifer Protection Permits-General Permits; Article 4, Nitrogen Management General Permits

**4. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
(F-11-0804)**

Title 18, Chapter 9, Article 10, Arizona Pollutant Discharge Elimination System-Disposal, Use, and Transportation of Biosolids

5. ARIZONA DEPARTMENT OF HEALTH SERVICES (F-11-0802)

Title 9, Chapter 16, Article 3, Licensing Hearing Aid Dispensers

6. DEPARTMENT OF INSURANCE (F-11-0803)

Title 20, Chapter 6, Article 1, Hearing Procedures and Rulemaking Petitions; Article 2, Transaction of Insurance; Article 3, Financial Provisions and Procedures; Article 18, Prepaid Dental Plan Organizations; Article 20, Captive Insurers

7. ARIZONA DEPARTMENT OF HEALTH SERVICES (F-11-0805)

Title 9, Chapter 15, Article 1, General; Article 2, Primary Care Provider Loan Repayment Program; Article 3, Rural Private Primary Care Provider Loan Repayment Program

8. ARIZONA CRIMINAL JUSTICE COMMISSION (F-11-0806)

Title 10, Chapter 4, Article 5, Full-service Forensic Crime Laboratory Account

9. ARIZONA OMBUDSMAN-CITIZENS' AIDE (F-11-0807)

Title 2, Chapter 16, Article 1, General Provisions; Article 2, Handling Confidential Material; Article 3, Receiving and Processing Complaints; Article 4, Conducting Investigations; Article 5, Incorporating Agency Responses into Reports and Recommendations

10. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) (F-11-0808)

Title 9, Chapter 30, Article 1, Definitions; Article 2, Eligibility; Article 3, Services; Article 4, Grievance System

E. CONSIDERATION AND APPROVAL OF RULES:

The Council will consider rule packages filed under A.R.S. 41-1052 and may approve or return the packages, in whole or in part. The Council may request information from the agency or members of the public.

1. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) (R-11-0803)

Title 9, Chapter 22, Article 1, Definitions; Article 2, Scope of Service; Article 7, Standards of Payment

Amend: R9-22-101, R9-22-201, R9-22-202, R9-22-204,
R9-22-210, R9-22-210.01, R9-22-211, R9-22-215,
R9-22-217, R9-22-703 and R9-22-712

2. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) (R-11-0804)

Title 9, Chapter 31, Article 2, Scope of Services; Article 16, Services for Native Americans

Repeal: R9-31-1602, R9-31-1603, R9-31-1604,
R9-31-1605, R9-31-1606, R9-31-1607,
R9-31-1608, R9-31-1609, R9-31-1610,
R9-31-1611, R9-31-1612, R9-31-1613,
R9-31-1614, R9-31-1615, R9-31-1622 and
R9-31-1625

Amend: R9-31-201, R9-31-204, R9-31-215, Article 16 and
R9-31-1601

3. ARIZONA DEPARTMENT OF TRANSPORTATION (R-11-0802)

Title 17, Chapter 5, Article 2, Motor Carriers

Repeal: R17-5-205

Amend: R17-5-201, R17-5-202, R17-5-203, R17-5-204,
R17-5-206, R17-5-208, R17-5-209, R17-5-210,
R17-5-211, R17-5-212

F. AGENCY REPORT TO COUNCIL:

The Council will discuss the agency's report on the rulemaking progress as requested. The Council may request information from the agency or members of the public.

1. DEPARTMENT OF ECONOMIC SECURITY (F-10-0107)

Title 6, Chapter 2, Article 1, General Provisions; Article 2, Employment Services Provided by the Department

Approved January 5, 2010, with an agreement from the agency that it will provide a status report every six months, on the progress of its rulemaking activities.

2. DEPARTMENT OF ECONOMIC SECURITY (F-09-1103)

Title 6, Chapter 13, Article, 2, Application and Continued Eligibility; Article 3, Methods of Eligibility Determination and Budget Procedures; Article 6, Supplemental Payments Program; Article 9, Tuberculosis Control; Article 12, Other Procedures and Services

Approved January 5, 2010, with an agreement from the agency that it will provide a status report every six months, on the progress of its rulemaking activities.

3. DEPARTMENT OF ECONOMIC SECURITY (F-10-0105)

Title 6, Chapter 5, Article 52, Certification and Supervision of Family Child Care Home Providers

Approved January 5, 2010, with an agreement from the agency that it will provide a status report every six months, on the progress of its rulemaking activities.

4. DEPARTMENT OF ECONOMIC SECURITY (F-10-0106)

Title 6, Chapter 5, Article 56, Confidentiality and Release of CPS Records

Approved January 5, 2010, with an agreement from the agency that it will provide a status report every six months, on the progress of its rulemaking activities.

G. ADJOURNMENT

**GOVERNOR'S REGULATORY REVIEW COUNCIL
CLAIM FOR SERVICE**

NAME AND ADDRESS:

Claim for Attending Meeting on August 2, 2011

| | |
|-----------------------|---------------------|
| 1 day @ \$200 per day | \$200 |
| Total Amount of Claim | <u>\$200</u> |

I certify that I have performed the work listed above and claim this reimbursement according to A.R.S. § 41-1051.

Signature

Date

EIN

=====

FOR DOA USE ONLY

Date received: _____

Approved: _____

Janice K. Brewer
Governor



Scott A. Smith
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

GOVERNOR'S REGULATORY REVIEW COUNCIL

100 NORTH FIFTEENTH AVENUE • ROOM 402
PHOENIX, ARIZONA 85007

(602) 542-2058

MEMORANDUM

DATE: August 2, 2011

TO: Council Members

FROM: Lielyn Creswell-Downing, GRRC

SUBJECT: Conflict of Interest Information for the August 2, 2011 Council Meeting

Following is a brief description of the substance of the agenda items for the **August 2, 2011** meeting. This is provided to aid you in determining whether a conflict exists.

FIVE-YEAR-REVIEW REPORTS

D-1. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (F-11-0704)

Title 18, Chapter 2, Article 14, Conformity Determinations; Article 15, Forest and Range Management Burns; Article 17, Arizona State Hazardous Air Pollutants Program; Appendix 12, Procedures for Determining Ambient Air Concentrations for Hazardous Air Pollutants

The Department of Environmental Quality (DEQ) is reviewing its rules on the following: conformity determinations, which are determinations of whether a federally funded transportation plan or project conforms with the State Implementation Plan (SIP) regarding air pollution; requirements for forest and range management burns; and the Hazardous Air Pollution (HAP) program, including acute and chronic ambient air concentrations and procedures for determining ambient air concentrations of pollutants. The rules in Article 14 were made in 1995 and have not been amended, the rules in Article 15 were last amended in 2004, and the rules in Article 17 were made in 2007.

Commenters: No written criticisms were received. However, in 2009 after an adverse ruling by the Superior Court, the Department settled litigation brought by Oak Creek Manufacturing and the Chamber of Commerce. The litigation resulted from a 2006 amendment to the Article 17 HAP rules and challenged as beyond the Department's authority the Department's regulation of modifications to sources with emissions below statutory thresholds.

**D-2. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
(F-11-0705)**

Title 18, Chapter 9, Article 5, Grazing Best Management Practices

The Department of Environmental Quality (DEQ) is reviewing its rule establishing the surface water quality general grazing permit. As required by A.R.S. § 49-202.01, the permit is voluntary and issued to persons engaging in livestock grazing who adopt voluntary best management practices.

Commenters: None

**D-3. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
(F-11-0706)**

Title 18, Chapter 9, Article 1, Aquifer Protection Permits-General Provisions; Article 3, Aquifer Protection Permits-General Permits; Article 4, Nitrogen Management General Permits

The Arizona Department of Environmental Quality ("Department" or "DEQ") is charged with administering the state's laws on environmental regulation. In this five-year-review, the Department is reviewing its rules on notice requirements and terms and conditions for General Aquifer Protection Permits (APPs) and Nitrogen Management General Permits. DEQ's report on individual APPs (Article 2) was approved at the May, 2011 Council meeting. The rules set forth general provisions for discharging under a general permit, specify the types of general permits, and establish requirements for nitrogen management permits for application of nitrogen fertilizer and discharges from animal feeding operations. These rules were made in 2001 and most were amended in 2005.

Commenters: Members of the Arizona County Directors of Environmental Health Services Association, Jack Bale of Wilson Bale Consulting, and Smith & Loveless, Inc.

**D-4. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
(F-11-0804)**

Title 18, Chapter 9, Article 10, Arizona Pollutant Discharge Elimination System-Disposal, Use, and Transportation of Biosolids

The Arizona Department of Environmental Quality (Department) is reviewing its rules on biosolids/sewage sludge. The Department was delegated authority for the biosolids/sewage sludge program in Arizona by the federal EPA in 2004. Anyone applying, generating, or transporting biosolids must register with the Department. The rules reviewed establish requirements for treatment, transportation, and land-application of biosolids, septage pumping activities, and treatment works that treat domestic sewage. The rules were made in 2001 and most were amended in 2003.

Commenters: Peter Gawain of RDI Energy Plants, Inc

D-5. ARIZONA DEPARTMENT OF HEALTH SERVICES (F-11-0802)

Title 9, Chapter 16, Article 3, Licensing Hearing Aid Dispensers

The Arizona Department of Health Services (Department) is reviewing its rules on licensing hearing aid dispensers. The rules establish requirements for licensing and license renewal for individuals and businesses that dispense hearing aids, operation and inspection requirements, enforcement procedures, and fees.

Commenters: None

D-6. DEPARTMENT OF INSURANCE (F-11-0803)

Title 20, Chapter 6, Article 1, Hearing Procedures and Rulemaking Petitions; Article 2, Transaction of Insurance; Article 3, Financial Provisions and Procedures; Article 18, Prepaid Dental Plan Organizations; Article 20, Captive Insurers

The purpose of the Department of Insurance (Department) is "to administer this state's insurance laws, protect the citizens of this state who purchase insurance . . . stimulate the insurance market by encouraging competition, protect the public from unregulated insurers and represent insurance consumers' interests." Laws 2010, Ch. 13, § 3. This five-year review report covers the 44 rules, including a table, in 20 A.A.C. 6 (Chapter 6), Articles 1, 2, 3, 18, and 20.

Article 1 contains rules governing hearing procedures and rulemaking petitions.

Article 2 contains rules governing transaction of insurance, including rules on advertising, surplus lines broker requirements, local or retaliatory taxes, industrial insureds, unfair gender discrimination, group coverage discontinuance, life insurance solicitation, readability of policies, unfair discrimination on the basis of blindness, forms for replacement of life insurance, life and disability policy language, and coordination of benefits.

Article 3 contains rules governing financial provisions and procedures, including rules on withdrawal of insurers from insurance business, accounting

for reserves on reinsurance, life and disability reinsurance requirements, and determination of an insurer's hazardous financial condition.

Article 18 contains rules governing prepaid dental plan organizations, including rules on application for a certificate of authority, officers, required reporting, basic dental services provided, the service delivery system, designation of service areas, contract requirements, dental advertising records, quality improvement, confidentiality of records, and assignment of members and providers.

Article 20 contains one rule that governs fees and costs paid by captive insurers.

Commenters: None

D-7. ARIZONA DEPARTMENT OF HEALTH SERVICES (F-11-0805)

Title 9, Chapter 15, Article 1, General; Article 2, Primary Care Provider Loan Repayment Program; Article 3, Rural Private Primary Care Provider Loan Repayment Program

The purpose of the Arizona Department of Health Services (Department) is "to protect the physical and mental health of the people of this state and to promote the highest standards for licensed health care institutions, emergency services, and care facilities for adults and children." Laws 2010, Ch. 8, § 3. This five-year review report covers the 37 rules in 9 A.A.C. 15 (Chapter 15), which relate to two loan repayment programs of the Department. The rules were last amended or newly made in 2001.

The programs are designed to encourage primary care providers to practice in areas of Arizona that are underserved by paying off portions of education loans taken out by the providers. "Primary care providers" are described in the relevant statutes as physicians [limited in R9-15-101 to doctors of medicine or doctors of osteopathy under Arizona law], dentists, and mid-level providers. See A.R.S. §§ 36-2172 and 36-2174. A "mid-level provider" is defined as a physician assistant or a registered nurse practitioner, which includes a nurse midwife. See A.R.S. § 36-2171(2).

Article 2 contains 18 rules that govern the Primary Care Provider Loan Repayment Program (PCPLRP or public service program), the initial loan repayment program governed by A.R.S. § 36-2172 and added in 1994. The primary care providers in this program contract with the Department to provide services for at least two years at or through a public or non-profit facility in exchange for loan repayment. The services must be provided in a federally designated Health Professional Shortage Area (HPSA), as established by the U.S. Department of Health and Human Services. The Department receives federal grant monies that partially fund this program. The Department is

required to give priority to applicants who intend to practice in rural areas most in need of primary care services. A.R.S. § 36-2172(E).

Article 3 contains 18 rules that govern the Rural Private Primary Care Provider Loan Repayment Program (RPPCPLRP or private service program), a second loan repayment program added in 1997 and governed by A.R.S. § 36-2174 as well as applicable requirements of A.R.S. § 36-2172. The private service program is similar to the public service program in that the primary care providers contract with the Department to provide services for at least two years, but services are provided through an eligible private practice, described under A.R.S. § 36-2174, rather than a public or nonprofit facility. An eligible private practice is one that is "rural," as that term is defined in A.R.S. § 36-2174(A), and located in an Arizona Medically Underserved Area (AzMUA) designated by the Department under A.R.S. § 36-2352. The Department uses the Health Professional Shortage Areas described in Article 2 to designate the boundaries of medically underserved areas in Arizona. As with the public service program, the Department is required to give preference in the private service program to applicants who agree to serve in rural areas [A.R.S. § 36-2174(A)], but the Department receives no federal funding for primary care physicians serving in private practice.

Commenters: None

D-8. ARIZONA CRIMINAL JUSTICE COMMISSION (F-11-0806)

Title 10, Chapter 4, Article 5, Full-service Forensic Crime Laboratory Account

The Arizona Criminal Justice Commission (Commission) administers the Full-Service Crime Laboratory Account (Account). The Commission makes grants to cities, counties, and states to improve the efficiency and effectiveness of full-service forensic crime laboratories. The rules establish requirements for grant solicitation and evaluation, and reports required to be filed by grant recipients. The rules were last amended in 2006.

Commenters: None

D-9. ARIZONA OMBUDSMAN-CITIZENS' AIDE (F-11-0807)

Title 2, Chapter 16, Article 1, General Provisions; Article 2, Handling Confidential Material; Article 3, Receiving and Processing Complaints; Article 4, Conducting Investigations; Article 5, Incorporating Agency Responses into Reports and Recommendations

The purpose of the Office of Ombudsman-Citizens' Aide (Office) is "to service citizens' complaints by investigating the administrative acts of state agencies and to annually report to the governor, the legislature and the public on its activities." Laws 2010, Ch. 12, § 3. This five-year review report covers the 20 rules in 2 A.A.C. 16 (Chapter 16), Articles 1 through 5. The rules contain

definitions and cover handling confidential material, receiving and processing complaints, conducting investigations, and incorporating agency responses into reports and recommendations.

Commenters: None

**D-10. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
(AHCCCS) (F-11-0808)**

Title 9, Chapter 30, Article 1, Definitions; Article 2, Eligibility; Article 3, Services; Article 4, Grievance System

The Arizona Health Care Cost Containment System (AHCCCS) is reviewing its rules on the Medicare Prescription Part D Extra Help Program, which provides assistance with Medicare Part D prescription costs for members who qualify. The rules apply when a person does not apply for the Extra Help Program through Social Security. The rules were made in 2006.

Commenters: None

RULES:

**E-1. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
(AHCCCS) (R-11-0803)**

Title 9, Chapter 22, Article 1, Definitions; Article 2, Scope of Service; Article 7, Standards of Payment

Amend: R9-22-101, R9-22-201, R9-22-202, R9-22-204,
R9-22-210, R9-22-210.01, R9-22-211, R9-22-215,
R9-22-217, R9-22-703 and R9-22-712

The Arizona Health Care Cost Containment System ("AHCCCS") is the state's Medicaid agency. In this rulemaking, AHCCCS is eliminating the requirement for Acute Care Program members to obtain preauthorization for certain services, including dialysis shunt placement, apnea management and training for premature babies, eye surgery for glaucoma, and home health visits following an acute hospitalization. AHCCCS is also making technical and grammatical changes, including clarifying that prior authorization of a service takes into consideration factors such as cost effectiveness and compliance with AHCCCS' rules, as well as the medical necessity of the service.

Commenters: None

**E-2. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
(AHCCCS) (R-11-0804)**

Title 9, Chapter 31, Article 2, Scope of Services; Article 16, Services for Native Americans

Repeal: R9-31-1602, R9-31-1603, R9-31-1604,
R9-31-1605, R9-31-1606, R9-31-1607,
R9-31-1608, R9-31-1609, R9-31-1610,
R9-31-1611, R9-31-1612, R9-31-1613,
R9-31-1614, R9-31-1615, R9-31-1622 and
R9-31-1625

Amend: R9-31-201, R9-31-204, R9-31-215 Article 16, and
R9-31-1601

The Arizona Health Care Cost Containment System ("AHCCCS") is the state's Medicaid agency. This is a companion rulemaking to the Chapter 22 rulemaking on this month's agenda. AHCCCS is eliminating the requirement for Children's Health Insurance Program members to obtain preauthorization for certain services, including dialysis shunt placement, apnea management and training for premature babies, eye surgery for glaucoma, and home health visits following an acute hospitalization. AHCCCS is also making technical and grammatical changes, including clarifying that prior authorization of a service takes into consideration factors such as cost effectiveness and compliance with AHCCCS' rules, as well as the medical necessity of the service. Several Article 16 rules are being repealed and replaced with cross-references to rules in Chapter 22 and the term "Native American" is being replaced with "American Indian."

Commenters: None

E-3. ARIZONA DEPARTMENT OF TRANSPORTATION (R-11-0802)

Title 17, Chapter 5, Article 2, Motor Carriers

Repeal: R17-5-205

Amend: R17-5-201, R17-5-202, R17-5-203, R17-5-204,
R17-5-206, R17-5-208, R17-5-209, R17-5-210,
R17-5-211, R17-5-212

The Department of Transportation (Department) has exclusive control and jurisdiction over state highways, state routes, state owned airports and all state owned transportation systems. See A.R.S. § 28-332(A). The Department's powers include registering motor vehicles, licensing drivers, designing and constructing transportation facilities, and administering transportation safety

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programs. See A.R.S. § 28-332(B). In this rulemaking, the Department, in partnership with the Department of Public Safety (DPS), is incorporating by reference relevant sections of the 2009 edition of the Code of Federal Regulations. The United States Department of Transportation requires that states adopt Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations to ensure eligibility for federal enforcement grants. The Department and DPS rely on these federal monies to fund numerous enforcement positions, including enforcement positions at Arizona's southern ports of entry.

Commenters: None

**GOVERNOR'S REGULATORY REVIEW COUNCIL (GRRC)
COUNCIL MEMBER DISCLOSURE FORM**

TO: Governor's Regulatory Review Council

FROM:

DATE: August 2, 2011

SUBJECT: Conflict of Interest Disclosure Pursuant to
A.R.S. §§ 38-501 to 38-511

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1. Identify the agency, rule number, agenda item, and date of GRRC meeting at which rule is scheduled to be heard, or other matter in which you or your relative may have a "substantial interest" under A.R.S. §§ 38-501 to 38-511.

 2. Describe the "substantial interest" referred to above. (Attach additional pages if necessary.)

STATEMENT OF DISQUALIFICATION

To avoid any possible conflict of interest under A.R.S. §§ 38-501 to 38-511, I will refrain from participating in any manner in the matter identified above.

Signature

Date